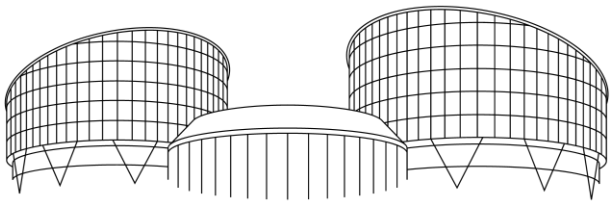

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

**CASE OF ENUKIDZE AND GIRGVLIANI v. GEORGIA**

*(Application no. 25091/07)*

JUDGMENT

STRASBOURG

26 April 2011

**FINAL**

*26/07/2011*

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of Enukidze and Girgvliani v. Georgia,**

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

Françoise Tulkens, *President,*
Ireneu Cabral Barreto,
Vladimiro Zagrebelsky,
Danutė Jočienė,
Dragoljub Popović,
András Sajó, *judges,*
Irakli Adeishvili, ad hoc *judge,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 27 April 2010 and 22 March 2011,

Delivers the following judgment, which was adopted on the last-mentioned date:

# PROCEDURE

1. The case originated in an application (no. 25091/07) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Georgian nationals, Mrs Irina Enukidze and Mr Guram Girgvliani ("the applicants"), on 11 June 2007 and 17 March 2008 respectively. On 24 August 2007, Mrs Irina Enukidze ("the first applicant") died. On 17 March 2008 Mr Guram Girgvliani ("the second applicant"), her husband, informed the Court of his intention to pursue the proceedings in his own name as well as on behalf of his late wife. For the sake of the readability and other practical considerations, the Court will continue referring to both applicants in the present judgment.

2. The applicants were represented by Mr Shalva Shavgulidze and Mr Davit Jandieri, lawyers practising in Tbilisi. The Georgian Government ("the Government") were represented by their Agent, Mr Levan Meskhoradze.

3. The applicants alleged, in particular, that their son had been killed by Ministry of the Interior officials because he had upset senior officials in that Ministry as well as the Minister's wife, and that the investigation carried out by the authorities had not been effective.

4. On 24 June 2008 the Court decided to communicate the complaints under Articles 2, 6 § 1 and 13 of the Convention to the Government (Rule 54 § 2(b) of the Rules of Court) and to rule on the admissibility and merits of the application at the same time (Article 29 § 3 of the Convention). On the same date it also requested the Government to submit a copy of all the criminal case materials related to the homicide of

the applicants' son, both on paper and on data storage devices, including the fourteen exhibits (see paragraph 159 below), as well as a copy of the full file concerning the criminal proceedings directed against L.B.-dze under Article 371-1 of the Criminal Code (see paragraph 194 below).

5. On 22 December 2008, as well as filing their observations on the admissibility and merits of the present application, the Government submitted eight volumes of documentary evidence related to the homicide case only. Volume no. 8 confirmed that video recordings, including the fourteen exhibits, also formed part of that criminal case file. However, none of those recordings was enclosed. As to the file concerning the criminal proceedings against L.B.-dze, the Government did not produce a single item of evidence, limiting themselves to the explanation that, after having examined a number of witnesses, the relevant domestic authorities had discontinued those proceedings.

6. The applicants submitted their observations in reply, together with their claims for just satisfaction, on 24 May and 9 July 2009. The Government commented on the applicants' submissions on 14 July 2009.

7. On 6 October 2009 the Court decided to hold a hearing on the admissibility and the merits of the case.

8. On 9 November 2009 the Court drew the Government's attention to their failure to submit the fourteen exhibits and other video recordings which formed part of the homicide case as well as the case materials concerning the criminal proceedings against L.B.-dze, including the decision on the discontinuation of those proceedings. Referring to its case-law on the respondent States' obligations under Article 38 of the Convention (*Medova v. Russia*, no. 25385/04, §§ 76-80, ECHR 2009-... (extracts)), the Court again requested the Government to submit the missing items of evidence, emphasising that they should reach the Court by 1 December 2009 at the latest.

9. By a faxed letter of 1 December 2009, the Government informed the Court, without attaching a copy of the relevant postal receipt in support, that the requested items of evidence had been sent by ordinary mail.

10. On 14 December 2009, reiterating its request for the above-mentioned items of evidence, the Court also invited the Government, in view of the forthcoming hearing, to submit additional documents – the classified internal memo addressed by D.A.-aia to the Minister of the Interior (see paragraph 49 below) and the documents concerning the preparation and implementation of the presidential pardon of 24 November 2008 and the four convicts' release on licence on 5 September 2009 (see paragraphs 204-205 below).

11. On 15 December 2009 the items of evidence posted by the Government on 1 December 2009 (see paragraph 9 above) finally reached the Court. They consisted of the fourteen exhibits in the homicide case and of certain materials concerning the proceedings against L.B.-dze under

Article 371-1 of the Criminal Code. The additional documents requested by the Court on 14 December 2009 (see the preceding paragraph) were submitted by the Government on 12 January 2010.

12. On 26 April 2010 the Government submitted further written comments on the admissibility and merits of the application. Those comments had not been requested by the Court, given its earlier decision to adopt an oral procedure, but were nevertheless included in the case file pursuant to Rule 38 § 1 of the Rules of Court and transmitted to the applicants on the same date.

13. A hearing took place in public in the Human Rights Building, Strasbourg, on 27 April 2010 (Rule 59 § 3). On the same date the Court advised the parties that the adversarial written procedure was definitively closed and that no further pleadings would be entertained.

There appeared before the Court:

(a) *for the Government*
Mrs T. BURJALIANI, *First Deputy Minister of Justice*,
Mr L. MESKHORADZE, *Agent*,

(b) *for the applicants*
Mr SH. SHAVGULIDZE and Mr D. JANDIERI, *Counsels*,
Mr G. GIRGVLIANI, *Applicant*,
Mrs K. KVANTALIANI, *Adviser*.

The Court heard addresses by Mrs T. BURJALIANI and Mr D. JANDIERI.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

14. The first applicant was born in 1956. She died on 24 August 2007. The second applicant was born in 1950 and lives in Tbilisi.

### *1. Background to the case*

15. On 27 January 2006, at around 11 p.m., a group of friends met at the Café Chardin in Tbilisi. In the group were T.S.-aia, the Minister of the Interior's wife, D.A.-aia, Director of Constitutional Security at the Interior Ministry, his deputy O.M.-ov, V.S.-dze, Director of the General Inspectorate of the Interior Ministry, G.D.-dze, Head of Press at the Ministry and the Minister's spokesman, and A.K.-dze, a lady friend of

T.S.-aia. Another woman, Th.M.-dze, a friend of A.K.-dze, was also with them.

16. Mr Sandro Girgvliani, the applicants' 28-year-old only son, and a friend of his, L.B.-dze, were sitting at another table in the same room.

17. According to the applicants D.A.-aia, O.M.-ov, V.S.-dze and G.D.-dze are very well-known public figures in Georgia who, with V.M.-shvili, the Georgian Minister of the Interior, played an active part in the so-called Rose Revolution that brought about the resignation of President E. Shevardnadze in November 2003 (see *The Georgian Labour Party v. Georgia*, no. 9103/04, §§ 11-13, 8 July 2008). According to the applicants, the government relies on the support of these trusted aides.

18. As submitted by the applicants, on the evening in question Sandro Girgvliani and L.B.-dze, both young bankers, arrived at the Café Chardin later than the group of friends mentioned above. The applicants' son was actually hoping to see Th.M.-dze, whom he was apparently courting. On entering the café, he went up to the table where T.S.-aia, the Interior Minister's wife, and her friends were sitting to say hello to Th.M.-dze. After greeting Th.M.-dze with a kiss, he went to sit with L.B.-dze at a nearby table. At one point he signalled to Th.M.-dze to join them at his table and she temporarily changed tables. The discussion between Sandro Girgvliani and Th.M.-dze, which lasted between 20 and 30 minutes, was apparently quite tense, punctuated with lively gestures that suggested they were disagreeing about something. Because of this, A.K.-dze went up to Th.M.-dze twice, to ask her if everything was all right and if she needed any help. Th.M.-dze said all was well and she would soon be going back to A.K.-dze's table. When she finally did so the Minister of the Interior's wife asked her if there was anything wrong. Th.M.-dze said that the young man she had been talking to was a friend and that there was no problem.

19. On 28 January 2006, at about 3 p.m., Sandro Girgvliani's body was found by three friends, with the help of a local man, near the cemetery in Okrokana, a suburb of Tbilisi, 6.3 km from the Café Chardin.

20. According to an expert report drawn up by forensic specialists on 28 January 2006, after inspecting the crime scene, and the photographs appended to it, Sandro Girgvliani's body, naked from the waist up, was discovered lying in the snow in the woods near the cemetery. Visual examination of the body revealed numerous parallel linear wounds on the left arm and shoulder, three 8 cm wounds to the neck, a similar wound to the throat and numerous bruises and lesions, some deep, to the chest. A pocketknife was found in the victim's trouser pocket.

21. The autopsy carried out on 28 January 2006 by the National Forensic Bureau established that the victim had 12 cuts of different sizes on his throat, caused by a sharp object, and one lesion on the left shoulder. Three of the wounds to the throat were deep enough to have damaged the muscles. One of them, measuring 0.5 cm in diameter, had reached the pharynx.

According to a State expert who examined a sample of skin taken from the throat, the wounds had been caused by a sharp, pointed object with a handle, probably a knife. A very large number of cuts of different sizes – from 4 to 15 cm long – were found on the left shoulder, the left forearm, the right shoulder, the fingers, the belly, both knees and tibias, the thighs, the forehead, the nose, and around the eyes. Analyses revealed the presence of alcohol but no drugs in the blood. According to the experts, the amount of alcohol in the victim's blood at the time of death was insignificant (0.35 ‰).

22. The report concluded that death had been caused by the wound to the pharynx. The victim had died of asphyxia when blood from the wound to his pharynx was sucked into the airways. It was a serious, life-threatening wound.

*2. The part of the investigation carried out by the Ministry of the Interior*

23. On 28 January 2006 criminal proceedings were instituted by the Ministry of the Interior for murder (Article 108 of the Criminal Code). On the same day criminal proceedings were instituted on counts of false imprisonment (Article 143 § 2 of the Criminal Code) and criminal association (Article 179 § 2 of the Criminal Code). Also on the same day, the two cases were joined.

24. On 28 January 2006 L.B.-dze was questioned as a witness. He explained that on 27 January 2006, at around 8 p.m., Sandro Girgvliani, himself and some colleagues of theirs went to the Keiser inn. They ordered various dishes, and beer and vodka. They left the inn at about 1 a.m. The applicants' son and L.B.-dze took one taxi and their colleagues took another one. On the way, Mr Girgvliani suggested stopping off at the Café Chardin for a coffee. According to L.B.-dze, they met several people they knew in the café and stayed there until about 2 a.m., when they left and started walking down Leselidze Street towards the main road. A silver Mercedes ML pulled up alongside them. Two men got out and grabbed L.B.-dze by the neck to push him into the car. One of them pushed the applicants' son into the car, holding his hands behind his back.

25. L.B.-dze asked the three kidnappers what they wanted. One of them said that, to start with, he wanted to know what they had in their pockets. L.B.-dze and Sandro Girgvliani showed him their mobile phones, which the man confiscated and placed in the glove compartment. The same man then asked them for proof of identity. L.B.-dze gave him his work pass, which was also confiscated. L.B.-dze and Mr Girgvliani took the men for policemen, but when the car started heading uphill, out of Tbilisi, the applicants' son asked where they were going, as there was no police station in that direction. By way of an answer, the man sitting next to him elbowed him in the ribs. L.B.-dze asked the same question, but to no avail.

Mr Girgvliani then demanded that they show their police badges, and was again elbowed in the ribs. The man sitting next to the driver finally answered that they would soon see where they were going and find out what would happen when they got to "the top". Everyone then remained silent for a moment. On the way out of Tbilisi, the driver called someone on his mobile phone, saying: "We're on our way up. The road is fine; you can come up in your car". Near Okrokana cemetery they stopped the car, pulled L.B.-dze and the applicants' son out and pushed them towards the cemetery. L.B.-dze was dragged along by the driver of the vehicle and the man who had been sitting in the front. Suddenly he felt a violent blow to the neck and collapsed. His captors then started kicking him while one of them held a pistol to his head. At the same time, Sandro Girgvliani was being beaten by the third man.

26. A short time later, L.B.-dze saw a fourth man, who had not been in the car. The man came up to him, aimed a gun at him and said he was only getting the punishment he deserved. He then kicked him in the face, fired a shot into the air then walked over to where Sandro Girgvliani was being beaten and started hitting him too.

27. At one point the two men beating Sandro Girgvliani came over to those who were beating L.B.-dze and said "the other bastard's got away". They then made L.B.-dze take his clothes off, hit him some more and left him there.

28. L.B.-dze managed to get up, with difficulty, and made his way back to the road. He walked along the road to a service station, where he woke up the watchman. He waited with the watchman until the early morning, when he was able to ask a passer-by to let him use his mobile phone to call the police. When questioned subsequently, the watchman confirmed L.B.-dze's story.

29. At the end of that interview L.B.-dze said that he was still in shock and could not remember any other details at that time.

30. On 28 January 2006 L.B.-dze was granted civil party status and was questioned again in that capacity. He confirmed his previous statements and added that he had been pistol-whipped around the head.

31. On 28 January 2006 the colleagues with whom Sandro Girgvliani and L.B.-dze had spent the evening until 12.20-12.30 a.m. were all questioned. They confirmed that the applicants' son and L.B.-dze had taken a taxi. They had not heard about the subsequent events and Sandro Girgvliani's death until the next day.

32. On 29 January 2006 L.B.-dze was arrested and placed under investigation for concealment of murder.

33. On 29 January 2006 the waiters, the manager and the accountant at the Café Chardin were interviewed. They stated that on Fridays and Saturdays a percussionist played the drums in their café and a DJ played music. One of the waitresses said that table no. 5 had been occupied by

G.D.-dze, the spokesperson for the Minister of the Interior, and 6 or 7 other people. According to her, G.D.-dze and his friends had left the café at around 2.40 a.m. She had not noticed any trouble or fight that evening. However, she would not have been able to overhear any unpleasant verbal exchanges between the clients because of the music played between 10 p.m. and 1 a.m. The person who had served coffee to the applicants' son said that Mr Girgvliani had been joined by a friend who had gone to the toilets. The two had only ordered coffee and had left after about 20 minutes.

34. On 30 January 2006 the investigating authority ordered the heads of all the police stations in Tbilisi to search their districts for silver Mercedes ML cars, to draw up lists of the owners, to get their photographs and their mobile and ordinary phone numbers and to find out about their professional contacts, friends, families and any possible criminal connections. The results of these investigations, which went on until 1 March 2006, were communicated to the investigating authorities by stages.

35. On 30 January 2006, L.B.-dze, when questioned as an accused person, gave new information. He said that a young woman he did not know had joined them at their table in the Café Chardin. The applicants' son had greeted her warmly. At the same time L.B.-dze had been talking to an acquaintance. He had nevertheless noticed that the discussion between the applicants' son and the lady concerned had grown tense. He could not hear what they were talking about because Sandro Girgvliani and the lady were sitting very close to each other and the music was loud. After ten minutes the lady had stood up, angry, and gone back to the other table, around which there were other ladies but also some muscular-looking men. Sandro Girgvliani did not tell L.B.-dze who the woman was. No-one in the café had had an argument with Sandro. At the cemetery, when the applicants' son was being beaten, L.B.-dze had not been able to see him, but he had heard his screams. Later, a fourth man had joined the other assailants. He had a gun. According to L.B.-dze, it was not impossible that that man had someone else with him, as Sandro Girgvliani was a strong man and it would not have been easy to hold him still while they subjected him to the kind of torture indicated by the marks on his body. It was also after that man arrived that the applicants' son had let out a terrible scream. Sometimes the man in question left Sandro Girgvliani and came over to hit L.B.-dze. As he was being kicked in the face, L.B.-dze had had to cover his face, so he could not see exactly what was happening to his friend and how many men were beating him.

36. On 30 January 2006 L.B.-dze was released, there being no evidence against him.

37. On 30 January 2006 some clients of the Café Chardin who had known Sandro Girgvliani were questioned. They said they had witnessed no altercation in the café.

38. On an unspecified date the investigator in charge of the case asked the mobile phone operators to provide lists of all the numbers which had been in communication on 28 January 2006 from certain antennas in Tbilisi, between midnight and 2 a.m. for some antennas and between 1 and 3.30 a.m. for others. On 31 January and 16 February 2006, the two operators supplied the data concerned in table form.

39. On 30 January 2006 the investigator found that the crime could have been committed for reasons of personal revenge against L.B.-dze, who had left his wife to live with another woman. The Tbilisi City Court then ordered the monitoring of the telephone conversations of L.B.-dze's ex-wife and his new wife from 31 January to 1 March 2006.

40. On 31 January 2006 the investigator requested and obtained from one of the mobile phone operators a list of all the telephone numbers dialled between 10 and 31 January 2006 from the telephone of G.A.-ia, the first Deputy Director of Constitutional Security at the Ministry of the Interior.

41. When questioned on 31 January 2006, Sandro Girgvliani's lady friend Th.M.-dze made the same statements as on 13 March 2006 (see paragraphs 98-108 below), except that she did not mention Sandro Girgvliani's having insulted G.D.-dze.

42. According to an expert medical report of 31 January 2006, L.B.-dze had numerous bruises on his face and other parts of his body. They were considered light injuries that did not affect his ability to work.

43. On 6 February 2006 the first applicant was granted civil party status.

44. When questioned on 16 February 2006, A.K.-dze said that the discussion between Th.M.-dze and Sandro Girgvliani had been calm and she had not noticed whether O.M.-ov had left the café to go looking for cigarettes. The remainder of her testimony was the same as that given on 13 March 2006 (see paragraphs 111-112 below).

45. D.A.-aia, V.S.-dze, G.D.-dze and T.S.-aia were also heard on 16 February 2006. The statements they made were essentially the same as those they made on 12 March and 20 June 2006 (see paragraphs 113-123 below). However, T.S.-aia, the Minister's wife, said nothing about asking Th.M.-dze if "everything was all right" when she came back to their table after talking to Sandro.

46. When questioned on 16 February 2006, O.M.-ov said that on the evening of 27 January 2006 he had gone with his friend and hierarchical superior D.A.-aia to the Café Chardin. He had had a drink. He had no recollection of seeing Th.M.-dze change tables. There had been no incident or altercation. He said he had eventually found the cigarettes the Minister's wife had asked for at an all-night vendor's near B. supermarket. At about 3 a.m. they had all gone home in good spirits. Other than that, O.M.-ov gave the same account of events as on 22 July 2006 (see paragraph 199 below).

47. Throughout the month of February 2006 shop assistants, night vendors and caretakers of establishments located on Leselidze street were questioned. None of them had noticed anything of relevance.

48. On 28 February 2006 recordings made by the surveillance camera at the home of a wealthy businessman located on the road to Okrokana were seized from the head of security at the property, who also worked as a guard at the Ministry of the Interior. The recordings were of the period between 2 and 3 a.m. on 28 January 2006.

49. On 5 March 2006 the Chief Prosecutor of Georgia, on the basis of "the Ministry of the Interior's memo of 24 February 2006", decided to take the case away from the Ministry of the Interior and hand it over to the Tbilisi City Prosecutor's Office.

50. According to the criminal case file submitted to the Court, the memo in question was a classified internal document sent by D.A.-aia to the Minister of the Interior. It revealed, *inter alia*, that D.A.-aia was the person responsible in the Ministry of the Interior for elucidating the important aspects of the case. In the first part of the note D.A.-aia reported the same facts to the Minister as those described by L.B.-dze in his statements concerning the kidnapping and the assault that caused Sandro Girgvliani's death (see paragraphs 25-28 above). It went on to explain that on the night in question he had been in the Café Chardin himself with a group of friends until 3.30 a.m., celebrating V.S.-dze's birthday. G.A.-ia, his subordinate, had also been invited by V.S.-dze. According to D.A.-aia, he had spoken to G.A.-ia several times on the telephone from the Café Chardin to find out if he was coming. After confirming that he would be coming, G.A.-ia had informed D.A.-aia around 3 a.m. that he would not be able to make it after all.

51. In the same memo, D.A.-aia explained to the Minister that on 2 February 2006 a regional manager from his department had informed him that a Mercedes ML that had been seized as evidence in a criminal case was being taken to Kutaisi. D.A.-aia had taken an interest in the vehicle and, on learning that it was a silver Mercedes ML, had decided to question a number of Ministry employees about it. He had thus been able to establish that on 28 January 2006 around 1.30 a.m. the car had left the courtyard of the Ministry with G.A.-ia and two other Ministry staff members, A.A.-uri and A.Gh.-ava, on board. After seeking the necessary information from the mobile phone operator, D.A.-aia had been able to reconstitute G.A.-ia's movements and to conclude that on the night concerned he had been in the vicinity of the cemetery at Okrokana and had spoken on the phone with M.B.-dze, another Ministry employee.

52. Lastly, in the same written memo, D.A.-aia informed the Minister that he had asked G.A.-ia if he had been present at the scene of the crime on the night in question. G.A.-ia, strangely unsettled, had denied being there.

53. According to D.A.-aia, all this seemed to indicate that G.A.-ia, A.A.-uri, A.Gh.-ava and M.B.-dze might have had a hand in committing the crime in question. He asked the Minister to decide what course of action should be taken.

*3. The part of the investigation carried out by the Tbilisi City Prosecutor's Office*

54. On 6 March 2006 the Tbilisi City Prosecutor's Office cancelled the decision granting the first applicant civil party status on the ground that only the direct victim of the crime, that is, the son, was entitled to civil party status. As the direct victim in this case was dead, the only standing one of his parents could claim was as his heir.

55. On 6 March 2006, L.B.-dze, in his civil party capacity, applied to the investigator in charge of the case, stating that he did not need to be assisted by counsel and that he declined the services of the two lawyers assigned to his case.

56. That same day, L.B.-dze was asked to assist in identifying the presumed perpetrators of the crime, without the assistance of a lawyer.

57. L.B.-dze identified G.A.-ia, the first Deputy Director of Constitutional Security at the Ministry of the Interior, "without any doubt", as one of the people who had taken part in his kidnapping and assault at the cemetery in Okrokana.

58. L.B.-dze identified A.Gh.-ava, a subordinate of G.A.-ia's, as "possibly being" the driver of the Mercedes ML, but he could not be certain.

59. L.B.-dze also said that A.A.-uri, another of G.A.-ia's subordinates, "was probably" the man who had sat next to Sandro Girgvliani in the car. When asked by the prosecutor if he was 100% certain, L.B. said that he could not be 100% sure but that A.A.-uri resembled the man concerned.

60. Finally, when faced with four unknown persons among whom M.B.-dze, the second Deputy Director of Constitutional Security at the Ministry of the Interior, had been placed, L.B.-dze said that the man next to M.B.-dze could be one of the perpetrators of the crime, but he was not 100% sure. The man's face and stature resembled the man who had beaten Sandro, who was the one with whom he had had the least contact.

61. On 6 March 2006 G.A.-ia, A.Gh.-ava and A.A.-uri, but also M.B.-dze, were arrested.

62. On 6 March 2006 L.B.-dze was questioned as a civil party.

63. According to the video recording of the interview, the investigator asked L.B.-dze if he wished to be assisted by a lawyer. L.B.-dze said he did not. He then confirmed his previous statements, adding that Sandro Girgvliani had made a phone call to someone from the taxi before suggesting that they stop by the Café Chardin. When they entered the café, L.B.-dze had gone to the toilet and then joined Sandro Girgvliani at a table. By the time Th.M.-dze had joined them at their table, music was playing.

Th.M.-dze and the applicants' son had been sitting quite close to one another, so it had been impossible for him to hear what they were talking about. Anyway, a friend had come to sit and talk to L.B.-dze for 2 to 5 minutes. This last sentence does not appear in the record of the interview included in the case file. According to L.B.-dze, Th.M.-dze and Sandro Girgvliani had not had an argument, but the discussion between them had been tense.

64. L.B.-dze added that he himself had not had any argument with anyone in the café. He could not say for sure whether Sandro Girgvliani had, as he had left him to go to the toilet.

65. L.B.-dze explained that when they had left the café, he and Sandro Girgvliani had not crossed the room together, but they had gone out into the street together. That statement does not appear in the record of the interview in the case file. However, the video recording shows that when L.B.-dze said that, the investigator suggested including the following wording in the record, which he dictated himself: "I cannot remember if Sandro and I went out through the café door together. (...) it is possible that I was a little way behind him." L.B.-dze then added himself that if he remembered rightly, before leaving the café he had gone to the toilet again. The investigator told him to note it down in the record.

66. In answer to the investigator's question whether anyone could have followed them as they left the café, L.B.-dze said he did not think so.

67. Lastly, the investigator asked L.B.-dze if he thought the assailants had intended to kill him with Sandro. L.B.-dze thought they probably had not, considering that they had just abandoned him there, still alive, instead of killing him.

68. Still on 6 March 2006, L.B.-dze was questioned again, with no lawyer present, about the fourth person who had arrived on the scene later.

69. L.B.-dze said he could not rule out the possibility that the person concerned had not come alone. It was this man who had fired the shot in the air. In answer to a question from the investigator, L.B.-dze replied that he had indeed been invited by an MP into his office in the Parliament to look at a photograph and say whether he recognised the man in it. L.B.-dze had said that he could not be sure, but he thought the man in the photo "looked just like" the fourth man, who had joined them at the cemetery later. The MP had recorded the procedure, with L.B.-dze's consent, and as the man in the photo was O.M.-ov, the recording had been made public. To the investigator, L.B.-dze said that the man in the photograph resembled the "fourth man", but that he could be mistaken.

70. When questioned on 6 March 2006, G.A.-ia said that he had been at work late on 27 January 2006 in the evening. Before going home, he had decided to stop by the Café Chardin, with A.A.-uri and A.Gh.-ava, to wish V.S.-dze a happy birthday. He had been invited, he explained. To get there, he had taken a Mercedes ML that was parked in the Ministry courtyard,

having been impounded as evidence in a criminal case. G.A.-ia explained that he had given A.A.-uri number plates with the number WAW-293 to put on the car.

71. The three men had stopped the car in Leselidze street near the café. Only G.A.-ia had got out of the car. At the entrance to the café, he found someone he did not know (Sandro Girgvliani) insulting G.D.-dze's mother. On hearing this, G.A.-ia asked what the problem was. In response, Mr Girgvliani insulted him too and walked away. G.A.-ia decided to follow him "to find out why he was hurling insults". He returned to the car and asked A.A.-uri, who was at the wheel, to follow the two men. He also asked his two colleagues if they had their pistols on them, as he thought they might need to make an arrest. When they replied that they were not armed, G.A.-ia called M.B.-dze on the phone and asked him to come and help them and to bring his gun.

72. A.A.-uri pulled up alongside Sandro Girgvliani and L.B.-dze, and G.A.-ia got out of the car and asked the two men to show their identity documents. Mr Girgvliani asked him in a very disparaging tone who he was. G.A.-ia said they were from the Ministry of the Interior and asked him for his papers again. Sandro Girgvliani and L.B.-dze insulted him again. The discussion grew more heated and A.A.-uri got out of the car and told them to calm down. Sandro Girgvliani pushed him and A.A-uri fell over. According to G.A.-ia, Mr Girgvliani and L.B.-dze told the other men that they could go anywhere they liked and sort things out. They all decided to get in the car and go somewhere else. They drove twice round the main square in Tbilisi, while G.A.-ia tried to understand why Sandro Girgvliani had been insulting G.D.-dze. Then they stopped the car and told Sandro Girgvliani and his friend to get out, but they refused, saying that was no place to talk and they should go elsewhere. So they had gone to Okrokana, and stopped the car near the cemetery. Then they had all got out and started fighting. It was a bright night and there was fairly good visibility.

73. M.B.-dze had soon come along to assist his colleagues. He had dealt mainly with Sandro. When Sandro Girgvliani had escaped, G.A.-ia had told M.B.-dze not to bother following him. The scuffle had lasted 15 minutes and it must have been 2 a.m. when they left Okrokana.

74. G.A.-ia also maintained that on the way back from Okrokana he had received phone calls from D.A.-aia and G.D.-dze asking him if he was coming to V.S.-dze's birthday party (cf. paragraph 154 below).

75. When questioned on 6 March 2006, M.B.-dze maintained that after receiving a call for help from his superior, G.A.-ia, around 1.30 a.m., he had taken his weapon and gone to the Ministry of the Interior to pick up an official car, thinking that it would be necessary to arrest someone. When he reached Leselidze street he realised his colleagues had gone, so he called G.A.-ia, who told him they were on their way to Okrokana. When he drove there he spotted the Mercedes ML "which he thought his colleagues were

using". He headed towards the cemetery, where the noise was coming from. He found Sandro Girgvliani lying on the ground and L.B.-dze putting up a fight. His colleagues were accordingly concentrating their efforts on L.B.-dze. Sandro Girgvliani had got up again, however, and attacked him. They had started to wrestle. Sandro Girgvliani's clothes were ripped in the struggle. At one point M.B.-dze thought he saw a knife in Sandro Girgvliani's hand. He took his gun out and fired into the air. That was when Sandro Girgvliani had taken the opportunity to run away. The struggle had lasted no longer than 15 minutes.

76. M.B.-dze stated that neither he nor his colleagues had used any sharp weapons, and that he could only assume that, after escaping, Sandro Girgvliani must have injured himself on the wire fencing round the tombs or in the bramble bushes.

77. When questioned on 6 March 2006, A.Gh.-ava confirmed G.A.-ia's account of events. He also said that he and his colleagues had identified themselves to Sandro Girgvliani and L.B.-dze as employees of the Ministry of the Interior. He said that Sandro Girgvliani and L.B.-dze had got into the car of their own free will. A.Gh.-ava confirmed, like M.B.-dze, that it had been a clear night and that none of his colleagues had been carrying a knife or any other sharp object.

78. When questioned on 7 March 2006, A.A.-uri gave exactly the same account as G.A.-ia, A.Gh.-ava and M.B.-dze. As to the origins of Sandro Girgvliani's wounds, A.A.-uri made the same suppositions as M.B.-dze.

79. On 7 March 2006 a public prosecutor from Tbilisi City Prosecutor's Office placed G.A.-ia, A.Gh.-ava, A.A.-uri and M.B.-dze under investigation for wilful bodily harm resulting in death (Article 119 of the Criminal Code) and premeditated false imprisonment by a group of persons with life-threatening violence (Article 143 § 2 (a), (c) and (h) of the Criminal Code). On 8 March 2006 they were remanded in custody.

80. On 8 March 2006 L.B.-dze, with no lawyer present, was called to identify the "fourth man", who had arrived last at the cemetery. According to the video recording of this investigative measure, among the four men in the line-up to be presented to L.B.-dze, O.M.-ov took the third position from the left. The public prosecutor then invited L.B.-dze into the room and asked him to look carefully at the four men. L.B.-dze hesitated before saying: "I can't be 100% sure ... the man must have been bigger, but I don't know..., I don't recognise, let's say, going by the face..., I could say it was the second man from the left, or the third from the left." The public prosecutor replied: "So you do not recognise any of these four people for sure." L.B.-dze explained that he did not "recognise anyone for sure, but the two men he had picked out looked like the assailant who had arrived last at the cemetery". The public prosecutor then invited him to write the report, including sentences he dictated to him: "Among the four individuals presented to me, I am unable to identify anyone as the individual who

on 28 January 2006 committed the unlawful acts against me and against Sandro Girgvliani". The public prosecutor then asked L.B.-dze to start a new paragraph, and L.B.-dze complied. The doubts and resemblances noted by L.B.-dze are not mentioned in the record of the proceedings, which also contains another error: according to the record, O.M.-ov was in the third position from the right, not from the left as seen in the video recording.

81. When questioned on 8 March 2006, the barman from the Café Chardin explained that the musicians generally played as long as there were still clients in the establishment. A waitress, R.A., said that the percussionist played the bongo drums on Fridays and at the weekend, from 10 p.m. until 2 a.m. On the evening in question R.A. had recognised G.D.-dze and O.M.-ov as soon as they had walked into the café. Even if she would not have been able to hear an argument with all the noise, R.A. could safely say that there had been no trouble at Sandro Girgvliani's table or at the table where G.D.-dze, O.M.-ov and their friends had sat. One of G.D.-dze's friends, whose name she could not recall, had asked her what brands of cigarettes she sold. As she had not had the brand the person wanted, he had gone looking for them elsewhere.

82. On 8 March 2006 the café's accountant, a waiter L.M., a waitress and three patrons present in the café were questioned. They all said that there had been no trouble that evening. L.M. said he knew G.D.-dze, who had been at table no. 5 with some friends, by sight. They had still been there when he had finished work at 3.30 a.m. According to L.M., music was playing in the café from 10 p.m. to 2 a.m.

83. In spite of what it says in the corresponding reports, the video recordings of the above interviews are not included in the criminal case file submitted to the Court.

84. On 9 March 2006, during a reconstruction at the scene of the crime, L.B.-dze said that the two men who had taken him out of the car and beaten him had stayed with him until the end. Some way off he could see Sandro Girgvliani lying on the ground covering his face with his hands, while the man who had elbowed him in the car to keep him quiet stood over him. L.B.-dze also said that the fourth assailant had probably arrived at the cemetery about ten minutes after them. Before Sandro Girgvliani had run away, L.B.-dze had heard a terrible scream and a shot fired into the air. According to the video recording of this investigative measure, L.B.-dze said that when he managed to get to his feet again he started calling Sandro Girgvliani's name, hoping to find him. He continued to call him, but in vain, after reaching the road. When no answer came he had started walking. He had tried to flag down a car, but no-one would stop for a half-naked man in the state he was in.

85. On 10 March 2006 L.B.-dze was questioned again, with no lawyer present, the prosecutor simply explaining that he had the right to be represented, before proceeding with his questions. He was questioned, *inter*

*alia*, about the contradiction between his statements to the authorities and those he had made on television concerning the moment when they left the café. On television he had stated that he and Sandro Girgvliani had had no run-in with G.A.-ia when they were leaving the café.

86. L.B.-dze then explained that, first of all, inside the café there had been no incident resembling an argument or an altercation, but he did not exclude the possibility of some "latent conflict" between his friend and the other people in the café. Secondly, outside the café, that is to say, once they had stepped out into the street, there had been no incident or trouble of any kind. He could not, however, exclude the possibility that his friend had exchanged angry words with someone as they left the café, without him noticing. The prosecutor then reminded him that he had stopped off at the toilets when Sandro Girgvliani started making his way out of the café and that he had followed him out but had not been right beside him. L.B.-dze agreed that something might have happened to his friend on the way out without him noticing. The prosecutor then dictated the following entry for the record: "I do not remember if there was any trouble when we left the café, because I seem to remember I went to the toilet. So I cannot say whether any incident occurred at that juncture". The prosecutor explained that by "incident" he meant an exchange of words. L.B.-dze agreed.

87. Insisting heavily on the possibility that an incident might have occurred on the way out of the café, the prosecutor asked L.B.-dze if he could say with any certainty that the accused G.A.-ia had not been there when they left the café. L.B.-dze could not say whether he had or had not been there.

88. The prosecutor then asked L.B.-dze about his statement on television that O.M.-ov could have been one of the men who had assaulted them at the cemetery. The prosecutor reminded him that he had not been able to identify O.M.-ov on 8 March 2006 and asked him for an explanation. According to the video recording, L.B.-dze replied that although he had not been able to identify O.M.-ov, he could not rule out the possibility that he had been at the cemetery. When asked whether O.M.-ov really had been there or not, L.B.-dze repeated that he could not say he had not been there. To include these answers in the record, the prosecutor dictated to L.B.-dze: "I cannot say for sure that O.M.-ov was not one of the people who assaulted us at the cemetery ... I was unable to identify O.M.-ov, but I cannot exclude the possibility that he or any other person took part in the crime."

89. On 10 March 2006, the second applicant informed the prosecutor that he consented to his wife, the first applicant, being given standing as heir to the civil party, given that, pursuant to Article 68 § 2 of the Code of Criminal Procedure ("the CCP"), both parents could not claim that standing simultaneously. The first applicant was given that status on the same day.

90. On 11 March 2006 statements made by B.E. on 2 March 2006 were verified at the scene of the crime. This young man, who lives in Okrokana,

had helped Sandro Girgvliani's friends to find his body in the woods. B.E. showed the place where, in the gorges of the river that runs past the cemetery, he had first spied the traces of a bloodied body that had fallen down in the snow. With Sandro Girgvliani's friends they had followed the regular blood stains along the path. The young man confirmed that all along the way the traces of only one injured person had been visible.

91. On 13 March 2006 a test run showed that the offenders would have needed 17 minutes and 33 seconds to drive from the Café Chardin to the cemetery in Okrokana 6.3 km away and back. O.M.-ov would have needed 18 minutes and 20 seconds to get to the B. supermarket 5.5 km from the café.

92. According to a letter from the management of the Café Chardin, dated 14 March 2006, the surveillance camera only covered the area occupied by the bar and did not record pictures.

93. When questioned on 15 March 2006, the bouncers at the café said that they had been in the entrance, between the two doors. The music had been loud and people had had to raise their voices to be heard. They reported that there had been no disturbance inside the café. They would not have been able to hear any argument outside because of the music. They could see out into the street through the large windows, but they would not necessarily have noticed any incident. In any event, their job was not to keep an eye on what went on in the street but to keep an eye on the inside of the café and the entrance.

94. On 13 March 2006 the first applicant said that she had seen Th.M.-dze's interview on television, where Th.M.-dze said that L.Tch.-shvili, a chauffer of the Ministry of the Interior, had bought T.S.-aia two packets of cigarettes at the start of the evening. Considering that two hours was not enough time for T.S.-aia to have smoked two packets of cigarettes, the first applicant requested that the people present that evening be asked about the real reasons why O.M.-ov had left the café at the same time as her son and L.B.-dze. She also requested that O.M.-ov be asked how it was that the security camera at the B. supermarket showed that he had not gone there that evening.

95. She further requested leave to take part in the above investigative measures, in conformity with Article 69 (i) of the CCP.

96. On 15 March 2006 the first applicant's requests were rejected by the public prosecutor, on the grounds that the points raised had already been elucidated and there was no need to repeat the investigative measures concerned.

97. However, the applicant subsequently learned that, to clarify the points she had raised on 13 March 2006 the prosecutor had questioned A.K.-dze and Th.M.-dze on 13 March 2006 and D.A.-aia, V.S.-dze, T.S.-aia and G.D.-dze on 20 June 2006, without informing her or inviting her to attend the proceedings.

**(a) Statements made by the members of the group of friends of the Minister of the Interior's wife**

*i. Th.M.-dze, Sandro Girgvliani's lady friend*

98. When questioned on 13 March 2006, Th.M.-dze stated that on the evening of 27 January 2006, at around 10.30 p.m., her friend A.K.-dze came to pick her up from her home to take her out for the evening. She had difficulty walking from her building to the car as the streets of Tbilisi were covered with ice. Th.M.-dze saw that A.K.-dze was not alone in the car; there was also the wife of the Minister of the Interior, whom she knew well, together with V.S.-dze, Director of the General Inspectorate of the Interior Ministry, whom she had not met before. The car was driven by V.S.-dze's chauffeur. They headed for the Café Chardin. They found a table there and the Minister of the Interior's wife asked V.S.-dze's chauffeur to go and find her some K-brand cigarettes. The chauffeur, L.Tch.-shvili, left and returned ten minutes later with two packets of K cigarettes. L.Tch.-shvili then left the café and went to wait in the car for the rest of the evening.

99. At around midnight Th.M.-dze received a phone call from Sandro. It appears they had had a tiff and he wanted to make up. She refused to see him, but Sandro Girgvliani insisted. Th.M.-dze misled him into thinking she was at a café in another part of the town and said she did not want to see him. To take the phone call, she had gone out into the café lobby, where the music was not so loud.

100. Some 30-40 minutes after that phone call, D.A.-aia and O.M.-ov had joined the Minister of the Interior's wife and her group of friends. 5 to 10 minutes later, G.D.-dze had also joined them.

101. At about 1.15 or 1.20 a.m. Sandro Girgvliani and L.B.-dze entered the Café Chardin. Sandro Girgvliani went up to Th.M.-dze, gave her a kiss and asked her how she was. He then went to talk to some other people he knew in the room. 15 or 20 minutes later, he signalled to Th.M.-dze that he was about to leave. When Th.M.-dze asked him where he was going Sandro Girgvliani told her he was drunk and had to go home. Instead of leaving, however, he sat down at a nearby table with L.B.-dze and ordered a coffee. He then signalled to Th.M.-dze to come and join him. Th.M.-dze discreetly changed tables a few minutes later. The applicants' son asked her who the men were with whom she had come to spend the evening. Th.M.-dze said they were friends of her friends and that she did not really know them. So Sandro Girgvliani asked her what she was doing spending her evening with strangers. She said it was of no importance whom she spent her evenings with and expressed surprise that he should have come all the way to the Café Chardin to ask her such a question. Sandro Girgvliani then asked her what she was doing with "that poof", referring to G.D.-dze, the Minister of the Interior's spokesman. According to Th.M.-dze, the tone of their conversation, which lasted 15-20 minutes, was "stilted" and Sandro

Girgvliani was gesticulating. At one point A.K.-dze left the Minister of the Interior's wife and her friends and went over to Th.M.-dze to ask her if everything was all right. Th.M.-dze said it was. A.K.-dze then went to the toilet and, on the way back, asked Th.M.-dze what she was doing. Th.M.-dze said she would return to their table shortly. At the end of the conversation, Sandro Girgvliani suggested that Th.M.-dze leave the café with him. She said she would join him later and asked him to call her in half an hour. Th.M.-dze then went back to her table. The Minister's wife asked her if "everything was all right". Th.M.-dze said she was fine.

102. Ten minutes later Sandro Girgvliani and L.B.-dze got up to leave the café. On his way out, Sandro Girgvliani waved goodbye to Th.M.-dze, who waved back and said she would join him later.

103. Th.M.-dze stated that before she said the words "I'll see you later" she heard the Minister's wife ask O.M.-ov to go and buy some cigarettes, as there were only 2 or 3 left in the last packet. O.M.-ov, who was sitting next to Th.M.-dze, got up and blocked Th.M.-dze's view; she had to lean over to tell Sandro Girgvliani she would join him. O.M.-ov went towards the exit at about the same time as Sandro Girgvliani and L.B.-dze. Th.M.-dze could not see the door from where she was sitting, so she did not see who left first, O.M.-ov or Sandro Girgvliani and his friend. She could see the door to the toilets, however, and maintained that she did not see any of the three men go to the toilet before leaving the café.

104. Th.M.-dze waited for Sandro Girgvliani to call her, as arranged, looking at her watch every so often. That was how she could be so sure that O.M.-ov, who had left the café at the same time as Sandro Girgvliani and L.B.-dze, was gone for 30-40 minutes. When Sandro Girgvliani failed to call her, Th.M.-dze got annoyed and said she was leaving. A.K.-dze said they would all soon be leaving anyway. Th.M.-dze got the impression that they were waiting for O.M.-ov to come back before leaving the café.

105. O.M.-ov came back 30-40 minutes later with the cigarettes in his hand. He looked cold. Th.M.-dze asked him if it was cold outside. He said it was. He explained that he had been unable to find any K-brand cigarettes in the vicinity and had had to go further afield – "to the B. supermarket" – to find them.

106. At about 2.50 a.m. the evening came to an end and at about 3 a.m. they all got up to leave. V.S.-dze's chauffeur drove Th.M.-dze and A.K.-dze home. D.A.-aia took the Minister of the Interior's wife home.

107. It was 3.10 a.m. when Th.M.-dze got home.

108. In answer to a question from the prosecutor, Th.M.-dze said she had not had a tense conversation with Sandro Girgvliani or his friend L.B.-dze. Apart from calling one of them a "poof", Sandro Girgvliani had not insulted the people she was with. In answer to another question, Th.M.-dze said there was an 80% chance that the other people in the party had not overheard the insult in question, as Sandro Girgvliani was speaking

in a normal tone and the music was loud. She also said that when she had gone back to her friends she had not told them what Sandro Girgvliani had called G.D.-dze. She further stated that there had been no contact between the applicants' son and L.B.-dze and the group of friends at the other table.

109. In a television interview Th.M.-dze stated that O.M.-ov had followed Sandro Girgvliani and L.B.-dze out of the café.

110. Subsequent examination of the video recorded by the surveillance system at the B. supermarket did not reveal that O.M.-ov had gone there on the night in question.

*ii. A.K.-dze, Th.M.-dze's friend*

111. When questioned for the second time, on 13 March 2006, A.K.-dze stated that she and her friends went to pick up Th.M.-dze from her home around 10.30 a.m. She said she did not notice exactly when Th.M.-dze went over to join Sandro Girgvliani at his table. However, the 5-10-minute conversation between Mr Girgvliani and Th.M.-dze had been calm and Sandro had not spoken at any time to any of the people in the group she was with. A.K.-dze maintained that she did not hear Mr Girgvliani insult anyone. When Th.M.-dze came back to her table, A.K.-dze asked her who the young man was that she had been talking to. Th.M.-dze told her he was a friend and he wanted her to leave with him. A.K.-dze had told her that she might as well go, as that was what he wanted. Th.M.-dze had been in good spirits. A.K.-dze confirmed that O.M.-ov had left the café at one point to buy cigarettes for the Minister of the Interior's wife. She thought he was gone about 20-25 minutes. She confirmed that at the beginning of the evening the Minister's wife had had a packet or two of cigarettes with her. A.K.-dze did not smoke. She categorically denied going over to Th.M.-dze when she was talking to Sandro, to see if she was all right.

112. According to the record of that interview, the interview was filmed, but contrary to what it says in the file, the video recording was not included in the criminal case file submitted to the Court.

*iii. D.A.-aia, Director of Constitutional Security at the Interior Ministry*

113. When questioned on 12 March and 20 June 2006, D.A.-aia reiterated that he had arrived at the café with O.M.-ov at about 11.30 p.m., in his official car. He confirmed that the Minister of the Interior's wife had asked O.M.-ov to go and fetch some K-brand cigarettes. D.A.-aia had nodded to O.M.-ov to do as she asked and had given him the keys to the official car. D.A.-aia had learned later that outside the café O.M.-ov had asked D.A.-aia's chauffeur to take the car and go looking for cigarettes. According to D.A.-aia, O.M.-ov was away for 20 minutes and came back with a packet of cigarettes which he said he had bought "near B. supermarket". According to D.A.-aia, O.M.-ov had appeared calm.

114. D.A.-aia said that he had not smoked on the evening in question. He confirmed that he had spoken to G.A.-ia several times on the telephone to see if he was coming to join the party. After first confirming that he was coming, at about 3 a.m. G.A.-ia said he would not be joining them after all. Since arriving at the café, D.A.-aia had used O.M.-ov's mobile phone, with his own SIM card in it, as the battery in his own mobile phone was flat.

115. D.A.-aia maintained that no member of his group had had any altercation or incident with the people present in the café.

116. Lastly, D.A.-aia explained that he had immediately informed the Minister of the Interior of what one of his department's regional directors had reported to him on 2 February 2006 (see paragraphs 50-52 above). The Minister had instructed him in writing to continue investigating and discover the truth of the matter.

*iv. V.S.-dze, Director of the General Inspectorate of the Interior Ministry*

117. When questioned on 12 March and 20 June 2006, V.S.-dze confirmed what Th.M.-dze had said about the period prior to their arrival at the café. He added, however, that before going he had made a phone call to D.A.-aia telling him to bring their mutual friend G.A.-ia along. According to D.A.-aia, G.A.-ia was supposed to join them, but in the end he did not come.

118. V.S.-dze confirmed that at one point Th.M.-dze had gone over to another table and at another juncture the Minister of the Interior's wife had sent O.M.-ov to buy her some cigarettes. According to V.S.-dze, O.M.-ov had returned 15-20 minutes later. V.S.-dze did not smoke. He too said that there had been no incident or altercation between his friends and any other person in the café.

*v. T.S.-aia, the Minister of the Interior's wife*

119. When questioned on 12 March and 20 June 2006, T.S.-aia said that V.S.-dze had come to pick her and A.K.-dze up at her home in his chauffeur-driven official car. They had then gone to pick up Th.M.-dze They were at the café by about 11 p.m. D.A.-aia and O.M.-ov arrived at about 12.30 a.m. and G.D.-dze arrived at about 1.15 a.m. The remainder of her account corroborated V.S.-dze's version of events.

120. T.S.-aia did add, however, that when Th.M.-dze came back to their table after talking to Sandro, she asked her if "everything was all right". Th.M.-dze, who was calm, said she was fine. T.S.-aia confirmed that later in the evening she had asked O.M.-ov to go and get her some K-brand cigarettes. O.M.-ov had returned 20-25 minutes later. She further stated that shortly after they reached the café, V.S.-dze's chauffeur had brought her two packets of cigarettes which he had bought near the B. supermarket. T.S.-aia also said that there had been no altercation between her friends and

any of the other people present in the café. Come midnight they had all wished V.S.-dze a happy birthday

121. D.A.-aia had driven T.S.-aia home in his official car. O.M.-ov and G.D.-dze were with them in the car.

*vi. G.D.-dze, Head of Press at the Ministry of the Interior and spokesman for the Minister*

122. When questioned on 20 June 2006, G.D.-dze explained that his friend the Minister's wife had called to say that she was dining at the Café Chardin and invited him to join her. G.D.-dze got to the café around 11.50 p.m. In answer to a question from the prosecutor, G.D.-dze said that he did not usually smoke, but on the evening in question he had smoked the cigarettes that were on the table. Indeed, everyone in the party, except D.A.-aia and V.S.-dze, had smoked the same cigarettes. At one point he had noticed that there were none left, but later someone had brought some more. He had not noticed who had gone to buy more cigarettes.

123. G.D.-dze did not know whether their colleague G.A.-ia had also been expected in the café that evening. He had no knowledge of any incident or altercation between his friends and anyone else in the café that evening and he had not heard anyone insult him.

*vii. L.Tch.-shvili, V.S.-dze's chauffeur*

124. When questioned on 12 March 2006, V.S.-dze's chauffeur confirmed that he had bought two packets of K-brand cigarettes for the Minister of the Interior's wife at the start of the evening. Later, when he was waiting in the car for the party to end, O.M.-ov had called him and taken him to a nearby car park where D.A.-aia's official car was parked. L.Tch.-shvili had closed his car and walked towards O.M.-ov. As he passed by the Café Chardin he saw G.A.-ia, who was walking fast. He greeted him, but received no reply. G.A.-ia was alone. In the car park O.M.-ov told L.Tch.-shvili that he had been drinking and did not want to take D.A.-aia's official car to go and buy some cigarettes. He asked L.Tch.-shvili to drive. They drove off in search of the cigarettes and found some near the B. supermarket. They got back to the café about 30 minutes later.

**(b) Subsequent investigative steps**

125. On 22 March 2006 the statements made by G.G., one of Sandro Girgvliani's friends who had discovered the body, were verified at the scene of the crime. He explained that the police had arrived before them and there were many footprints in the snow at the cemetery. G.G. pointed out the place under a tree where he had seen what looked like the red imprint left by a bloodied face. The friends had gone through the cemetery and started to explore the river gorges. They asked a young village lad who was out bird-hunting (see paragraph 19 above) to help them. The lad spotted what looked

like a large blood stain in the snow some way off. They saw that it led to other stains, some of which indicated that Sandro Girgvliani had had to lie down in the snow to rest at regular intervals. At one point they realised that the applicants' son must have fallen off a ledge and tried to climb back up into the wood. At the edge of the wood he had turned into the bushes and fallen in the brambles.

126. On 23 March 2006 the first applicant complained to the investigator in charge of the case that, in breach of section 86 § 2 of the law on detention, the four accused were sharing the same cell in prison no. 7 in Tbilisi. She argued that this gave them an opportunity to coordinate their stories to prevent the truth from emerging. She requested that the detainees be separated forthwith, in conformity with Article 161 § 1 of the CCP.

127. That same day the first applicant submitted the same request to B.A.-aia, the director of the Prisons Department of the Ministry of Justice, and also to the Chief Public Prosecutor.

128. On 30 March 2006 the first applicant complained to the Public Prosecutor's Office that she had received no reply to her complaint of 23 March 2006.

129. On 29 March 2006 the first applicant complained to the investigator in charge of the case that B.A.-aia, the above-mentioned director of the Prisons Department, who was also the brother of D.A.-aia, was making sure the four accused were as comfortable as possible in prison, *inter alia*, by allowing them access to alcohol and drugs. The detainees in the neighbouring cells would often hear them laughing and having a good time. The first applicant maintained that B.A.-aia was treating them like that to prevent them from incriminating his brother D.A.-aia. She requested that the authorities stop supplying the accused with drink and drugs and test them within 48 hours to detect the presence of alcohol and drugs in the bloodstream. She also requested authorisation to take part in this verification procedure as the civil party's heir.

130. No action was taken on this complaint.

131. On 27 April 2006 the head of the Prison Department's welfare service informed the first applicant that the four accused had indeed been placed in the same cell from 8 to 23 March 2006, because of renovation work in Tbilisi's prison no. 7. Once the work was completed, they had been separated. The documents submitted to the Court by the Government for the hearing confirm that the accused were placed in the same cell. There is also documentary evidence that on 21 February and 25 March 2006 a company did some renovation work in prison no. 7.

132. On 28 April 2006 section 86 § 2 of the law on detention was amended and the words "persons under investigation in the same criminal case shall be detained separately" were deleted.

133. The first applicant considered that the comfort and leniency clearly shown to the four accused by the authorities was designed to prevent them

from incriminating the senior Ministry of the Interior officials and the Minister's wife who had been at the Café Chardin. She submitted that, in actual fact, G.A.-ia, A.A.-uri and A.Gh.-ava, three of the accused, had gone to the café after being summoned there by telephone to punish her son for having insulted the Minister of the Interior's spokesman.

134. On 25 April 2006 the Tbilisi City Prosecutor's Office asked the Department of Constitutional Security of the Ministry of the Interior, directed by D.A.-aia, for a copy of the criminal case file in which the Mercedes ML featured as evidence.

135. The file shows that the vehicle was seized on 19 October 2005 as having been acquired with the proceeds of crime. On 13 December 2005, when the investigation into the present case was under way, the owner of the car lodged a complaint with the Chief Public Prosecutor's Office and the Minister of the Interior, claiming that on 6 December 2005 he had seen his car being driven in Tbilisi with new number plates (WAW – 293). He said he had followed the car and taken photos of it, and had asked the driver by what right he was driving a car known to have been seized. In response, the chauffeur had threatened him. Saying that he could identify the driver, the owner of the car demanded that an investigation be opened without delay. On 13 December 2005 the Chief Public Prosecutor's Office referred the complaint to the Department of Constitutional Security of the Ministry of the Interior for "immediate verification". However, the complaint was not followed up. On 4 February 2006 the investigator in charge of the case took the car keys from G.A.-ia to send the vehicle to Kutaisi and discovered that the seals had been broken. He immediately informed his superior in Kutaisi and asked him to take action.

136. On 1 May 2006, at the request of the investigator in charge of the case of Sandro Girgvliani and L.B.-dze, the Tbilisi City Court decided to dismiss the four accused from their respective posts in the Ministry of the Interior.

137. On 1 May 2006 the first applicant requested that the Minister's wife, G.D.-dze, D.A.-aia, V.S.-dze, O.M.-ov, A.K.-dze and Th.M.-dze be heard again in her presence, given that the recording made by the surveillance camera at B. supermarket that she had managed to obtain did not reveal that O.M.-ov had gone there on the night in question. She pointed out that a similar request she had made on 13 March 2006 had been rejected on the grounds that the points raised had already been elucidated. She asked to be informed of the investigative measures which had helped elucidate the points raised in her complaint, as well as the conclusions that had been reached.

138. On 9 May 2006 her request was rejected because the people concerned had already been heard several times precisely to clarify the questions raised by the applicant in her complaint. To see the content of

their statements she would have to wait for the case to be referred for trial, when she would have access to the criminal file.

139. On 3 May 2006 the investigator invited the applicants and the first applicant's father to be questioned about the applicant's public statement that someone, acting through a third party, had offered her family a sum of money in exchange for their silence. On 4 May 2006 the applicants and the first applicant's father explained that they had expressed their indignation at such a proposal and that the person who had delivered the message could be risking his life if ever the truth were to come out. The person concerned had told them that if they did not accept the money and remain silent, their lives could be in danger.

140. The file shows that on 3 May 2006 the prosecuting authorities offered the four accused, in the presence of their lawyer, a plea-bargaining arrangement. In particular, they were offered a suspended sentence in return for identifying any senior Ministry of the Interior official or other person who had had a hand in the crime.

141. According to the relevant video recordings, the four accused rejected that proposal. A.A.-uri replied: "Everyone who was there is now in prison." A.Gh.-ava said: "I am naming no names, like I said the first time I was questioned, I know nothing and nobody was involved." M.B.-dze declared that nobody else, including the Minister of the Interior's wife's friends, was involved in the crime. After reading the offer in full, he repeated that, "dear to him as his freedom was", he could not accept. G.A.-ia said: "I cannot name any senior officials who were involved in the case." The public prosecutor asked for an explanation. G.A.-ia said that he could not accept the offer. The public prosecutor asked him again: "You mean nobody else was involved – is that it?" G.A.-ia said yes. With the help of the public prosecutor and his lawyer, he stated in the record: "No member of the Ministry of the Interior or any other person was involved in this crime; so I cannot name anybody and must therefore reject the offer."

142. On 18 May 2006, one of the mobile telephone operators gave the public prosecutor a CD with the list of numbers G.A.-ia had been in contact with on the night in question, showing the location of the antennas covering the various calls. The list showed that G.A.-ia had been near the "Chardin" antenna at 1.56 a.m. and that later, at 2.17 and 2.35 a.m., he had had two telephone conversations via the "Okrokana" antenna. At 2.54 a.m. he was already back in the centre of Tbilisi near the main square and the Café Chardin. For the other calls, the number G.A.-ia had spoken to was indicated, but not for the two above-mentioned calls. However, cross-checking this information with other information found in another volume of the case file shows that at 2.17 and 2.35 a.m. D.A.-aia called G.A.-ia in Okrokana.

143. On 16 May 2006 the four accused refused to have their statements verified at the scene of the crime.

*4. The trial*

144. On 21 June 2006 the preliminary investigation was closed. The first applicant and L.B.-dze were given five volumes of the criminal case file for consultation. On 22 June 2006 the whole case concerning both Sandro Girgvliani and L.B.-dze was sent before the Tbilisi City Court for trial.

145. On 20 June 2006 G.A.-ia, A.A.-uri, A.Gh.-ava and M.B.-dze were charged with wilful bodily harm resulting in death, and premeditated false imprisonment by a group of persons with life-threatening violence and destruction of another person's property (Articles 119 and 143 § 2 (a), (c) and (h) and 187 § 1 of the Criminal Code). G.A.-ia was also charged with abuse of authority under Article 333 § 1 of the Criminal Code. Appended to the indictment was a list of the items of evidence collected by the prosecuting authorities during the investigation.

146. On 27 June 2006 the Tbilisi City Court commenced its examination of the case. As the first applicant had not had access to the materials in the case file during the investigation, in conformity with Article 69 (j) of the CCP, and had not been informed of the referral of the case for trial until 24 June 2006, she said she needed an extra three days to study the five volumes of the criminal case file and prepare her position. She pointed out in this connection that, unlike the civil party, the accused had had unrestricted access to the file throughout the preliminary investigation, in keeping with Article 76 § 3 of the CCP.

147. On 27 June 2006 her request was refused on the grounds that the first applicant and her lawyer had had access to the file during the investigation and after the case had been referred for trial, and they would have access to it throughout the trial.

148. At the hearing on 27 June 2006 L.B.-dze reiterated in full the various statements he had made during the investigation. He explained that he and Sandro Girgvliani had left the café together. G.A.-ia had also been armed and both he and A.Gh.-ava had beaten him. He had been forced at gunpoint to take his clothes off. His assailants had taken his clothes away, leaving him in his underpants and socks. He had not been fully able to identify O.M.-ov, but could only be 70% sure that the man in the photograph was one of the assailants (see paragraph 80 above).

149. At the hearing on 29 June 2006 Th.M.-dze fully confirmed the various statements she had made during the investigation. In her opinion Sandro Girgvliani had guessed she was at the Café Chardin because he had heard the sound of the bongo drums during their telephone conversation (see paragraph 99 above). When she talked to Sandro Girgvliani at his table, she had her back to her friends and could not tell whether G.D.-dze had heard Sandro Girgvliani insult him. Th.M.-dze had not smoked any K-brand cigarettes. According to her, only the Minister's wife had smoked those cigarettes. At the table nobody had asked whether G.A.-ia was supposed to join them.

150. On 30 June 2006 D.A.-aia fully confirmed the statements he had made during the investigation. Notably, he reiterated that the mobile phone he had used in the café was O.M.-ov's, with his own SIM card in it, as the battery in his own mobile phone was flat. He added that the telephone number (8 77 79 89 60) that featured most frequently in the lists of calls made and received by each of the Ministry of the Interior officials present in the café that night was the number of a colleague of his called M-eli.

151. However, the criminal case materials contained a letter dated 2 March 2006 issued by the relevant mobile company, according to which the telephone number 8 77 79 89 60 belonged to a certain K.N.-dze from the limited liability company "Falko". Furthermore, the records of the telephone calls made and received by some of the persons involved, which had been obtained by the investigation at various stages and included in the case file, disclosed that the number in question had been contacted during the night in question by:

- G.A.-ia at 12.31 a.m., 1.04 a.m., 1.26 a.m., 1.46 a.m., 2.01 a.m. and 2.12 a.m.;
- D.A.-aia at 1.28 a.m.;
- G.D.-dze at 1.32 a.m., 1.36 a.m., 1.45 a.m.;
- O.M.-ov at 1.26 a.m. and 1.27 a.m.

In addition, those records also showed that G.D.-dze and V.S.-dze had contacted another telephone number – 877 76 76 90 – several times between 1.50 and 1.55 a.m., and that D.A.-aia had called G.D.-ze at 1.56 a.m.

152. Giving evidence on 30 June 2006, the Minister's wife T.S.-aia fully confirmed the various statements she had made during the investigation. She added that she had not been told that G.A.-ia had also been invited to the party. D.A.-aia had often been on the telephone, but she had not heard what he was talking about because of the noise.

153. On 30 June 2006 V.S.-dze also fully confirmed the statements he had made during the investigation. He stated that he had learnt from D.A.-ia that G.A.-ia had been supposed to join their party in the café.

154. Also on 30 June 2006, G.D.-dze fully confirmed the statements he had made during the investigation, adding that he had not been told that G.A.-ia had also been invited to the party (cf. paragraph 74 above). He also said that it was not impossible that D.A.-aia or someone else had used his telephone, which he had left on the table. At one point someone had called his number asking to speak to D.A.-aia. He himself had not made any calls to the accused. G.D.-dze also added that nobody had insulted him in the café.

155. In their testimonies on 30 June 2006, O.M.-ov and A.K.-dze fully confirmed the statements they had made during the investigation. O.M.-ov said that he had been unaware that their group in the café had been waiting for G.A.-ia. A.K.-dze said that she could not really remember, but did not

exclude the possibility that she had gone over to Sandro Girgvliani's table to say something to Th.M.-dze.

156. At the hearing on 3 July 2006, L.Tch.-shvili confirmed the statements he had made during the investigation. He added that O.M.-ov had called him from a number he did not recognise.

157. Also on 3 July 2006, G.A.-ia confirmed the statements he had made during the investigation, adding that as Deputy Director of the Ministry of the Interior he had no need to receive instructions from anybody to arrest an individual who was breaking the law under his nose. He acknowledged, however, that as time passed the discussion had gone beyond the limits of a routine job. Sandro Girgvliani had insulted G.D.-dze's mother and the "mothers of the KGB" who were inside the café. G.A.-ia said that he had not been carrying a gun that evening. On the way to Okrokana he had called G.D.-dze's number to speak to D.A.-aia, whom he had been unable to contact by any other means.

158. On the same day A.A.-uri, A.Gh.-ava and M.B.-dze refused to testify and remained silent.

159. Still on 3 July 2006, the first applicant requested that the court, in conformity with Articles 69 (j), 439 § 4, 440 § 1 and 485 § 2 of the CCP, examine the following items of evidence publicly and with the participation of the parties ("the fourteen exhibits"):

*i.* the video of the verification of L.B.-dze's statements, recorded at the scene of the crime on 9 March 2006;

*ii.* the video of the verification of G.G.'s statements, recorded at the scene of the crime on 22 March 2006;

*iii.* the video of the verification of B.E.'s statements, recorded at the scene of the crime on 11 March 2006;

*iv-vii*. the videos of 6 March 2006 showing L.B.-dze identifying G.A.-ia, A.A.-uri, A.Gh.-ava and M.B.-dze;

*viii*. the video of 8 March 2006 showing L.B.-dze identifying O.M.-ov;

*ix*. the video of 6 March 2006 showing L.B.-dze's second interview;

*x*. the video of 10 March 2006 showing L.B.-dze's additional hearing;

*xi*. the two video cassettes of 13 March 2006 showing Th.M.-dze's additional questioning;

*xii*. the compact disc containing the images recorded by the surveillance camera at the home of B.P., a wealthy businessman, on the road from Tbilisi to the Okrokana cemetery (the Tbilisi-Kojori road);

*xiii*. four compact discs of 13 March 2006, with recordings of Th.M.-dze's additional questioning;

*xiv*. a sketch tracing the presumed movements of Sandro Girgvliani at the scene of the crime.

160. On 3 July 2006 the court allowed this request only in respect of the exhibits numbered *iii* and *xii* above, but only ordered the publication of a written summary of the two video recordings concerned. The court pointed

out that the people whose statements were recorded on the other CDs concerned had already been heard by the court. Furthermore, the records of these investigative measures, which had been filmed, were in the case file and the applicant had never challenged them.

161. On 5 July 2006 the first applicant requested that the evidence in the case file be made public and examined at the hearing, in keeping with Article 484 of the CCP.

162. The court rejected that request on the same day, holding that the evidence had already been examined in public and it was not necessary to examine it again.

163. On 5 July 2006 L.B.-dze's lawyer requested that the two mobile phone operators be asked to supply records of all the telephone calls made and received by the four accused but also by the seven people who had sat at the same table in the café as the Minister of the Interior's wife. The first applicant joined in this request, arguing that the case file did not contain necessary information concerning telephone calls that might have been made between the four accused and their friends in the café, or between the accused, their friends in the café and V.S.-dze's chauffeur waiting in the car. She maintained that without that information it was impossible to know whether G.A.-ia had really had an altercation with her son which had nothing to do with the Ministry of the Interior officials sitting in the café, or whether, as she suspected, after being insulted by her son the officials had called G.A.-ia to come and punish Sandro.

164. That request was rejected on 5 July 2006.

165. At the hearing on 5 July 2006 L.B.-dze asked to be heard again. He then said that now he had seen O.M.-ov again and listened to him and observed him when the court had heard him as a witness, he could now say with certainty that he was indeed the man who had joined the other assailants at the cemetery and participated, with particular cruelty, in the attack on him and Sandro. L.B.-dze further stated that he had also been observing M.B.-dze since the start of the trial and was now convinced that he had not been present in Okrokana. What he had said about the behaviour of the fourth man, who had arrived at the cemetery after the others, therefore concerned O.M.-ov and not M.B.-dze. L.B.-dze further explained that at the time of the investigation he had believed that the public prosecutor and he were on the same side. Later, however, he had realised that the prosecutor was strongly backing the hypothesis of an altercation between Sandro Girgvliani and G.A.-ia in the entrance to the café. During the different identification parades on 6 March 2006 the prosecutor had advised him not to request the assistance of a lawyer, as the suspects had just been arrested and no time should be lost. The prosecutor had also advised L.B.-dze that it would be "better" if he could not identify O.M.-ov.

166. On 5 July 2006 L.B.-dze was placed under investigation for intentionally perverting the course of justice with manifestly contradictory statements (see paragraphs 194-203 below).

167. On 5 July 2006 the president of the court decided to allow the parties an hour to prepare their closing statements. The first applicant protested that she needed a week, because she had not had time to familiarise herself properly with the case file, either between the time when the case was referred for trial and the start of the trial or during the actual trial, which had only lasted nine days. If she was to be able to defend her rights, she needed a week.

168. Her request was rejected.

169. On 5 July 2006 L.B.-dze's lawyer, having regard to the available records of a selection of the telephone calls made and received by G.A.-ia, D.A-aia, G.D.-dze and O.M.-ov on the night in question, asked the judge to order the two mobile phone operators in Tbilisi to communicate the names of the subscribers with the telephone numbers 8 77 79 89 60, 8 77 48 48 45, 8 99 96 00 01 and 8 99 75 10 89 (see paragraphs 150-151 above). The first applicant additionally requested that the records of the phone calls of A.A.-uri, A.Gh.-ava and M.B.-dze, as well as all those present at the Minister's wife's table, also be provided. The public prosecutor objected that that information had nothing to do with the charges.

170. The judge rejected these requests the same day. The lawyers then challenged the judge, arguing that if he did not consider it necessary to obtain information so important for the case, he was clearly partial and incapable of pronouncing a fair judgment. The judge rejected the challenge outright.

171. On 6 July 2006 the Tbilisi City Court, in view of the abrogation on 28 April 2006 of Article 119 of the Criminal Code, reclassified the offences as crimes under the new Article 117 § 6 of that code. It thus found G.A.-ia guilty of premeditated false imprisonment by a group of persons with life-threatening violence (Article 143 § 2 (a), (c) and (h) of the Criminal Code), wilful bodily harm resulting in death (Article 117 § 6 of the Criminal Code), abuse of authority (Article 333 § 1 of the Criminal Code) and destruction of another person's property (Article 187 § 1 of the Criminal Code). A.A.-uri, A.Gh.-ava and M.B.-dze were found guilty of the crimes provided for in the above-mentioned Articles 143 § 2 (a), (c) and (h), 117 § 6 and 187 § 1.

172. G.A.-ia was sentenced to 8 years' imprisonment (7 years under Article 143 § 2 (a), (c) and (h), 6 years under Article 117 § 6, 1 year under Article 333 § 1 and 1 year under Article 187 § 1 of the Criminal Code). The other three accused were sentenced to 7 years' imprisonment each (6 years under Article 143 § 2 (a), (c) and (h), 6 years under Article 117 § 6 and 1 year under Article 187 § 1 of the Criminal Code).

173. The prosecution appealed against that decision, asking for the sentences to be increased to eight and nine years respectively. The first applicant joined in the appeal, in conformity with Article 25 § 1 of the CCP. She did not consider it worthwhile lodging a separate appeal as the appeal court would have examined the case only within the framework of the charges specified in the first-instance judgment (Article 450 of the CCP) and would not have been able to reclassify them as aggravated murder (Article 109 of the Criminal Code) as she would have wished, or to refer the case for additional investigation (Articles 498 and 501-504 of the CCP).

174. On 18 July 2006 the offenders were placed in Avchala prison no. 10.

175. On 20 and 26 July and 11 September 2006 the first applicant appealed to the president of the court that examined the case at first instance and on 3 August 2006, to the president of the criminal section of that court, requesting access to the fourteen exhibits in the case file before it was sent to the Court of Appeal (Articles 69 (j) and 485 § 2 of the CCP). The president of the court did not reply. The first applicant reiterated her request on 11 September 2006. On 18 September 2006 she was told that the case file containing the exhibits had already been sent to the Court of Appeal.

176. On 6, 17 and 30 October, 24 November and 8 December 2006 the first applicant asked the Tbilisi Court of Appeal to give her access to the fourteen exhibits in question. She pointed out that on 3 July 2006 the court of first instance had rejected the same request and that she had applied in vain to the president of the court on 20 and 26 July and 11 September 2006. She argued that without access to the evidence concerned she would be unable to properly defend her rights in the appeal proceedings.

177. No reply was received to any of these requests, except that of 8 December 2006, which was rejected on the same day. The applicant later challenged that decision, together with the appeal court's judgment, on points of law.

178. On 8 December 2006 the applicant asked the Court of Appeal:

- to order the two mobile phone operators to produce the records of the telephone calls made and received between midnight and 12 noon on 28 January 2006 on the telephone numbers of the four accused, the seven people who were at the same table in the café as Th.M.-dze, and also L.Tch.-shvili, stating the location of the corresponding antennas;

- to give her access to the recording made by the surveillance camera at the home of a wealthy businessman on the road to Okrokana between midnight and 12 noon on 28 January 2006. The applicant explained that only a recording covering the period between 2 and 3 a.m. had been included in the case file by the investigating authorities and that did not show the traffic using that road before 2 a.m. and after 3 a.m.;

- to question G.D.-dze, Th.M.-dze, T.S.-aia and A.K.-dze in order to double-check the telephone numbers these people had used on the night in question.

179. On 8 December 2006 the applicant's request was rejected.

180. On 8 December 2006 the applicant asked the Court of Appeal to summon the two Ministry of the Interior investigators who had been in charge of the investigation prior to 5 March 2006, to question them about the records they had seized from the mobile phone companies but not included in the case file. She also asked the Court of Appeal to obtain those records and any other evidence the investigators might have gathered and not included in the case file.

181. Her request was rejected.

182. On 11 December 2006 the four accused refused to attend the hearing and informed the Court of Appeal that they would be represented by counsel.

183. On the same date, 11 December 2006, the Tbilisi Court of Appeal upheld the first-instance judgment in full. Concerning L.B.-dze's identification of O.M.-ov, it found the allegation ill-founded, pointing out that, in any event, M.B.-dze had confessed to being the fourth assailant, who had arrived last at the cemetery. Lastly, the Court of Appeal explained that the court of first instance would not have been able to examine the question of O.M.-ov's involvement anyway, as O.M.-ov was not concerned by the criminal case as referred for trial (Article 450 of the CCP).

184. On 19 December 2006 and 4 January 2007, the first applicant applied to the Court of Appeal to give her access to the fourteen exhibits, to enable her to defend her rights at least in cassation. She received no reply.

185. On 21 December 2006 the first applicant applied to the Principal State Prosecutor, requesting the investigators who had been in charge of her son's case to be placed under investigation for abuse of authority and destruction of evidence. In particular she maintained:

- that the offenders' deeds had been deliberately misclassified as wilful bodily harm resulting in death, when her son had in fact been the victim of a crime under Article 109 of the Criminal Code, namely aggravated murder (committed by a group, with particular cruelty, out of self-interest, to order);

- that the investigating authorities had failed to consider the possibility suggested by various aspects of the case that D.A.-aia, V.S.-dze, G.D.-dze, O.M.-ov, T.S.-aia, Th.M.-dze and A.K.-dze or any one of them had been involved in the crime;

- that the investigating authorities of the Ministry of the Interior in charge of the investigation between 28 January and 5 March 2006 had destroyed evidence. In particular, the applicant alleged that she had obtained, by chance, a copy of the decisions of 31 January and 1 February 2006 in which the Tbilisi City Court found lawful such investigative measures as requiring the mobile phone companies to submit the records of all the phone calls

made and received between 10 January and 31 January 2006 on the telephones of A.Gh.-ava and M.B.-dze. However, the records of those calls, the records of their seizure, the investigators' request for the Tbilisi City Court to allow the seizure and the two decisions mentioned above had not been included in the case file, so the court had not been able to examine them. As they were missing from the case file, the applicant presumed that the evidence must have been destroyed or concealed. In its stead, on 11 May 2006 the investigating authorities of the Tbilisi City Prosecutor's Office had placed in the case file, for the same telephone numbers, a selection of the records of the calls concerned, namely, those made between 1.28 and 2.58 a.m. on 28 January 2006. That incomplete information, however, did not serve the purpose of an effective investigation.

186. The Chief Public Prosecutor having failed to reply, the applicant reiterated her request on 16 February 2007, demanding a prompt reply.

187. The Chief Public Prosecutor again failed to reply.

188. On 11 January 2007 the first applicant lodged a cassation appeal against the appeal judgment of 11 December 2006 and all the procedural decisions pronounced in the appeal proceedings, including the decision of 8 December 2006 denying her access to the different items of evidence. In particular, she asked for the judgment of the Court of Appeal to be quashed, the procedural decisions set aside and the case referred to the Tbilisi Court of Appeal for fresh examination. The applicant stressed that her aim was to have a full and exhaustive investigation carried out. If this had been done earlier, the complicity between the four accused and the Minister's wife's friends in the café would have been demonstrated.

189. On 16 February 2007 the first applicant asked the Supreme Court of Georgia, when examining her appeal, to grant her access to the fourteen exhibits. She reiterated that without examining that evidence she would not be able to defend her interests as a civil party (Articles 15 §§ 3 and 5, 69 (k), 447 § 1 and 485 § 2 of the CCP). Her request went unanswered.

190. L.B.-dze and the four convicted persons also lodged cassation appeals.

191. On 27 July 2007, the Supreme Court of Georgia, acting as final court of appeal, found that the guilt of the four officials concerning the destruction of another person's property (Article 187 § 1 of the Criminal Code) had not been validly demonstrated and acquitted them of that charge, reducing each of their prison sentences by six months, but upheld the remainder of the earlier judgment.

192. Concerning the complaint about the repeated refusal of access to evidence, the Supreme Court noted that the matter had been examined at first instance and that there had subsequently been no particularly important grounds to justify its further examination in application of Article 553 § 4 of the CCP. In addition, no appeal had been lodged against the decisions of the court of first instance. Lastly, the purpose of the first applicant's demands

had mainly been to prosecute persons external to the criminal case in point as brought against the four accused persons. However, a court was not a criminal prosecution body under Articles 15 § 5 and 439 § 3 of the CCP and the scope of its deliberations was confined to the charges in the indictment (Article 450).

193. The Supreme Court's decision was served on the parties and the civil parties on 30 July 2007.

*5. Criminal proceedings against L.B.-dze for perverting the course of justice*

194. After accusing O.M.-ov at the hearing on 5 July 2006, L.B.-dze was charged with perverting the course of justice by making manifestly contradictory statements (Article 371-1 of the Criminal Code).

195. On 11 July 2006 he was questioned in this connection in the presence of his lawyer. He explained that at the different identification parades on 6 March 2006 (see paragraph 56 above) he had not been assisted by any lawyer who could have advised him. The investigator, on the other hand, had impressed on him that it would be "extremely serious if he identified the wrong person and that he should think carefully". L.B.-dze had been able to identify G.A.-ia without any doubt. The investigator had then told him that for the other suspects it would be sufficient for him to say whether there was a physical resemblance. L.B.-dze remembered that when he had been invited into an MP's office he had said that the man in the photograph looked like the fourth man, who had arrived later at the cemetery, but as he was not certain, he preferred not to incriminate him. He had not really been able to dispel his doubts until he had seen O.M.-ov give evidence in court. Only then had he been convinced, by the way O.M.-ov moved and spoke, that he was indeed the fourth assailant. To make absolutely sure, however, he had borrowed a video recording of O.M.-ov's hearing from the first applicant which had apparently been made in secret. After watching the recording several times, L.B.-dze had been able to identify O.M.-ov with certainty. He repeated that he could not exclude the possibility that there had been more than four assailants at the cemetery, but he had only seen four. L.B.-dze pointed out that he had said several times in court that he did not know who M.B.-dze was. He also specified that on 6 March 2006 he had not identified that person as the fourth assailant (see paragraph 60 above). The fourth assailant had kicked him in the face, held a gun against his head and eye and threatened to kill him, and pistol-whipped him. He had then gone over to hit Sandro Girgvliani before coming back to him again. According to L.B.-dze, when it was all over and he found himself alone with his assailants, O.M.-ov had suggested to his friends that they take a photograph of their bruised and naked victim with a mobile phone.

196. At the end of the record of that interview it is mentioned that the lawyer had wanted to ask L.B.-dze some additional questions, but the investigator would not authorise it.

197. On 12 July 2006 L.B.-dze, as an accused person, requested that criminal proceedings be brought against O.M.-ov, with himself as a civil party, and that a thorough medical check-up be carried out to determine how serious the after-effects of the ill-treatment he had suffered on 28 January 2006 were.

198. On 13 July 2006 his request was rejected, on the grounds that the criminal case being investigated was against L.B.-dze, for perverting the course of justice, not against O.M.-ov. The right of application to the prosecuting authorities was explained to him.

199. On 22 July 2006 O.M.-ov was questioned as a witness in the case. He said that at around midnight on 27 January 2006 D.A.-aia had called him in his office and asked him to go down to the courtyard of the Ministry so they could take the official car together. They were already in town when D.A.-aia told him that he was going to the Café Chardin to wish V.S.-dze a happy birthday. As D.A.-aia's mobile phone battery was flat O.M.-ov lent him his and D.A.-aia put his SIM card in it. In the café O.M.-ov found the Minister's wife, the young women mentioned earlier and V.S.-dze. O.M.-ov ordered an alcoholic beverage. About an hour and a half after they arrived in the café, the Minister's wife asked him to go and find her some K-brand cigarettes, a brand they did not stock in the café. D.A.-aia gave him his car keys. He had been drinking, however, and did not want to drive, so, using G.D.-dze's mobile phone he called V.S.-dze's chauffeur to drive him. Before leaving the café, he went to the toilet. Outside, he met V.S.-dze's chauffeur, who took him away in D.A.-aia's car in search of cigarettes. They bought the cigarettes from a night vendor near the B. supermarket. He then went back to the café. He must have been away for 20-25 minutes. According to O.M.-ov, the statement made by L.B.-dze on 5 July 2006 was untrue and merely the result of pressure brought to bear by the first applicant and anti-Government activists.

200. On 6 July 2006 the first applicant applied to the Chief Public Prosecutor requesting that, in the light of L.B.-dze's statement of 5 July 2006, and in conformity with Articles 22, 261 and 263 § 1 of the CCP, O.M.-ov be arrested immediately as a prime suspect and placed under investigation, and that she be given status in the case as the civil party's heir. She requested that the case be taken away from the Tbilisi City Prosecutor's Office, which had failed to conduct an effective investigation, and that the Chief Public Prosecutor's Office take charge of the investigation of O.M.-ov's case.

201. On 11 July 2006 her request was referred to the Tbilisi City Prosecutor's Office, which informed the first applicant on 25 July 2006 that, in the framework of the criminal proceedings against L.B.-dze, the

statement he had made on 5 July 2006 would be verified and an "objective and lawful" decision taken.

202. On 3 August 2006 the first applicant requested that the criminal proceedings against L.B.-dze be taken out of the hands of the Tbilisi City Prosecutor's Office for the reasons mentioned above and that the Chief Public Prosecutor's Office take charge of the case. That request was rejected as unfounded by a prosecutor from the Chief Public Prosecutor's Office on 4 August 2006.

203. Neither the first applicant nor her lawyer found out what the outcome of the criminal proceedings against L.B.-dze had been. On receiving the observations of the Government (see paragraphs 5 above and 294 below), the applicant party learned that the case had been discontinued.

*6. Pardon and release on licence of the convicted persons*

204. On 24 November 2008 the President of Georgia, along with pardoning 363 other prisoners, decided to grant G.A.-ia, A.A.-uri, A.Gh.-ava and M.B.-dze a measure of clemency and reduce the remainder of their respective sentences by half.

205. As that measure made them eligible for release on licence, the four men applied to the competent body in the Prisons Department of the Ministry of Justice on 14 August 2009 to be released. According to the certificates appended to their requests by the prison authorities, the men's behaviour had been good (calm, courteous and on good terms with the prison authorities) and none had received any reprimand while in detention. Based on a unanimous favourable decision of the board on 21 August 2009, which described the crime committed by G.A.-ia, A.A.-uri, A.Gh.-ava and M.B.-dze as "physical aggression towards other persons which resulted from a verbal altercation" ("*urTierTSelaparakebis niadagze fizikuri Seuracxyofa miayenes moqalaqeebs*"), the Tbilisi City Court decided, on 5 September 2009, to release the four convicts on licence. It noted in particular that the men had served two-thirds of their sentences as reduced on 24 November 2008 (Article 72 § 8 of the CCP), and took their good behaviour into account. In the court's opinion their continued detention was no longer necessary to reform them.

*7. Claim for damages*

206. On 6 July 2009 the second applicant applied to the Tbilisi City Court requesting that the four men be ordered to pay him 200,000 Georgian laris (("GEL), approximately 84,000 euros ("EUR")) for the non-pecuniary damage he had suffered. He said that the pain caused by the murder of his only son and the ill-treatment inflicted on him before he died was a source of immeasurable suffering that would remain with him all his life.

207. To have his claim examined the second applicant had to pay a State tax of GEL 3,000 (approximately EUR 1,262).

208. By a judgment of 5 February 2010, the four individuals were ordered, in first instance, jointly to pay the applicant GEL 40,000 (approximately EUR 16,832) in respect of non-pecuniary damage. It was also decided to refund GEL 600 (approximately EUR 254) of the State tax he had had to pay.

209. As submitted by the applicants on 23 December 2010 and confirmed by the Government on 24 February 2011, the Tbilisi City Court's judgment of 5 February 2010 had by that time become final and enforceable.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. The Criminal Code

210. The Amendment Act of 28 April 2006 amended Articles 109, 117, 119, 143, 187, 333 and 371-1 of the Criminal Code.

The relevant provisions of the Code read as follows:

**Article 59 §§ 1 and 4**
**(as in force prior to the amendment of 29 December 2006)**

"Where several crimes are committed, sentences shall be pronounced for each crime.

If the crimes committed include lesser offences as well as serious or particularly serious crimes, the harshest sentence shall absorb the lighter one, or the sentences for each crime shall be added together, in part or in full, in order to determine the final sentence. However, the final prison sentence shall not exceed 20 years."

**Article 59 § 1**
**(as amended on 29 December 2006)**

"Where several crimes are committed, sentences shall be pronounced for each crime, then added together to determine the final sentence."

In conformity with Article 12 §§ 2 and 3 of the Criminal Code, the crimes provided for in Articles 117 § 6 and 143 § 2 are serious crimes, whereas those provided for in Articles 187 § 1 and 333 § 1 are lesser criminal offences.

**Article 108 – "Murder"**

"Murder shall be punishable by 7 to 15 years' imprisonment."

**Article 109 (as in force prior to the amendment of 28 April 2006) – "Aggravated murder"**

"Murder (...);

(f) with particular cruelty; (...)

(h) by a group;

(i) out of self-interest or to order; (...)

shall be punishable by 10 to 20 years' or life imprisonment."

**Article 117 (as amended on 28 April 2006 and applied in the instant case) – "Wilful grievous bodily harm"**

"1. Wilful grievous bodily harm (...) which is life-threatening (...) shall be punishable by 3 to 5 years' imprisonment.

2. When it results in death, wilful grievous bodily harm shall be punishable by 4 to 6 years' imprisonment. (...)

5. Wilful grievous bodily harm committed (...);

(e) by a group;

shall be punishable by 7 to 9 years' imprisonment.

6. The offence provided for in the preceding paragraph, when it results in death, shall be punishable by 8 to 10 years' imprisonment.

7. Wilful grievous bodily harm committed:

(a) on two or more people;

(b) with particular cruelty;

(c) out of self-interest or to order; (...)

shall be punishable by 9 to 12 years' imprisonment.

8. The offence provided for in the preceding paragraph, when it results in death, shall be punishable by 10 to 13 years' imprisonment."

**Article 119 (abrogated on 28 April 2006) – "Bodily harm resulting in death"**

"Wilful grievous or less serious bodily harm resulting in death shall be punishable by 3 to 10 years' imprisonment."

**Article 143 §§ 2 and 3 (as in force prior to 28 April 2006) – "False arrest"**

"2. False arrest

(a) by a group, with premeditation; (...)

(c) of two or more people; (...)

(h) with life- or health-threatening violence (...);

shall be punishable by 3 to 10 years' imprisonment.

3. The offence provided for in the preceding paragraph,

(a) when committed by an organised group;

(b) when it results in the death of the victim (...) ;

shall be punishable by 5 to 15 years' imprisonment."

**Article 187 § 1 (as in force prior to the amendment of 28 April 2006) – "Destruction of another person's property"**

"Destruction of or damage to another person's property, resulting in substantial loss, shall be punishable by 100 to 180 hours' community service or up to one year's correctional labour or up to 3 years' imprisonment."

**Article 333 § 1 (as in force prior to the amendment of 28 April 2006) – "Abuse of authority"**

"Abuse of authority by a public official (...) which substantially adversely affects the rights of a natural person or other legal entity or the legal interests of society or of the State shall be punishable by a fine (...) or up to 3 years' imprisonment, and up to 3 years' disqualification from holding public office (...)"

**Article 371-1 (as amended on 28 April 2006) – "Substantially contradictory statements by a witness or a civil party"**

"1. Wilful perversion of justice by a witness or a civil party by substantially contradictory statements shall be punishable by a fine or by 1 to 3 years' imprisonment.

2. The same offence committed out of self-interest or for another private motive shall be punishable by 2 to 4 years' imprisonment (...)"

## B. The Code of Criminal Procedure ("the CCP"), as it stood at the material time

211. Pursuant to Article 62 §§ 1 and 2 of the CCP, whilst criminal investigations are normally carried out by the Ministry of the Interior, an

investigation into an offence implicating, *inter alia*, a policeman, an investigator or a senior military or special law-enforcement officer should be entrusted to the Public Prosecutor's Office.

Pursuant to Article 68 § 2 of the CCP, if a crime resulted in the death of the victim, civil party status should be granted to one of his close relatives. If several relatives share the same bloodline with the deceased victim, the relatives should agree amongst themselves who should act as the civil party.

Article 347 § 2 of the CCP, which enumerated the rights and responsibilities of a victim or a witness participating in an identification parade, was silent about whether the victim or witness was to be assisted by a lawyer during that investigative action.

Pursuant to Articles 498 and 501-504 of the CCP, the trial court is empowered to examine the case only within the scope of the charges as brought by the public prosecutor in the indictment, and to deliver either an acquittal or a conviction on the basis of the indictment and the available case materials. The trial court may not remit the case for additional investigation, unless the prosecutor personally decided to seek an aggravation of the criminal liability during the trial.

The other relevant provisions of the CCP read as follows:

**Article 25 § 1**

"The civil party and their counsel shall have the right to join the proceedings brought by the public prosecutor."

**Article 69**

"The civil party (...) shall have the right: (...) ;

(i) to take part in the investigative measures carried out at their request;

(j) to acquaint themselves with a copy of the full criminal case file and all the evidence once the case has been referred for trial; (...)

(m) to take part in the judicial examination of the case, by submitting evidence and by examining the evidence produced by the other parties (...)"

**Article 261**

"Upon receipt of information concerning the commission of a crime, the investigator and the public prosecutor, within the limits of their powers, shall open an investigation. (...)"

**Article 263 § 1**

"The preliminary investigation shall be opened on the basis of the information concerning the commission of the crime brought to the attention of the investigator or the public prosecutor by a natural person or other legal entity, (...), reported in the

media, or brought to light during the investigation of a case by the authority in charge of the investigation (...)"

**Article 439 § 4**

"The court shall guarantee the requisite conditions for the presentation and examination of evidence by the parties, while observing its duty to be impartial (...)"

**Article 440 §§ 1 and 3**

"During the examination of the case, the court of first instance shall ensure the examination of the evidence by (...) studying it and, where necessary, by reading out the records of investigative measures or other documents.

The material in the file of the preliminary investigation may be made public during the judicial examination of the case only in those cases provided for in the present code."

**Article 450**

"The court shall examine the case within the framework of the charges brought against the accused, except when the prosecution changes the charges in favour of the accused."

**Article 484 §§ 1 and 3**

"At the request of the parties or at the initiative of the court, the clerk of the court shall read out the material collected in the file of the preliminary investigation and the records of the investigative measures. At the same time the question of the reliability, relevance and admissibility of these items of evidence shall be examined.

The documents presented by the parties shall be read out and placed on file."

**Article 485 § 2**

"The items of material evidence placed in the file during the preliminary investigation as well as any such evidence submitted to the court by the parties (...) shall be examined by the court in the courtroom with the participation of the parties. (...)"

## C. The practice of application of sentences for the offences in question, as submitted by the parties

212. As disclosed by the Government's submissions, supported by a summary of the relevant official statistical data issued by the relevant department of the Supreme Court of Georgia, in 2006 three persons were convicted of wilful grievous bodily harm resulting in death (Article 117 § 6 of the Criminal Code), all of them being sentenced to eight years' imprisonment without remission.

213. In the same year, 199 persons were convicted of false arrest by a group, with premeditation and life- or health-threatening violence (Article 143 § 2 of the Criminal Code), 105 of whom were given suspended prison sentences. The duration of those sentences varied from one to eight years – 78 persons were sentenced to three years in prison, 36 persons to four years and 44 persons to five years. In 2007, the prison sentences imposed for the same crimes varied between three and seven years.

214. Still in 2006, 32 persons were convicted of abuse of authority (Article 333 § 1 of the Criminal Code). 17 of them were sentenced to two years' imprisonment without remission and 15 were given suspended prison sentences. Only on two occasions was the penalty of disqualification from holding public office also pronounced.

215. The Government also submitted numerous (more than 30) judgments delivered by various courts of first instance in 2006 under, *inter alia*, the above-mentioned three provisions of the Criminal Code. However, the voluminous information contained in those judgments was not presented in an analytical and pertinent summary, nor was it clear whether those judgments were ever upheld by the upper courts and thus became binding in their initial wording.

216. In reply to the Government's submissions, the applicants likewise submitted numerous decisions delivered by the Supreme Court in 2006-2008 upholding the lower courts' convictions under various provisions of the Criminal Code, including Articles 117 § 6, 143 § 2 and 333 § 1. The major part of that voluminous information was not presented in an analytical and pertinent summary and was thus barely comprehensible.

217. However, amongst those decisions, as the applicants emphasised themselves, there were those concerning the case of *G.Z.-dze*, which attracted publicity in Georgia. Notably, as disclosed by the relevant case materials, in the course of a verbal altercation with a stranger in the street, the fourteen-year-old boy stabbed the stranger in the right shoulder with a folding pocket knife. A subsequent forensic medical report confirmed the injury inflicted was of a superficial nature and did not cause any serious damage. The act was classified as attempted murder, and the boy was sentenced by the Tbilisi Court of Appeal's decision of 19 March 2007 to seven years' imprisonment without remission. The Supreme Court of Georgia left that conviction intact by its final decision of 1 November 2007.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

218. The applicants complained under Article 2 of the Convention that their son had been killed by senior officers of the Ministry of the Interior and that the relevant authorities had failed to conduct an effective investigation. Article 2 of the Convention reads as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

219. Noting that the applicants complained of a violation of both the substantive and procedural limbs of Article 2 of the Convention, the Court considers it appropriate to address first the procedural part of that provision.

### A. Admissibility

220. The Court notes that the complaints under Article 2 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

### B. Merits

#### *1. As to whether the investigation into the death was effective*

##### (a) The Government's arguments

221. The Government submitted that the investigation into the death of the applicants' son had fully met the requirements of impartiality and thoroughness, as required by Article 2 of the Convention. The obligation to

conduct that investigation was one of means only, not of result. As regards impartiality, they argued that the Ministry of the Interior had been competent to carry out the investigation between 28 January and 5 March 2006 by virtue of Article 62 of the CCP, given that not the slightest suspicion implicating an agent of that Ministry had existed at that time. Such a suspicion emerged only on 5 March 2006, and the case was then immediately transferred to the Public Prosecutor's Office.

222. Even the manner of the implementation of the relevant investigation measures by the Ministry of the Interior excluded, according to the Government, any doubt as regards the impartiality of the investigators in charge of the case. For instance, all the actions aimed at the identification of the car which had been used in the commission of the crime had been duly undertaken in good time, and when D.A.-aia, Director of Constitutional Security, had learnt from one of his officers that G.A.-ia, his Deputy, had shown an interest in a similar car, a silver Mercedes ML, which had been seized as an item of evidence in an unrelated criminal case, the Director had proved his vigilance by drawing the logical inferences and immediately reporting the matter to the Minister of the Interior. Indeed, as it later turned out, G.A.-ia, A.A.-uri and A.Gh.-ava had left the Ministry of the Interior in the vehicle concerned at around 1.00 a.m. on 28 January 2006, whilst the seized records of the relevant mobile telephone numbers established that G.A.-ia's mobile phone had been in communication through the antennas near Okrokana cemetery between 2.00 and 3.00 a.m. That highly sensitive information was immediately reported to the Minister of the Interior who, in his turn, transmitted it to the Chief Public Prosecutor.

223. For the Government, the fact that certain items of evidence collected during the investigation had not eventually been included in the criminal case file, notably the records of the telephone calls made and received by M.B.-dze and A.Gh.-ava which had been seized on the basis of the court decisions of 31 January and 1 February 2006 (see paragraph 185 above), did not detract from the impartial and comprehensive character of the investigation. That was so because, first, the missing evidence was not important for the examination of the case, and, second, it was never too late to collect that information again, as the records of the relevant calls were stored in the database of the relevant mobile phone companies.

224. The Government also claimed that all the persons with whom the four perpetrators had been in communication by telephone on 28 January 2006 between 12.00 a.m. and 15.00 p.m. had in reality been duly identified and questioned. However, as those persons appeared not to have been implicated in the crime, the records of the questioning had been filed in a separate, confidential "operational dossier" which could not be disclosed for legitimate privacy considerations.

225. The Government further submitted that the applicants' fears that the placement of the four accused in the same cell of prison no. 7 between

8 and 23 March 2006 had thwarted the effective conduct of the investigation were ill-founded. Their placement in the same cell had been necessary because of construction work and the shortage of free cells in that prison at the material time. Given the political scandal which the death of the applicants' son had triggered in the country, the accused could not have been transferred to any other prison, as only prison no. 7, with its particularly strict security regime, could ensure the requisite level of safety for them. Nor could the accused have been placed in cells with other inmates, all of whom, being mafia bosses, represented a clear danger for the detained law-enforcement agents. In any event, the Government argued, the four accused had been questioned on 6 March 2006, that is before their placement in the same cell on 8 March. Furthermore, it could not be reasonably assumed that the four accused had coordinated their stories in the cell, as they had remained silent throughout the proceedings.

226. The Government further stated that the applicants' allegation that "certain other" persons had been involved in the crime was totally unsubstantiated. In fact, all the persons directly or indirectly connected with the circumstances surrounding the crime had been duly identified and questioned; those persons' concordant statements corresponded to the findings reached on the basis of other evidence. The Government also emphasised that the relevant domestic authorities had gone so far in their diligence to uncover the truth that they had offered the four perpetrators a plea bargain in exchange for identifying other potential suspects.

227. The Government added that L.B.-dze had not been assisted by a lawyer during the various identification parades because he had waived that right, and the relevant domestic law (Article 347 of the CCP) did not oblige the authorities to provide him, as the victim, with mandatory legal assistance.

228. As to the possibility for the applicants to have access to the case materials and to participate in the investigation measures, the Government conceded that they, as the civil party, did not have such a right during the investigation stage. However, the Government considered that the principle of the equality of arms did not apply to their situation, given that it applied only between the defence and the prosecution, not the civil party. The Georgian system of criminal procedure was not, as the Government put it, "a system of revenge of the victim against the perpetrator of the crime"; the perpetrators were not responsible to the victim but rather to society as a whole. Consequently, the interests of the victim were subsumed by those of a public prosecutor, whose participation was sufficient to safeguard the victim's rights under Article 2 of the Convention.

229. That being said, the victim, after having obtained civil party status, could also claim certain procedural rights, such as the right to be informed of the development of the investigation as well as to assist the prosecutor in the establishment of the truth. However, the civil party's rights should not

be equated with those of the main parties to the proceedings – the accused and the prosecutor. In the present case, the Government continued, the first applicant, being granted the standing of heir to the civil party, had the right to present additional items of evidence, to participate in the examination of the collected evidence, to file various procedural motions, including requests to remove various agents of the State from the investigation, to express her opinion on any question pertinent to the investigation and so on. The Government concluded that Article 2 of the Convention did not entitle the relatives of the deceased to have an unlimited access to all the case materials during the investigation stage, and the fact that, in the present case, the first applicant had been able to obtain that access at the trial stage sufficed for the purposes of an effective investigation.

230. The Government also added that the applicants' lack of access to the fourteen exhibits had not posed a real problem, given that during the trial they had been granted access to the written records of all those investigative measures which had been filmed on video.

231. Lastly, the Government submitted that the prison sentences imposed were in proportion to the gravity of the crime committed by the perpetrators, who, furthermore, would not be allowed to occupy a post in the public service for several years after their liberation. The Government also commented that in 2006 only one person convicted of abuse of public authority under Article 333 § 1 of the Criminal Code had been punished by disqualification from holding public office (see paragraph 214 above).

**(b) The applicants' arguments**

232. The applicants submitted that, by virtue of Article 62 § 2 of the CCP, the Ministry of the Interior should not have carried out the initial stage of the investigation, given that there had existed a suspicion that its senior officers were implicated in the offence. The circumstances of the case reveal that the Ministry had suspected the involvement of some of its officers, notably G.A-ia, A.Gh.-ava and M.B.-dze, by 31 January 2006 at the latest. The applicants maintained that, apart from manifestly lacking the requisite objectivity and impartiality, the investigation was not thorough due to the following serious omissions.

233. First, the applicants complained that the records of the mobile telephone calls made and received by each member of the Minister of the Interior's wife's group in the Café Chardin during the night in question had never been seized in their entirety by the authorities. They further deplored that only a selection of the calls made and received by the four convicts had been included in the criminal case file and that the investigation did not consider it necessary to seize the images from the surveillance camera on the Tbilisi-Kojori road showing what happened after 3.00 a.m. It was important to secure the recordings made after that time as well, in order to verify whether anybody from the Ministry of the Interior might have gone

up to the scene of the crime to destroy the evidence. The applicants also complained that the investigation had failed to establish who had been the owner of the telephone number 8 77 79 89 60 with whom both the four convicts and some senior officers from the Minister of the Interior's wife's group in the café had been in regular communication during the night in question. Notably, that number had been dialled by G.A.-ia at 2.12 a.m., that is shortly after Sandro Girgvliani and L.B.-dze were kidnapped.

234. The applicants also drew the Court's attention to the fact that the bouncers at the Café Chardin had not confirmed seeing any incident between their son and G.A.-ia in the entrance to the café. Furthermore, since it was established that O.M.-ov had left the café at exactly the same time as Sandro, he would have witnessed any such incident. The explanation that O.M.-ov had left the café to buy cigarettes for the Minister's wife was not convincing either, since the Minister's wife had had two packets of cigarettes at the start of the evening and two hours could hardly have been enough time to have smoked all of them.

235. The applicants reiterated their complaint that the four convicts had been placed in the same cell for fifteen days during the initial stage of the investigation, which unlawful measure had allowed them to coordinate their false stories. In addition, the exceptional comfort they were allowed by the prison authority could also be understood as having been aimed at discouraging them from disclosing the truth.

236. The applicants also complained that O.M.-ov had not been placed under investigation despite having been identified, on several occasions, by L.B.-dze as one of the perpetrators. The authorities had refused to follow the second line of enquiry, according to which G.A.-ia had not had any independent altercation with the applicant's son but had been summoned by somebody from the Minister of the Interior's wife's group to punish Sandro Girgvliani for having insulted G.D.-dze. The applicants deplored that the investigative authorities had not given due consideration to that very serious allegation.

237. Another serious cause for concern was the fact that the applicants had not been granted access, at any stage of the criminal proceedings, to the fourteen exhibits. That omission was not only unlawful (see Articles 69 § (j), 439 § 4, 440 and 485 § 2 of the CCP) but also deprived them of the possibility of identifying and pointing out discrepancies between the video recordings of various investigative measures and the relevant written records of those measures. Furthermore, there were clear indications that the investigators in charge of the case had destroyed important pieces of evidence. For instance, whilst it was known that the investigators had obtained on 31 January 2006 the records of all the phone calls made and received by A.Gh.-ava and M.B.-dze between 10 January and 31 January 2006, which information had then been allowed by the domestic courts as evidence, those records had never been included in the criminal case file.

However, access to that information was crucial for the applicants, as it could have discredited the official version of the investigation concerning the role of those two persons in the commission of the crime.

238. In reply to the Government's argument, the applicants stated that the prosecution authority's powers in conducting the investigation were no compensation for the impossibility for the civil party to exercise its own procedural rights. First, nothing could ever remedy the applicants' lack of access to the case materials during the investigation, as a result of which they had been totally unaware of what progress was being made and found themselves in the position of being unprepared for the trial. Even during the trial stage, the domestic courts did not afford them sufficient time and facilities to study the file in full. Furthermore, it was clear that the prosecution authority had never been on the applicants' side, as it refused to grant any of their numerous requests to collect additional evidence and allow them to participate in various investigative measures. On the contrary, the relevant circumstances of the case clearly showed that the prosecution had formed a common front with the convicts against the civil party.

239. The applicants also complained that their son's murder should have been classified by the domestic courts as aggravated murder (Article 109 of the Criminal Code) rather than wilful grievous bodily harm which resulted in death. The nature of the wounds inflicted on Sandro Girgvliani clearly showed that the perpetrator aimed to kill the victim by stabbing him with a knife. The intention to kill was also clear from the fact that one of the perpetrators had threatened the victims with a pistol and even fired it. The applicants also stated, without further explanation, that the amendment of 28 April 2006 to the Criminal Code was aimed at mitigating the liability of the four convicts. They further argued that the sentences imposed upon the convicts had been manifestly inadequate considering the gravity of the crime. Noting that the convicts had not been disqualified from holding public office in the future, as an additional punishment, the applicants submitted that it was not excluded that the murderers would one day again enter the public service.

240. Lastly, referring to various other documents in various volumes of the criminal case file and submitting the video recording of a hearing at first instance, the applicants complained about other inconsistencies in the investigation and reiterated that the trial had been conducted in unfair conditions.

**(c) The Court's assessment**

*i. General principles*

241. The Court reiterates that Article 2 of the Convention imposes a duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the

person, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. It also requires by implication that there should be an effective official investigation when individuals have been killed. The duty to conduct such an investigation arises in all cases of killing and other suspicious death, whether the perpetrators were private persons or State agents or are unknown (see *Angelova and Iliev v. Bulgaria*, no. 55523/00, § 92, ECHR 2007-IX, and *Rantsev v. Cyprus and Russia*, no. 25965/04, § 232, ECHR 2010-... (extracts)).

242. The investigation must be effective in the sense that it is capable of leading to the establishment of the relevant facts and the identification and punishment of those responsible. The authorities must have taken the reasonable steps available to them to secure all the evidence concerning the incident. The investigation's conclusions must be based on thorough, objective and impartial analysis of all the relevant elements. Furthermore, the requirements of Article 2 of the Convention go beyond the stage of the official investigation, where this has led to the institution of proceedings in the national courts: the proceedings as a whole, including the trial stage, must satisfy the requirements of the positive obligation to protect lives through the law. While there is no absolute obligation for all prosecutions to result in conviction or in a particular sentence, any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall foul of the required measure of effectiveness. The national courts should not under any circumstances be prepared to allow life-threatening offences to go unpunished (see *Mojsiejew v. Poland*, no. 11818/02, § 53, 24 March 2009, and *Esat Bayram v. Turkey*, no. 75535/01, § 47, 26 May 2009).

243. For an investigation to be effective, the persons responsible for and carrying out the investigation must be independent and impartial, in law and in practice. This means not only a lack of hierarchical or institutional connection with those implicated in the events but also a practical independence. The effective investigation required under Article 2 serves to maintain public confidence in the authorities' maintenance of the rule of law, to prevent any appearance of collusion in or tolerance of unlawful acts and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. In all cases, the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see, for example, *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, §§ 321-332, ECHR 2007-...; *Khaindrava and Dzamashvili v. Georgia*, no. 18183/05, §§ 59-61, 8 June 2010; *Tahsin Acar v. Turkey* [GC], no. 26307/95, §§ 222-225, ECHR 2004-III, and *Güleç v. Turkey*, 27 July 1998, § 82, *Reports of Judgments and Decisions* 1998-IV).

*ii. Application of these principles in the present case*

244. It is undisputed that the investigation into the death of the applicants' son was indeed carried out. However, having due regard to the relevant circumstances of the case, the Court has very serious misgivings about the integrity and efficiency of that investigation, which the Government have not been able to dispel either in their written observations or in their oral pleadings.

(ά) As regards the part of the investigation carried out by the Ministry of the Interior

245. The Court notes that the very first investigative steps undertaken by the Ministry of the Interior after the discovery of Sandro Girgvliani's body on 28 January 2006 established the following two facts – that the deceased's and L.B.-dze's presence in the Café Chardin had coincided with that of the Minister of the Interior's wife's group of friends, mostly consisting of senior officers from the same Ministry, and that upon leaving that café the two victims had been assaulted by unknown persons behaving like policemen (see the statements given by L.B.-dze and the café's staff to the investigator on 28, 29 and 30 January 2006, paragraphs 24-30, 33 and 35 above). Furthermore, as disclosed by the early statements of Th.M.-dze, Sandro Girgvliani's lady friend who had been a direct link between him and the Minister of the Interior's wife's group in the café, as well as by the investigator's sudden interest in the telephone numbers dialled and received during the relevant period by G.A.-ia, by 31 January 2006 at the latest the investigator already knew about the connection between the applicants' son and the above-mentioned group and had certain grounds to suspect G.A.-ia, First Deputy Director of Constitutional Security (see paragraphs 40 and 41 above). In addition, as alleged by the applicants and conceded by the Government themselves, on 31 January and 1 February the investigator had also seized the records of the telephone numbers which had been in communication with A.Gh.-ava and M.B.-dze, which fact proves that the investigator had already developed some suspicion by that time against those two law-enforcement officers, too (see paragraphs 185 and 223 above).

246. However, despite those circumstances implicating the representatives of the Ministry of the Interior from the early stage of the investigation, the same authority remained in charge of the investigation for a significant period of time, until 5 March 2006 (see paragraph 49 above). During that period, the Ministry conducted numerous important investigative actions, such as questioning relevant witnesses, collecting data about the mobile telephone numbers which had been in communication at the material time via the relevant antennas in Tbilisi, including, as noted above, the numbers of the Ministry officials concerned, seizing the recording from the surveillance camera along the Tbilisi-Kojori road, which

piece of evidence later became crucial for the verification of the alleged involvement of O.M.-ov, and so on (see paragraphs 24-48).

247. That institutional connection and even hierarchical subordination between the implicated senior officers of the Ministry of the Interior and the investigators in charge of the case is even more striking when assessed against the fact that D.A.-aia, a member of the Minister's wife's group in the café and, at the same time, G.A.-ia's direct superior, was subsequently the person responsible in the Ministry for the investigation of Sandro Girgvliani's death. The inappropriateness of that conflict of interests was, in the eyes of the Court, further exacerbated by its being hidden from the public: the only mention of D.A.-aia's involvement in the investigation appeared in the Ministry's memo of 24 February 2006, which was a classified internal document at that time (see paragraphs 10 and 50-52 above).

248. The contents of that memo further confirm that, at least by 2 February 2006, D.A.-aia already knew about the possible involvement of his colleagues in the crime, yet he did not withdraw from the case. Furthermore, if D.A.-aia's statements can be relied on, the Court is struck by the fact that even the Minister of the Interior, upon learning the facts implicating his subordinates and possibly his wife, did not immediately remove the file from the hands of his Ministry, which would have been the only professional and discreet solution in the circumstances, but, on the contrary, instructed D.A.-aia to continue investigating (see paragraph 116 above).

249. In the light of the foregoing, the Court finds that the investigation conducted by the Ministry of the Interior between 26 January and 5 March 2006, during which period the decisive items of evidence were collected, manifestly lacked the requisite independence and impartiality, which procedural deficiency prejudiced the subsequent developments in the investigation (see, as a recent authority, *Kolevi v. Bulgaria*, no. 1108/02, §§ 208 and 212, 5 November 2009).

(β) As regards the part of the investigation carried out by the Tbilisi City Prosecutor's Office

250. Turning to the circumstances surrounding the investigation conducted by the Tbilisi City Prosecutor's Office, the Court considers that one of the most serious omissions was that authority's obstinate refusal to grant the applicants leave to take part in important investigative measures, despite their strenuous efforts to remain involved. It is regrettable that, under the relevant domestic law and practice (see Article 69 (j) of the CCP), the applicants could not have any access whatsoever to the relevant case materials during the investigation stage. The Court deplores that the prosecution authority did not even inform the applicants of the findings made in the course of the investigation measures conducted in their absence

(see, for instance, paragraphs 94-97, 137 and 138 above). As a result, the applicants were left in a complete vacuum as regards the progress of the investigation, which clearly deprived them of the opportunity to safeguard their legitimate procedural interests as it unfolded (see *Slimani v. France*, no. 57671/00, §§ 44 and 46-48, ECHR 2004-IX (extracts); *Orhan v. Turkey*, no. 25656/94, § 346, 18 June 2002; *Beker v. Turkey*, no. 27866/03, § 49, 24 March 2009 , and *Güleç*, cited above, § 82).

251. Neither, the Court notes, was the second civil party, L.B.-dze, able to effectively participate in the investigative measures, given that, apart from lacking qualified legal counsel, he too was denied access to the case materials during the investigation stage. However, being the only survivor of and eyewitness to the crime, L.B.-dze was a source of information of paramount, undeniable importance, and the Court considers that the relevant domestic authorities were consequently under the particularly compelling obligation to take active measures to provide him with all the necessary means to ensure the full and effective realisation of his procedural rights.

252. A conspicuous example of the vulnerability of L.B.-dze's position during the investigation was the following episode. Being unaware of the evidence in the criminal case file at that time, which included accused G.A.-ia's theory according to which his altercation with Sandro Girgvliani had started in the entrance to the Café Chardin, L.B.-dze obviously had no means of knowing how important it was to recall accurately whether he had gone through the café door together with Sandro Girgvliani and whether he had seen his friend have an altercation with anybody on the way out. Consequently, L.B.-dze was totally unprepared for answering the prosecutor's dubious but insistent line of questioning in that respect. Indeed, the Court notes that it was only at the trial stage, after L.B.-dze had familiarised himself with the case materials, that he finally realised why the public prosecutor had been strongly supporting the hypothesis that he and Sandro Girgvliani might have left the café separately (see paragraphs 65, 71, 86-87 and 165 above).

253. The Court cannot overlook other episodes in which the Tbilisi City Prosecutor's Office carried out investigative measures in a clearly misleading manner. For example, as disclosed by the video recording of the identification parade of 8 March 2006, L.B.-dze tentatively suggested that O.M.-ov resembled one of the assailants. However, the public prosecutor failed to note the suggested resemblance in the relevant written records. Then again, when questioned on 10 March 2006, L.B.-dze reiterated his suspicions concerning O.M.-ov's possible involvement in the crime, but instead of treating that serious allegation with the requisite vigilance (see *Brecknell v. the United Kingdom*, no. 32457/04, §§ 70 and 75, 27 November 2007), the prosecutor re-phrased that statement in the written records in such a manner as to ignore the real content and importance of the information received (see paragraph 80 above). A similar discrepancy

between what was actually said by L.B.-dze as regards the circumstances surrounding his and Sandro Girgvliani's leaving the Café Chardin and what was recorded by the prosecutor occurred during the first interview of 6 March 2006. Nor did the prosecutor note L.B.-dze's statement according to which a friend had come to sit with him exactly at the same time as Sandro Girgvliani was having a stilted conversation with Th.M.-dze at the same table (see paragraphs 63 and 65 above). The Court considers this to be a distortion of the witness's statements in the written records by the public prosecutor.

254. The Court deplores that, despite the applicants' reiterated requests, the prosecuting authority did not identify and question, for the purposes of the investigation, those persons with whom both the four convicts and the members of the Minister of the Interior's wife's group had been in communication during the night in question. Such a measure was indispensable for the verification of the applicants' allegation that there had existed some sort of complicity between the direct perpetrators of the crime and the Minister of the Interior's wife's group in the café. The Court observes, for instance, that, as disclosed by the case file, one particular telephone number – 8 77 79 89 60 – was dialled most often on the night in question by both G.A.-ia, one of the perpetrators, and the senior officers of the Ministry of the Interior present in the café. D.A.-aia even testified that the number belonged to their common friend M-eli. That statement, in its turn, contradicted the information disclosed by the relevant mobile phone company, according to which the number in question belonged to a certain K.N.-dze from the limited liability company "Falko". Despite those manifest contradictions, the domestic authorities did not take the trouble to establish the real identity of the owner of that number and secure his appearance as a witness, so that every party to the proceedings could find out what that person had been discussing with both the senior officers of the Ministry of the Interior in the Café Chardin and G.A.-ia at the time when the latter, together with his colleagues from the Ministry, had been committing the crime against Sandro Girgvliani and L.B.-dze.

255. As to the Government's assertion that the investigation authorities had, in reality, questioned all the persons with whom the four perpetrators had been in telephone communication during the period question but had decided not to include that information in the criminal case file, the Court considers that, if accepted, that assertion would only exacerbate the situation. Indeed, the Government's suggestion corroborates the applicants' complaint, which they strenuously attempted to prove at the domestic level, that the investigators had concealed important items of evidence (see paragraphs 186 and 224 above). The Court considers that the identification of all those persons whom the four convicts had contacted during the relevant period was clearly relevant to a thorough and objective examination of the case. As to the consideration of the respect for those persons' privacy,

apart from having difficulty in finding the force in that unelaborated and ambiguous argument, the Court would simply note that the prosecution authority could have allowed the applicants and the domestic courts to have those persons examined at least as anonymous witnesses (cf., amongst many other authorities, *Kornev and Karpenko v. Ukraine*, no. 17444/04, § 56, 21 October 2010).

256. The Court is further struck by the prosecution authority's failure to elucidate the circumstances in which Sandro Girgvliani had received numerous wounds to various parts of his body, in particular those inflicted on his throat. Thus, whilst the forensic expert established that most of those wounds, including the fatal one to the pharynx, had been caused by a sharp, pointed object with a handle, probably a knife, the prosecution authority did not take the trouble to investigate and explain, in the context of the specific facts of the case, exactly how, with what sharp weapon and by whom amongst the four accused persons, those wounds could have been inflicted (see *Vachkovi v. Bulgaria*, no. 2747/02, § 91, 8 July 2010). The Court has no doubt that the establishment of that crucial element could have had an impact, *inter alia*, on the proper classification of the crime (see paragraphs 271 and 272 below). Instead, despite the serious indications calling for caution, the prosecution authority merely accepted the explanation of the accused that they had not used any sharp weapons and that Sandro Girgvliani must have received those wounds "on the wire fencing" or "in the bramble bushes", which gratuitous assertion directly contradicted the qualified State expert's conclusions as to the origins of the wounds (see *Velikova v. Bulgaria*, no. 41488/98, § 73, ECHR 2000-VI).

257. The Court also finds it disturbing that the prosecution authority and the Prisons Department – the latter agency, it should be noted, being headed by the brother of D.A.-aia (see paragraphs 127-129 above) – failed to ensure that the four accused were remanded in separate cells, as was clearly required by section 86 § 2 of the law on detention at the material time. Irrespective of whether that fact allowed the applicants to coordinate their statements, the Court attaches importance to the fact that such manifest disregard of the law could hardly have been conducive to the maintenance of the applicants' and the public's trust in the investigation.

258. All the above considerations are sufficient for the Court to conclude, even without enquiring into other relevant circumstances, that the part of the investigation carried out by the Tbilisi City Prosecutor's Office manifestly lacked the requisite thoroughness, objectivity and, most importantly, integrity. In addition, by not allowing the applicants and the second civil party to have access to the criminal file or at least to be regularly updated on the developments in the investigation, coupled with certain other serious omissions, the prosecution authority fell short of its obligation to safeguard the interests of the next of kin and to ensure that the

investigation received the required level of public scrutiny (see *Medova*, cited above, § 109).

(γ) As regards the judicial proceedings

259. The Court considers that a major deficiency in the judicial proceedings was the domestic courts' persistent refusal to provide the applicants with sufficient time and facilities to study the case materials, thus depriving them of the opportunity to prepare their position for and participate effectively in the trial. Indeed, it is striking that, in such a particularly complex case, the proceedings at first instance lasted only nine days (see paragraphs 146 and 171 above), during which period it was hardly feasible either for the civil parties or even for the judges to study the voluminous case materials. Of particular concern is the fact that the applicants did not have access to the fourteen exhibits, which items represented the backbone of the case, examined in their original form in public and adversarial proceedings. The importance of having direct access to the video materials concerned, rather than to their written transcripts, gains additional weight in the light of the prosecution authority's propensity to distort the facts in the relevant written records, as noted above by the Court (see paragraphs 252 and 253 above).

260. Considering that the accused, in keeping with Article 76 § 3 of the CCP, had unrestricted access to the case materials from the investigation stage, the applicants, as the civil party, found themselves in a clearly disadvantageous position during the trial. However, the Court reiterates that, in the normal course of events, a criminal trial, with an adversarial procedure before an independent and impartial judge, must be regarded as furnishing the strongest safeguards of an effective procedure for the finding of facts and the attribution of criminal responsibility (see *Brecknell*, cited above, §§ 65 and 66). The Court, sharing the applicants' arguments, notes that, in the particular circumstances of the present case, the prosecution authority's procedural rights could not compensate for the absence of those of the civil party because that authority, as noted above, manifestly lacked integrity in the conduct of the investigation and interest in the applicants' cause.

261. Furthermore, in addition to their failure to examine the above-mentioned fourteen exhibits properly, the domestic courts also disregarded the applicants' numerous requests for the collection of additional evidence directly relevant to the establishment of the truth in the case. For instance, although such information was necessary for the verification of the possible complicity between the four perpetrators and some of the persons present at the Minister of the Interior's wife's table in the Café Chardin, the domestic courts refused to secure and duly examine the records of all the telephone calls made and received by all the above-mentioned persons on the night in question. It is further regrettable that the courts disregarded the applicants'

allegation that the investigative authorities of the Ministry of the Interior and of the Tbilisi City Prosecutor's Office had destroyed or concealed evidence as they had introduced into the criminal file only a selection of the records of the calls made and received by the perpetrators, whereas they had in fact obtained the relevant information from the mobile phone companies in its entirety (see also the Court's findings at paragraph 254 above). The Court reaffirms in this connection that for an investigation into a death to be effective, the domestic authorities must take such steps as are necessary to secure all relevant evidence (see, for example, *Rantsev*, cited above, § 241).

262. The Court is particularly struck by the fact that, when L.B.-dze, in line with his previous pre-trial statements, reiterated during the trial, this time in a particularly convincing manner and for the attention of both the prosecution and the judicial authorities, that O.M.-ov had been the fourth assailant who had participated, with particular cruelty, in the attack on him and Sandro, those authorities, contrary to their obligation of vigilance, chose to close their eyes to that serious and credible accusation. The authorities remained inexplicably inactive even after the applicants explicitly requested the initiation of criminal proceedings against O.M.-ov on the strength of the incriminating statements of L.B.-dze, the direct victim (see paragraph 200 above). In the Court's opinion the placement under investigation of O.M.-ov, who had formed part of the group present at the Minister's wife's table in the café, was an indispensable measure for the verification of the applicants' allegation of the existence of complicity between the perpetrators and that group (see, *mutatis mutandis*, *Brecknell*, cited above, §§ 70-71; *Kolevi*, cited above, § 201; and *Slimani*, cited above, § 29).

263. The Court observes that there existed other suspicious circumstances which, had they been duly noted and assessed by the domestic courts, could have shed additional light on the applicants' above-mentioned allegation of complicity. Notably, whilst G.A.-ia had stated, in his pre-trial deposition, that on the way back from Okrokana cemetery, that is after the commission of the crime, he had received phone calls from G.D.-dze asking whether he was joining their party in the café, the latter, when questioned during the trial, suspiciously denied having received any information about G.A.-ia possibly joining their group (see paragraphs 74 and 155 above). At the same time, as disclosed by the records of the telephone calls which formed part of the criminal case materials, the Court notes that G.D.-dze and G.A.-ia had indeed been in communication on the night in question at 1.50, 1.56, 2.01 and 2.05 a.m. That being so, the Court finds it highly regrettable that the domestic authorities failed to explain that manifest discrepancy between the statements of G.A.-ia and G.D.-dze and their inconsistency with the facts as established by the records of the telephone calls.

264. It is noteworthy that even G.A.-ia's own story about the origins of his altercation with Sandro Girgvliani suggested that the applicants' son

must have been familiar with and apparently in conflict with at least some of the representatives of the Ministry of the Interior, and in particular with G.D.-dze. G.A.-ia said that he had heard Sandro Girgvliani insulting "G.D.-dze's mother" and the "mothers of the KGB" who had been in the café. A reasonable observer could infer from G.A.-ia's statement that Sandro Girgvliani must have known the people whom he was insulting. Another detail that supports the hypothesis that there might have been some kind of connection and latent animosity between the applicants' son and G.D.-dze is the fact that, in his private conversation with Th.M.-dze, Sandro Girgvliani offensively referred to the Minister of the Interior's spokesman as "that poof" (see paragraphs 71, 101 and 158 above).

265. Having further examined the records of the telephone calls which formed part of the criminal case materials, the Court also notes that Sandro Girgvliani's ill-treatment must have occurred between 2.12 and 2.54 a.m., as during that period G.A.-ia had been in the vicinity of Okrokana cemetery. These records establish that somebody contacted G.D.-ze from D.A.-aia's number at 2.08, 2.17, 2.23 and 2.25 a.m. That being so, the Court is struck by the fact that neither the prosecution nor the domestic courts attempted to clarify who from the Minister of the Interior's wife's group – D.A.-ia, the owner of the mobile phone, or perhaps even O.M.-ov (given that D.A.-ia's SIM card had been placed in the latter's mobile phone, see paragraph 114 above) – had been calling G.A.-ia with such suspicious insistence, at intervals of only 9, 6 and 2 minutes, at the precise time when the latter, with his colleagues from the Ministry, kidnapped Sandro Girgvliani and L.B.-dze and was either on the way to Okrokana or already beating the victims.

266. The Court deplores that, despite these very serious indications calling for particular caution in this regard, the authorities turned a blind eye to the applicants' credible allegation of complicity between some of the persons from the Interior Minister's wife's group in the café and the direct perpetrators of the crime. Such a selective approach by the domestic authorities is unacceptable for the Court because, in order for an investigation to be effective, its conclusions must always be based on thorough, objective and impartial analysis of *all* relevant elements. Failing to follow an obvious line of inquiry undermines the investigation's ability to establish the circumstances of the case and the person responsible (see *Kolevi*, cited above, § 201, and *Velikova*, cited above, § 82).

267. In the light of the above considerations, the Court concludes that the applicants were arbitrarily denied the right to participate effectively in the judicial proceedings and that the conduct of those proceedings confirmed the domestic authorities' manifest reluctance to uncover, in an objective and conclusive manner, the whole truth about the circumstances surrounding Sandro Girgvliani's kidnapping and death on 28 January 2006.

(δ) As regards the adequacy of the punishment of the convicted persons

268. The Court recalls that, while it largely defers to the national courts' choice of sanctions for ill-treatment and homicide, it nevertheless must, as the ultimate watchdog of the protection of Articles 2 and 3 of the Convention, the two most fundamental provisions, exercise a power of review and intervene in cases of manifest disproportion between the gravity of the act and the punishment imposed. Otherwise, the States' duty to carry out an effective investigation would lose much of its meaning, and the rights enshrined in the above-mentioned provisions would be ineffective in practice (see *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 61, 20 December 2007; *Fadime and Turan Karabulut v. Turkey*, no. 23872/04, § 46, 27 May 2010; and *Okkalı v. Turkey*, no. 52067/99, § 73-76, ECHR 2006-XII (extracts)).

269. In the present case, the Court considers it necessary to address not only the severity of the sentences as initially imposed by the domestic courts but also the manner of their subsequent implementation.

270. The Court notes that the question of the sentences imposed on the four senior Ministry of the Interior officials is intrinsically related to the criminal classification of the offences by the domestic courts. Admittedly, it is normally not the Court's task to verify whether the sentence correctly applied the criminal law provisions, or to rule on the degree of individual liability of the officials in question. However, keeping in mind its obligation under Article 2 of the Convention to apply particularly close scrutiny in cases of homicide inflicted at the hands of State agents, irrespective of whether they acted within or outside the exercise of their official duties, the Court is unable to overlook the fact that the investigation authorities failed to sufficiently prepare the relevant evidentiary basis, or that the domestic courts did not take the trouble to discuss in their decisions the exact nature of the treatment which had caused the death (see, for example, *Velikova*, cited above, § 73, and *Okkalı*, cited above, § 73).

271. The Court notes, for example, that the autopsy report and other evidence showed that, prior to his death, Sandro Girgvliani had been stripped from the waist up and received numerous wounds to different parts of his body inflicted by a sharp, pointed object with a handle, probably a knife. The prosecution and the judicial authorities found that his death had been caused by the treatment inflicted by the four officers. The only possible logical corollary to these two established facts is that the perpetrators first stripped Sandro Girgvliani at Okrokana cemetery, which in itself was a form of deliberately debasing treatment, and then at least one of the group started vigorously cutting him with an unidentified sharp weapon.

272. Looking more closely at the nature of those wounds – numerous cuts from 4 to 15 cm long all over the body, including deep wounds to the throat, one of them, the fatal one, piercing the pharynx (for more details, see paragraphs 20-22 above) – the Court cannot but conclude that Sandro

Girgvliani was subjected to particularly cruel, life-threatening inhuman treatment. Furthermore, where the perpetrator(s) slashed such a vulnerable area of the victim's body as the throat twelve times with a sharp weapon, it is only reasonable to assume that the perpetrator(s) actually intended to take Sandro Girgvliani's life. Another element which emphasises the deliberately life-endangering nature of the attack was the threat and the use of a gun by at least one of the assailants. All things considered, the Court finds it regrettable that, when classifying the offence and passing sentences of from 7 to 8 years' imprisonment, the adequacy of which punishment is in actual fact doubtful, the domestic courts failed to take into account such manifestly aggravating circumstances as the debasing and particularly cruel nature of the treatment inflicted on the victim, quite deliberately, by the State agents.

273. In any event, it is not so much the initial sentences imposed on the offenders as the subsequent manner of their implementation which is at the core of the problem. The Court is struck by the fact that on 24 November 2008 the President of Georgia found it appropriate to pardon State agents convicted of such a heinous crime by reducing the remainder of their sentences by half. Then, as if that measure of clemency was not generous enough, on 5 September 2009 the prison authority recommended and the relevant domestic court granted the convicts' release on licence. The Government referred to the necessity of holding offenders accountable before the public at large (see paragraph 229 above). The Court observes in that respect that Georgian society was expected to accept the fact that three years and six months of imprisonment (see paragraphs 61 and 205 above) was sufficient punishment for senior officers of the Ministry of the Interior who had wantonly ill-treated and killed an innocent man.

274. However, the Court considers that when an agent of the State, in particular a law-enforcement officer, is convicted of a crime that violates Article 2 of the Convention, the granting of an amnesty or pardon can scarcely serve the purpose of an adequate punishment (see, *mutatis mutandis*, *Okkalı*, cited above, § 76, and *Abdülsamet Yaman v. Turkey*, no. 32446/96, § 55, 2 November 2004). On the contrary, the Court expects States to be all the more stringent when punishing their own law-enforcement officers for the commission of such serious life-endangering crimes than they are with ordinary offenders, because what is at stake is not only the issue of the individual criminal-law liability of the perpetrators but also the State's duty to combat the sense of impunity the offenders may consider they enjoy by virtue of their very office and to maintain public confidence in and respect for the law-enforcement system (see, *mutatis mutandis*, *Nikolova and Velichkova*, cited above, § 63). In this regard, the Court considers that, as a matter of principle, it would be wholly inappropriate and would send a wrong signal to the public if the perpetrators of the very serious crime in question maintained eligibility for holding

public office in the future (see, *Türkmen v. Turkey*, no. 43124/98, § 53, 19 December 2006, and *Abdülsamet Yaman*, cited above, § 55).

275. In the light of the foregoing, the Court concludes that the sentences as initially imposed upon the convicts by the domestic courts and actually implemented by the relevant domestic authorities did not constitute adequate punishment for the crime committed. That unreasonable leniency deprived the criminal prosecution of the four officers of any remedial effect under Article 2 of the Convention (see *Nikolova and Velichkova*, cited above, §§ 58-64 and 75).

(ε) Concluding remarks

276. Summarising its findings above, the Court reiterates that the investigation into the death of Sandro Girgvliani manifestly lacked the requisite independence, impartiality, objectivity and thoroughness. On the contrary, the relevant circumstances of the case allow the Court to draw the conclusion that the domestic authorities were lacking in candour in the conduct of the investigation. Even if the failings of some of those authorities would not alone have been sufficient for a finding of the inadequacy of the investigation, their coexistence, cumulative effect is more than enough in this regard. Indeed, the Court is struck by how the different branches of State power – the Ministry of the Interior, as regards the initial shortcomings of the investigation, the Public Prosecutor's Office, as regards the remaining omissions of the investigation, the Prisons Department, as regards the unlawful placement of the convicts in the same cell, the domestic courts, as regards the deficient trial and the convicts' early release, the President of Georgia, as regards the unreasonable leniency towards the convicts, and so on – all acted in concert in preventing justice from being done in this gruesome homicide case.

277. However, the Court reiterates, in line with its findings above (see paragraph 274), that when a suspicious death has been inflicted at the hands of a State agent, particularly stringent scrutiny must be applied by the relevant domestic authorities to the ensuing investigation. Otherwise, the State risks instilling a sense of impunity in its agents, by appearing to tolerate their life-threatening acts, which could open the way to more wanton crimes such as that committed in the present case.

278. There has therefore been a violation of Article 2 of the Convention under its procedural limb.

*2. As to whether the death is imputable to the respondent State*

**(a) The parties' arguments**

279. The Government submitted that there had been no violation of Article 2 of the Convention given that, firstly, the results of the meticulous

investigation of the case conducted by the relevant domestic authorities had established that the life of the applicants' son had not been taken "intentionally", within the meaning of paragraph 1 of that provision. The absence of intent was confirmed by the fact that when, at Okrokana cemetery, the applicants' son had escaped his attackers, one of them had fired a gun in the air and not in his direction.

280. Secondly, the Government argued that the perpetrators had not been acting in an official capacity when the assault had taken place, but rather as ordinary individuals. They had committed wilful bodily harm out of revenge, on purely personal grounds, not within the framework of a police operation; they had not been acting on any order from their superiors. On the contrary, the crime had occurred in the context of a private visit to a friend's birthday party. Consequently, the Government argued, the situation in question was distinguishable from those, for example, in the cases of *Leonidis v. Greece* (no. 43326/05, § 58-66, 8 January 2009) and *Karagiannopoulos v. Greece* (no. 27850/03, §§ 56-64, 21 June 2007).

281. The Government further submitted that, even if G.A.-ia had acknowledged presenting himself to the applicants' son and L.B.-dze as a law-enforcement agent of the Ministry of the Interior, L.B.-dze had noted in his interrogation on 28 January 2008 that the perpetrators had been wearing dark-coloured civilian clothes. Consequently, it was obvious that the victims could not have identified the perpetrators as police officers. Furthermore, the men had not used their official firearms or any car belonging to the Ministry of the Interior. Instead, without the authorisation of the Ministry, G.A.-ia had used a seized car that belonged to a private person, for which abuse of authority he had subsequently been duly punished.

282. In reply, the applicants maintained that the State should bear responsibility for the death of their son, given that the perpetrators, senior officers of the Ministry of the Interior, had presented themselves to the victims as police officers and that one of them had even tried to take down the victims' identity. Furthermore, it was an established fact that the perpetrators had been driving official Ministry cars and had used their firearms as well as their professional relations to commit the crime. For example, G.A.-ia had used his hierarchical superiority to mobilise his colleagues to take the action they took. The applicants argued that the death had thus been brought about by the human and material resources of the State and that, in such circumstances, the respondent State could not be absolved from liability under the substantive aspect of Article 2 of the Convention.

283. The applicants further submitted that Article 2 of the Convention should not be understood as outlawing only deliberate homicide; there did not exist a right or authorisation to take somebody's life under any circumstances. The death in question should engage the responsibility of the State irrespective of the classification of the impugned acts by the domestic

courts (see, for example, *Leonidis*, cited above, §§ 58 and 59). The applicants also stated that, despite the internal investigation's refusal to elucidate O.M.-ov's role in Sandro Girgvliani's death, the Government's failure to submit to the Court the relevant criminal case materials in their entirety further corroborated the assumption that the homicide had been committed on orders given by the offenders' superiors from the Ministry of the Interior who had been present in the Café Chardin on the night in question.

**(b) The Court's assessment**

*i. General principles*

284. The Court reiterates that, in view of the fundamental nature of the right to life, the circumstances in which deprivation of life may be justified must be strictly construed. Article 2 does not grant a *carte blanche*. Unregulated and arbitrary action by State agents is incompatible with effective respect for human rights. This means, amongst other things, that the State must ensure, by putting in place a system of adequate and effective safeguards against arbitrariness and abuse of force, that its agents duly understand the limits of their power and that, in their actions, they are guided not only by the letter of the relevant professional regulations but also pay due regard to the pre-eminence of respect for human life as a fundamental value (see, *mutatis mutandis*, *Abdullah Yilmaz v. Turkey*, no. 21899/02, § 56, 17 June 2008; *Leonidis*, cited above, 54-57).

285. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Ertak v. Turkey*, no. 20764/92, § 32, ECHR 2000-V).

286. The Court is sensitive to the subsidiary nature of its role and recognises that it must refrain from taking on the role of a first-instance tribunal of fact unless this is rendered unavoidable by the circumstances of a particular case. Nonetheless, where allegations are made under Articles 2 and 3 of the Convention the Court must apply a particularly thorough scrutiny even if certain domestic proceedings and investigations have already taken place. The Court is not bound by the findings of domestic courts, and cogent elements may require it to depart from and set

aside these findings (see *Aktaş v. Turkey*, no. 24351/94, § 271, ECHR 2003-V (extracts), and *Leonidis*, cited above, § 59).

*ii. Application of these principles in the present case*

287. In reply to the Government's argument about the "meticulousness" of the domestic investigation into the death of the applicants' son, the Court refers to its comprehensive findings concerning the various unexplained discrepancies and serious omissions made by the relevant domestic authorities during that investigation (see paragraphs 245- 276 above).

288. However, the Court considers that, in the particular circumstances of the present case, the respondent State's failure to account sufficiently for the suspicious death should be limited only to its procedural obligations under Article 2 of the Convention.

289. Notably, the Court, sharing the Government's arguments, attaches particular importance to the fact that, even if Sandro Girgvliani met his death at the hands of the State agents, the perpetrators were not acting in the exercise of their official duties. On the contrary, according to the circumstances of the case as established by the domestic courts, the crime was committed in the context of the perpetrators' private celebration of their friend's birthday. They were not engaged in any planned police operation or in a spontaneous chase (see, by contrast, *Leonidis*, cited above, § 58). As to the applicants' claim that their son was killed on orders given by the offenders' superiors from the Ministry of the Interior who were present in the Café Chardin (see paragraph 283 above), the Court, having due regard to the material in its possession, considers that there is an insufficient evidentiary basis on which to make, applying the relevant standard of proof of "beyond reasonable doubt", such a far-reaching conclusion of fact.

290. Admittedly, the States are expected to set high professional standards within their law-enforcement systems and ensure that the persons serving in these systems meet the requisite criteria (see, *mutatis mutandis*, *Abdullah Yilmaz*, cited above, §§ 56 and 57). However, having regard to the particular circumstances of the present case, the Court is not convinced that the private acts of G.A.-ia, A.A.-uri, A.Gh.-ava and M.B.-dze should be held imputable to the Georgian State as a whole just because these individuals happened to be its agents (see, *mutatis mutandis*, *Çelik v. Turkey (no. 2)*, no. 39326/02, § 33, 27 May 2010). Indeed, the impugned acts were so flagrantly abusive and so far removed from the perpetrators' official status, that their serious criminal behaviour cannot engage the State's substantive international responsibility.

291. There has thus been no violation of the substantive limb of Article 2 of the Convention.

## II. OBSERVANCE OF ARTICLE 38 OF THE CONVENTION

292. The relevant provisions of Article 38 § 1 of the Convention, as they stood at the material time, read as follows:

> "If the Court declares the application admissible, it shall
>
> (a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities;

293. The applicants complained that the Government had submitted only part of the evidence necessary for the examination of the application, and even that had been done with a significant delay. In particular, the applicants denounced the fact that the Government had not submitted all of the images recorded by the surveillance camera at the home of the businessman on the Tbilisi-Kojori road between 2.00 and 3.00 a.m. on 28 January 2006 (see paragraph 48 above).

294. In their written comments of 26 April 2010 (see paragraph 12 above), the Government explained that the reason for the delayed submission of the fourteen exhibits had been the necessity to make additional copies of the relevant CDs. As to the submission of the criminal case materials related to the proceedings against L.B.-dze under Article 371-1 of the Criminal Code (see paragraph 4 above), this had been delayed by the fact that, at the time when the Court had requested those materials, the relevant proceedings were still pending before the Chief Public Prosecutor's Office. In any event, given that the Court had eventually obtained all of the requested documents and material evidence, the Government argued that the situation was distinguishable from the case of *Medova v. Russia* (cited above, §§ 126-133) and that, consequently, no violation of Article 38 of the Convention had occurred.

295. Noting that Article 29 § 3 of the Convention, as that provision stood at the material time, was applied at the time of communication of the present application (see paragraph 4 above), the Court considers that, in the consequent absence of a separate decision on admissibility, it retained jurisdiction under Article 38 of the Convention, as it read at the material time, to examine the relevant events which took place during the subsequent proceedings.

296. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 70, ECHR 1999-IV). This obligation requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of

applications. Failure on a Government's part to submit such information which is in their hands, without a satisfactory explanation, may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 of the Convention (see *Medova*, cited above, § 76, and *Timurtaş v. Turkey*, no. 23531/94, § 66, ECHR 2000-VI).

297. Returning to the relevant circumstances of the present case, the Court notes that by the specified 22 December 2008 deadline the Government had submitted only the documentary materials of the homicide case, in eight volumes. However, the fourteen exhibits, which consisted of 23 CDs and a sketch (see paragraph 159 above), as well as the materials concerning the proceedings against L.B.-dze under Article 371-1 of the Criminal Code, were missing. That omission was contrary to the Court's clear indication that the materials in both cases should be submitted in their entirety, including all evidence on paper and on data storage devices (see paragraph 4 above).

298. The Court further notes that the Government submitted the major part of those missing items of evidence as late as 15 December 2009, that is almost a year later, and even then only as a result of the Court's insistent demands. The Court cannot take seriously the Government's explanation, as regards the fourteen exhibits, that so much time was needed to copy some 23 CD's. As to the criminal proceedings against L.B.-dze, the Court first notes that they were conducted by the Tbilisi City Prosecutor's Office and not by the Chief Public Prosecutor's Office, as claimed by the Government. It is noteworthy that the applicants' requests for those criminal proceedings to be taken out of the hands of the City Prosecutor and given to the Chief Prosecutor were rejected as unfounded on 4 August 2006 (see paragraph 202 above). Subsequently, as the Government asserted in their observations of 22 December 2008, those proceedings were discontinued. Consequently, even assuming that at the time of the Court's first request for the relevant criminal file, made on 24 June 2008, those proceedings were indeed pending at the domestic level, the Court is still unable to understand what prevented the Government from submitting the file subsequently, after the alleged termination of the proceedings, together with their observations of 22 December 2008.

299. Furthermore, after having viewed all the recordings forming the fourteen exhibits in question, the Court notes that the images recorded by the surveillance camera on the Tbilisi-Kojori road were not presented in their entirety – far from it. According to the minutes concerning the seizure of the camera recordings by the investigative authority, they covered the period between 2.00 and 3.00 a.m. on 28 January 2006 (see paragraph 48 above). However, despite the Court's repeated requests for the full recordings, the Government submitted images which accounted for events

on the Tbilisi-Kojori road (the rare passage of cars) during the following ten disconnected and extremely short periods (the time is given in a.m.): (i) 2:13:30 – 2:13:41, (ii) 2:17:16 – 2:17:30, (iii) 2:17:37 – 2:17:41, (iv) 2:24:36 – 2:24:37, (v) 2:41:03 – 2:41:08, (vi) 2:42:37 – 2:42:42, (vii) 2:45:42 – 2:45:53, (viii) 2:46:48 – 2:46:51, (ix) 2:46:58 – 2:47:07 and (x) 2:47:10 – 2:47:20. The total length of the recordings submitted is thus about 68 seconds, instead of the requisite 1 hour.

300. The Court further notes that the Government also failed to submit the video recordings of the interviews with the staff of the Café Chardin and with A.K.-dze (see paragraphs 83 and 112 above).

301. In the light of the foregoing, the Court finds that the Government's explanations for their delay and the partial failure to submit the requested items of evidence are not convincing. Of particular concern is the failure to submit all the images showing the passage of cars on the Tbilisi-Kojori road during the whole period between 2.00 and 3.00 a.m. In the eyes of the Court the submission of that particular item of evidence in its entirety was relevant for the examination of the complaint under Article 2 of the Convention, as it could have corroborated or, on the contrary, refuted the applicants' allegation that O.M.-ov had left the Café Chardin to join his colleagues from the Ministry of the Interior in severely ill-treating and killing their son. The Government failed to justify that omission in their written observations and remained silent even after the applicants had explicitly reproached them on that account during the public hearing on 27 April 2010.

302. Referring to the importance of a respondent Government's cooperation in Convention proceedings and being mindful of the difficulties associated with the establishment of facts in complex cases of such a nature, the Court finds that, in the present case, the Georgian Government fell short of their obligations under Article 38 of the Convention.

## III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

### A. The complaints under Article 6 § 1 of the Convention

303. The applicants complained that the criminal proceedings in the murder case had been arbitrary, as demonstrated by the inadequate investigative measures, the unjustified leniency in the criminal classification of the four perpetrators' acts and the authorities' reluctance to engage the liability of other senior officials of the Ministry of the Interior implicated in the incident. Those shortcomings in the criminal proceedings, the applicants alleged, impaired the effective exercise of their right to claim civil damages.

304. The applicants also complained, without providing any relevant explanation, that the principle of the equality of arms had been breached to

their detriment in the course of the civil proceedings (see paragraphs 206-209 above).

305. The Government disagreed, arguing that the complaint about the criminal proceedings was incompatible *ratione materiae* with Article 6 § 1 of the Convention, since the applicants, as a civil party, had pursued purely punitive purposes (compare with *Perez v. France* [GC], no. 47287/99, §§ 69-70, ECHR 2004-I). They also reproached the applicants for having instituted the civil proceedings as late as two years after the termination of the criminal ones. In any event, the Government argued, referring to the above-mentioned case of *Perez*, the outcome of the criminal proceedings was not, according to the relevant Georgian law and as distinct from French law, decisive for the determination of the amount of the civil damages. The Government also noted that the first instance court had awarded the applicants GEL 40,000 (approximately EUR 16,832) in respect of non-pecuniary damage, which was allegedly the highest amount ever awarded in that respect by the Georgian courts.

306. Noting that the applicants' complaint about the arbitrariness of the criminal proceedings is based on the same facts as those examined under Article 2 of the Convention, the Court considers that the issue of its admissibility must be joined to the merits. However, having regard to its comprehensive factual and legal findings above and without prejudice to the question of the applicability of Article 6 § 1 with regard to the civil aspect of the criminal proceedings, the Court finds that all the grievances of the applicants have been fully absorbed by the examination of the complaints under Article 2 of the Convention and there is no call to examine these issues again under Article 6 § 1 of the Convention.

307. As to the complaint about the fairness of the civil proceedings, the Court notes that it was not properly elaborated, as the applicants failed to adduce any specific evidence in support of it (see paragraph 304 above). Consequently, this limb of the applicants' complaints under Article 6 § 1 of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

### B. The complaints under Articles 3 and 13 of the Convention

308. Relying on Articles 3 and 13 of the Convention, the latter provision being invoked in conjunction with Article 2, the applicants also complained that their son had been tortured prior to being killed and that the investigation into his death had not been an effective remedy. In respect to the latter complaint, the applicants denounced the domestic authorities' failure to react on their criminal complaints of 21 December 2006 and 16 February 2007, in which they had requested the initiation of criminal proceedings against the investigators in charge of the case for abuse of authority and destruction of evidence.

309. The Government disagreed.

310. The Court notes that the complaints under Article 3 and 13 of the Convention are closely linked to those examined under Article 2 of the Convention and must therefore likewise be declared admissible.

311. However, having regard to the grounds on which it has found a violation of Article 2 of the Convention, the Court considers that no separate issues arise under Articles 3 and 13 of the Convention (see *Nikolova and Velichkova*, cited above, §§ 77 and 78, and *Angelova and Iliev v. Bulgaria*, cited above, § 106).

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

312. 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

313. The applicants claimed EUR 300,000 for non-pecuniary damage.

314. The Government submitted that there was no call to make an award in respect of that claim, since there had been no violation of any provisions of the Convention in the present case. They also considered the amount claimed excessive.

315. Having regard to its conclusions under Article 2 of the Convention, the Court has no doubt that the applicants suffered intense distress and frustration on account of the respondent State's failure to conduct a meaningful investigation capable of uncovering the whole truth about the death of their son and leading to the adequate punishment of all those responsible. Making its assessment on an equitable basis, the Court awards the second applicant, Mr Guram Girgvliani, EUR 50,000 under this head (see paragraph 1 above).

### B. Costs and expenses

316. Each of the applicants' two representatives claimed EUR 5,000 for the legal assistance they had provided to the applicants. It was not clear from their submissions whether the amounts claimed were for the work done at the domestic level or in the proceedings before the Court. The amounts were not itemised, nor were any invoices, contracts or other documents attached in support. The representatives also submitted bills disclosing that the applicant had incurred postal, telephone, fax and

translation expenses in the overall amount of GEL 924 (approximately EUR 388[1]).

317. The Government replied that the amounts claimed by the representatives for the legal assistance were totally unsubstantiated and excessive.

318. In the light of its well-established case-law on the matter (see, for instance, *Ghavtadze v. Georgia*, no. 23204/07, §§ 118 and 120, 3 March 2009, and *Saghinadze and Others v. Georgia*, no. 18768/05, § 164, 27 May 2010), and having due regard to the insufficient documentary evidence in its possession, the Court considers that Mr Guram Girgvliani should only be awarded EUR 388 for the various administrative expenses.

### C. Default interest

319. The Court considers it appropriate that the default interest 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. *Joins* unanimously *to the merits* the Government's preliminary objection as regards the complaint under Article 6 § 1 of the Convention concerning the criminal proceedings;

2. *Declares* unanimously the complaint under Article 6 § 1 of the Convention concerning the civil proceedings inadmissible and the remainder of the application admissible;

3. *Holds* by 6 votes to 1 that there has been a violation of the procedural limb of Article 2 of the Convention on account of the lack of an effective investigation into the death of the applicants' son;

4. *Holds* by 4 votes to 3 that there has been no violation of the substantive limb of Article 2 of the Convention on account of the death of the applicants' son at the hands of senior officers of the Ministry of the Interior;

5. *Holds* by 6 votes to 1 that there has been a violation of Article 38 of the Convention;

[1] The conversion given in accordance with the exchange rate of the Georgian lari to the euro on 14 December 2010

6. *Holds* unanimously that there is no need to examine the remainder of the application;

7. *Holds* by 6 votes to 1
   (a) that the respondent State is to pay the second applicant, Mr Guram Girgvliani, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 50,000 (fifty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, and
      (ii) EUR 388 (three hundred and eighty-eight euros), plus any tax that may be chargeable to Mr Guram Girgvliani, for costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

8. *Dismisses* by 4 votes to 3 the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 26 April 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| | |
|---|---|
| Stanley Naismith | Françoise Tulkens |
| Section Registrar | President |

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) joint partly dissenting opinion of Judges Cabral Barreto, Jočienė and Popović;

(b) partly dissenting opinion of Judge Adeishvili.

F.T.
S.H.N.

# JOINT PARTLY DISSENTING OPINION OF JUDGES CABRAL BARRETO, JOČIENĖ AND POPOVIĆ

We voted along with the majority of the chamber in finding a violation of the procedural limb of Article 2 of the Convention, but we also believe there was a violation of Article 2 in its substantive limb in the present case. Our reasons are the following.

The Court reiterated in the *Çakıcı v. Turkey* case ([GC], no. 23657/94, § 86, ECHR 1999-IV) that Article 2 of the Convention, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention and, together with Article 3 of the Convention, enshrines one of the basic values of the democratic societies that make up the Council of Europe (see *McCann and Others v. the United Kingdom* judgment of 27 September 1995, §§ 146-47, Series A no. 324). The obligation imposed is not exclusively concerned with intentional killing resulting from the use of force by agents of the State. The first sentence of Article 2 § 1 also imposes a positive obligation on States to protect the right to life by law.

In this connection we consider that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. The Court's task is, therefore, to determine whether, given the circumstances of the case, the State did all that could have been required of it to prevent the applicant's life from being avoidably put at risk (see *L.C.B. v. the United Kingdom*, no. 23413/94, § 36, Reports 1998-III).

Furthermore, the Court stated in *Ertak v. Turkey, ECHR 2000-V*, § 132, that "the authorities are under an obligation to account for individuals under their control".

Coming to the circumstances of the present case, we firstly find it clearly established that Mr Sandro Girgvliani, who lost his life on 28 January 2006, was indeed under the control of State agents who put his life at mortal risk and were the perpetrators of the crime.

In support of this position we would like to stress the following facts: A.) The perpetrators of the crime as a result of which Mr Sandro Girgvliani lost his life were senior officers of the Ministry of the Interior. B.) At their first contact with Mr Sandro Girgvliani and the other victim on the night in question, the perpetrators of the crime presented themselves to the victims as police officers. C.) One of the police officers involved tried to take down the victims' identity. D.) The perpetrators used cars from the garage of the Interior Ministry to commit the crime. Only police officers had access to such cars. E.) When the crime was committed the police officers concerned were in possession of their service weapons. Although it is true that they did not use those weapons to put an end to the victim's life, it was established that the weapons were fired in the course of the events which led to

Mr Sandro Girgvliani's death. F.) One of the perpetrators relied on his hierarchical superiority to mobilise accomplices and involve them in the crime. This is worth emphasising because it supports our finding that the perpetrators used their official positions in committing the crime. G.) Mr Sandro Girgvliani lost his life as a result of being severely beaten by police officers in a place where no help was available, when the very people who beat him were supposed, by virtue of their position, to assist victims in similar situations. The perpetrators of the crime were not merely acting *ultra vires*; they deliberately committed a crime, even though their main and by far their most important duty was precisely to prevent crime.

Secondly, an important question is whether the action of the perpetrators of the crime in this case is attributable to the State or not. Our answer to this question is affirmative, without a doubt.

The State is responsible under international law for the acts of its agents. The perpetrators in the present case were State agents – high ranking police officers – acting as such. The State cannot absolve itself of its obligation under international law by alleging that the motives of its agents were contrary to State policy. The international-law responsibility of the State for the acts of its agents is independent of any motives they may have had.

Furthermore, the obligation is incumbent upon the State, under both international and internal law, to choose its agents carefully. In doing so the State must follow strict criteria and apply high professional standards in order to achieve a high quality of performance of its duties and obligations towards its own citizens, as well as the international community. The Court clearly stated in *Abdullah Yilmaz v. Turkey* (no. 21899/02, § 57) that "the State is under obligation to ensure a high level of competence of the professionals" in its service. We fully subscribe to this rule and consider it binding in all relevant cases before our Court.

It is clear in our opinion that Georgia failed in its obligation to recruit its police officers with due diligence in order to meet the standards required by the Convention.

The perpetrators in the present case were law-enforcement agents, senior officers of the Ministry of the Interior who, by the very nature of their office, were expected to behave at all times, whether on or off duty, in a manner befitting their status as law-enforcement officers responsible for preserving public order, promoting public safety and preventing and investigating crimes. They should have done everything possible to prevent the applicant's life from being avoidably put at mortal risk.

Therefore, by failing to choose proper law-enforcement officers the State placed itself in breach of Article 2 of the Convention in its substantive limb. Even if the officers in question were driven by their own private motives, which in our opinion is doubtful and remains unestablished, it is evident that the law-enforcement system did not meet the required standards in the present case. This provides grounds for our finding that the action of the

police officers who perpetrated the crime, resulting in the death of an innocent man, must be, and according to the case-file actually is, directly imputable to the Georgian State. That is why we consider that there has been a violation of Article 2 in its substantial limb, along with all the other violations of the Convention found in this case.

As regards just satisfaction under Article 41, the finding of a double violation of Article 2 of the Convention calls, in our opinion, for a much higher award in respect of non-pecuniary damage.

# PARTLY DISSENTING OPINION OF JUDGE ADEISHVILI

I regret that I can not agree with the position of the majority of the Chamber in finding a violation of Article 2 (procedural aspect) and Article 38 of the Convention.

With regard to the interpretation and application of the procedural aspect of Article 2 of the Convention, I believe that the majority deviated from the principle of subsidiarity – a cornerstone of the Convention system. In the present case the Court has been unable to avoid acting as the appellate body it is not intended to be. In its practice the Court often has to strike a balance between subsidiarity and supervision. In the case "*Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium v. Belgium* (Merits)" the Court refused "to assume the role of the competent national authorities, for it would thereby lose sight of the subsidiary nature of the international machinery of collective enforcement established by the Convention" (paragraph 10, Interpretation adopted by the Court, judgment of 23 July 1968). The present case is threatening to the very principle that guarantees the efficiency of the system.

In establishing the violation by the judiciary of Article 2 in its procedural aspect, the Court imputed a number of other actions to the domestic courts that cannot be deemed to be the functions of the judiciary and thus cannot be attributed to it. For instance, the deficiencies described by the Court in paragraphs 261-266 have nothing to do with the activities of the domestic courts.

According to the legislation at the material time, the courts were the only authority with the power to dispense justice. The domestic courts had no role to play in starting any investigation themselves or collecting any evidence. This was the job of the prosecution.

In the present judgment the Court criticises the domestic courts' inactivity, but the question arises whether, at the material time, the domestic courts actually had the power to remedy the shortcomings the Court imputes to the judiciary today. The answer is that all the issues raised by the Court in the above-mentioned paragraphs should have been clarified by the investigating authorities and not by the domestic courts, because at the material time the judiciary had no right even to return a case for additional investigation without the consent of the prosecution. Thus, it is not correct to impute all those deficiencies to the judicial authorities when the latter had no power to cure them.

As regards Article 38, I have to disagree with the majority's departure from the Court's case-law. In a number of cases the Court has found violations of Article 38 when the requested materials were never submitted to it (*Imakayeva v. Russia*, no. 7615/02, § 201, *Lyanova and Aliyeva v. Russia*, nos. 12713/02 and 28440/03, § 145, *Nevmerzhitsky v. Ukraine*, no. 54825/00 § 77).

In the case of *Alikhadzhiyeva v. Russia* (no. 68007/01), the respondent Government submitted the case file only after the application had been declared admissible (§ 99). In fact, the Government even directly refused to submit the case file at the communication stage (§ 102). However, in paragraph 104 the Court noted: "As to Article 38, the Court reiterates that it is applicable to cases which have been declared admissible. Taking into account the Government's compliance with the Court's request after the admissibility decision, the Court cannot find that the delays in submitting the information requested were such as to prejudice the establishment of facts or to otherwise prevent the proper examination of the present case. In these circumstances, the Court considers that there has been no breach of Article 38 of the Convention as regards the timing of the submission of the documents requested by the Court".

From the Court's above clarification it can be inferred that in order for a delay in submitting the case file to be considered as a violation of Article 38, (i) the delay must occur at that stage in the proceedings when the case is examined on the merits; (ii) the delay must be such as to prejudice the establishment of facts; (iii) the delay must be such as to otherwise prevent the proper examination of the case.

In the present case none of the above-mentioned conditions applied. The admissibility and merits of the case were examined at the same time (paragraph 4), and during that examination all the requested materials were in the possession of the Court. At the same time, the delay was not of such a nature as to prejudice the establishment of facts or otherwise prevent the proper examination of the case. The judgment on the present case is direct evidence that, based on the materials received, the Court made the relevant factual inferences and drew the corresponding legal conclusions. Nothing suggests either that the Court was unable to fulfil its functions because of the Government's failure to discharge its obligations under the Convention. So there was no element in the case that could result in a violation of Article 38.

This precedent creates a dangerous approach to the use of Article 38, as it may make the Governments rather reluctant to furnish the Court with the materials in their possession, knowing that even if they submit them with a

certain delay the Court may still find a breach of Article 38. This approach may not be in the Court's best interest in achieving its ultimate goals.