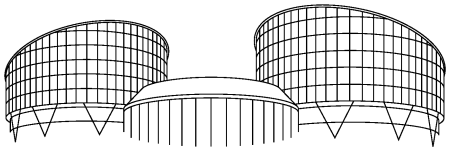

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF GEORGIA v. RUSSIA (I)

(Application no. 13255/07)

JUDGMENT
(Merits)

STRASBOURG

3 July 2014

This judgment is final but may be subject to editorial revision.

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In the case of Georgia v. Russia (I),

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Josep Casadevall, *President*,
Nicolas Bratza,
Mark Villiger,
Isabelle Berro-Lefèvre,
Corneliu Bîrsan,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Päivi Hirvelä,
Luis López Guerra,
Mirjana Lazarova Trajkovska,
Nona Tsotsoria,
Ann Power-Forde,
Zdravka Kalaydjieva
Vincent A. De Gaetano,
André Potocki,
Dmitry Dedov, *judges*,

and Michael O'Boyle, *Deputy Registrar*,

Having deliberated in private on 13 and 14 June 2012, and on 26 March 2014,

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

PROCEDURE

I. INTRODUCTION

1. The case originated in an application (no. 13255/07) against the Russian Federation lodged with the Court under Article 33 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Georgia on 26 March 2007. The Georgian Government ("the applicant Government") were represented before the Court by their Agent, Mr Levan Meskhoradze. They had previously been represented successively by their former Agents: Mr Besarion Bokhashvili and Mr David Tomadze.

2. The Russian Government ("the respondent Government") were represented by their representative, Mr Georgy Matyushkin. They had previously been represented by their former representative, Ms Veronika Milinchuk.

3. The applicant Government alleged that the respondent State had permitted or caused to exist an administrative practice of arresting, detaining and collectively expelling Georgian nationals from the Russian Federation in the autumn of 2006, resulting in a violation of Articles 3, 5, 8, 13, 14 and 18 of the Convention, and of Articles 1 and 2 of Protocol No. 1, Article 4 of Protocol No. 4 and Article 1 of Protocol No. 7.

II. ADMISSIBILITY PROCEDURE BEFORE THE CHAMBER

4. The application was allocated to the Fifth Section of the Court (Rule 52 § 1 of the Rules of Court).

5. On 13 April 2007 the President of the Chamber decided to give notice of the application to the respondent Government, inviting them to submit observations on the admissibility of the complaints. After an extension of the time-limit fixed for that purpose, the respondent Government submitted their observations, with Annexes, on 26 December 2007.

6. On 4 January 2008 the applicant Government were invited to submit their observations in reply. After an extension of the time-limit fixed for that purpose, they submitted their observations, with Annexes, on 5 May 2008.

7. The respondent Government submitted additional observations on 23 September 2008.

8. The Court considered the state of proceedings on 25 November 2008 and decided to obtain the parties' oral submissions on the admissibility of the application. It also decided to invite the parties to respond in writing to a list of questions prior to the date of the hearing.

9. On 18 March 2009 the parties filed their written observations on the questions put by the Court.

10. On 30 June 2009, following a hearing on admissibility questions (Rule 54 § 3) held on 16 April 2009, a Chamber of that Section composed of the following judges: Peer Lorenzen, President, Rait Maruste, Karel Jungwiert, Anatoly Kovler, Renate Jaeger, Mark Villiger and Nona Tsotsoria, and also of Claudia Westerdiek, Section Registrar, declared the application admissible.

III. PROCEDURE ON THE MERITS BEFORE THE GRAND CHAMBER

11. On 15 December 2009 the Chamber relinquished jurisdiction in favour of the Grand Chamber, neither of the parties having objected to relinquishment (Article 30 of the Convention and Rule 72).

12. On 8 January 2010 the composition of the Grand Chamber was determined in accordance with the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24 of the Rules of Court as follows: Jean-Paul Costa, President, Christos Rozakis, Nicolas Bratza, Peer Lorenzen, Françoise Tulkens, Josep Casadevall, Karel Jungwiert, Rait Maruste, Anatoly Kovler,

Renate Jaeger, Mark Villiger, Isabelle Berro-Lefèvre, Luis López Guerra, Mirjana Lazarova Trajkovska, Nona Tsotsoria, Ann Power and Zdravka Kalaydjieva, judges, and Michael O'Boyle, Deputy Registrar of the Court. On 3 November 2011 Jean-Paul Costa's term as President of the Court came to an end. Nicolas Bratza succeeded him in that capacity and from that date took over the presidency of the Grand Chamber in the present case (Rule 9 § 2). On 31 October 2012 Nicolas Bratza's term as President of the Court came to an end. From that date Josep Casadevall, Vice-President of the Court, took over the presidency of the Grand Chamber in the present case. Nicolas Bratza continued to sit following the expiry of his term of office, in accordance with Article 23 § 3 of the Convention and Rule 24 § 4 of the Rules of Court. The new composition of the Grand Chamber on 26 March 2014, the date of adoption of the present judgment, appears above at the beginning of the text.

13. In order to clarify certain matters relating particularly to the conditions of arrest, detention and expulsion of Georgian nationals, the Court decided to hear further evidence orally, in accordance with Article 38 of the Convention and Rule A1 of the Annex to the Rules. It appointed a delegation of five judges of the Grand Chamber composed of Josep Casadevall, Anatoly Kovler, Mark Villiger, Isabelle Berro-Lefèvre and Nona Tsotsoria for that purpose.

14. On 28 June 2010 the President of the Grand Chamber invited each party to submit a list of witnesses (a maximum of ten) whom they wished the delegation of judges to hear. He also invited five additional witnesses chosen by the Court. The applicant Government sent their list of witnesses on 11 August 2010 and the respondent Government sent theirs on 14 August 2010.

15. From 31 January to 4 February 2011 the delegation of judges of the Grand Chamber heard witnesses in camera in the presence of the parties' representatives at the Human Rights Building in Strasbourg.

16. The delegation heard a total of twenty-one witnesses, nine of whom had been proposed by the applicant Government and ten by the respondent Government, and two of whom had been chosen by the Court.

17. The list of witnesses who appeared before the delegation and a summary of their oral evidence are annexed to the present judgment. A verbatim record of the oral evidence given by the witnesses before the delegation has also been drawn up by the Court Registry and included in the case file.

18. By letters of 28 June 2010 and 8 March 2011, the President invited the respondent Government to submit further documents to the Court. The respondent Government replied to these on 14 August 2010 and 15 April 2011 respectively.

19. On 18 July 2011 the President invited the parties to file observations on the merits of the case and the verbatim record of the witnesses' oral

evidence that had been sent to them beforehand (Rule 58 § 1 and Rule A8 § 3 of the Annex to the Rules) by 30 November 2011 at the latest. The parties' observations arrived at the Court on that date.

20. A hearing on the merits took place in public in the Human Rights Building, Strasbourg, on 13 June 2012 (Rule 58 § 2).

There appeared before the Court:

(a) *for the applicant Government*
Mrs T. BURJALIANI, First Deputy Minister of Justice,
Mr L. MESKHORADZE, *Agent*,
Mrs K. TSKHOMELIDZE,
Mrs M. VASHAKIDZE
Mrs N. ABRAMISHVILI, *Advisers;*

(b) *for the respondent Government*
Mr G. MATYUSHKIN, Deputy Minister of Justice, *Representative*,
Mrs N. ZYABKINA, *First Deputy to the Representative*,
Mrs A. ZEMSKOVA,
Mrs I. KORIEVA
Mr Y. PETUKHOV
Mrs G. KHOKHRINA
Mrs Y. TSIMBALOVA,
Mr E. SHIPITSYN, *Advisers*.

The Court heard addresses by Mrs Burjaliani and Mr Matyushkin.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

21. The facts of the case may be summarised as follows.

A. Overview

22. Having regard to all the evidence submitted to the Court, it transpires that at the end of the summer of 2006 the political tensions between the Russian Federation and Georgia had reached a climax with the arrest on 27 September 2006 of four Russian officers in Tbilisi and the suspension by the Russian Federation on 3 October 2006 of all aerial, road, maritime, railway, postal and financial links with Georgia. Expulsions of Georgian nationals by the Russian Federation were already being reported in the international media at the end of September 2006, and those reports were

then being relayed by various international governmental and non-governmental organisations (see, *inter alia*, the report of 22 January 2007 by the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE) "Current tensions between Georgia and Russia", AS/Mon(2006)40 rev.; the report of October 2007 by Human Rights Watch (HRW) "Singled Out. Russia's detention and expulsion of Georgians", Volume 19 No. 5(D); and the report of April 2007 by the International Federation for Human Rights (FIDH) "Migrants in Russia", no. 472).

23. It has been established that during the period in question (from the end of September 2006 until the end of January 2007) Georgian nationals were arrested, detained and then expelled from the territory of the Russian Federation.

24. According to the applicant Government, these were reprisals following the arrest of the Russian officers in Tbilisi and Georgian nationals were expelled regardless of whether they were lawfully or unlawfully resident in the Russian Federation, simply because they were Georgian.

25. According to the respondent Government, the events relating to the arrest of four Russian officers in Tbilisi were entirely irrelevant to the facts set out by the applicant Government in their application. The Russian authorities had not taken any measures of reprisal against Georgian nationals, but had merely continued applying the statutory provisions for the prevention of illegal immigration in compliance with the requirements of the Convention and the Russian Federation's international obligations.

26. The parties submitted conflicting statistical evidence regarding the number of Georgian nationals expelled during that period.

27. The applicant Government submitted in particular that between the end of September 2006 and the end of January 2007, 4,634 expulsion orders had been issued against Georgian nationals, of whom 2,380 had been detained and forcibly expelled, and the remaining 2,254 had left the country by their own means. They specified that between October 2006 and January 2007 there had been a sharp increase in the number of expulsions of Georgian nationals, which had risen from about 80 to 100 persons per month between July and September 2006 to about 700 to 800 per month between October 2006 and January 2007. At the witness hearing Mr Pataridze, Consul of Georgia in the Russian Federation at the material time, stated that from the end of September 2006 the Georgian consulate in Moscow had been inundated with telephone calls and requests for assistance from relatives of persons detained, and that between 200 and 300 Georgian nationals had come to the consulate every day. He also said that there had been an increase in the number of travel documents (which were necessary to expel Georgian nationals) issued during that period, with the number rising from an average of 10 to 15 documents per day to 150 per day (see Annex, § 13).

28. The respondent Government, which stated that they had only annual or half-yearly statistics, said that, in 2006, 4,022 administrative expulsion orders had been issued against Georgian nationals, which was a 39.7% increase compared with 2005. However, during that year the highest number of administrative expulsion orders had been made against Uzbekistan nationals (6,089), followed by Tajik nationals (4,960) and Georgian nationals (4,022), who, in reality, were only in third place. Between 1 October 2006 and 1 April 2007, 2,862 Georgian nationals had been the subject of expulsion orders. They also indicated that during October 2006 four planes chartered by the Russian Federation had flown a total of 445 Georgian nationals from Moscow to Tbilisi, and that at the end of October and the beginning of December 2006 two planes chartered by Georgia had flown 220 Georgian nationals from Moscow to Tbilisi. At the witness hearing Mr Shevchenko, who had been Deputy Head of the Department of Immigration Control of the Federal Migration Service at the material time, said that on 6 October 2006 the flight had been with a cargo plane from the Ministry of Emergency Situations (IL 76), on 10, 11 and 17 October 2006 with a Russian airliner (IL 62 M), and on 28 October and 6 December 2006 with Georgian airliners (see Annex, § 23).

29. With regard to the international governmental and non-governmental organisations, they partly reproduced the figures submitted by the applicant Government (see, *inter alia*, the report of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe – PACE report, § 56). Human Rights Watch (HRW), for its part, also referred, in its report, to an information note of 1 November 2006 of the Federal Migration Service of the Russian Federation (HRW report, p. 37). According to HRW, that note indicated that between 29 September and 1 November 2006, 2,681 administrative expulsion orders were issued against Georgian nationals and 1,194 Georgian nationals were expelled. The International Federation for Human Rights (FIDH) referred in its report to "thousands of arrests [of Georgian nationals], hundreds of detentions and expulsions to Georgia" after the incident of 27 September 2006 (FIDH report, p.23).

B. Alleged existence of an expulsion policy specifically targeting Georgian nationals

1. Instructions and circulars

30. In support of their allegations, the applicant Government submitted a number of documents issued by the Main Directorate of Internal Affairs (GUVD) of St Petersburg and the Leningrad Region and by the Federal Migration Service of the Russian Federation. These refer to two circulars: circular – *приказ* – no. 0215 of 30 September 2006 issued by the Main Directorate of Internal Affairs of St Petersburg and the Leningrad Region

and circular – *указание* – no. 849 of 29 September 2006 issued by the Ministry of the Interior of the Russian Federation.

31. These documents are the following:

i. Three instructions of 2 and 3 October 2006 issued by the Main Directorate of Internal Affairs of St Petersburg and the Leningrad Region:

(a) The first instruction of 2 October 2006 (no. 122721⁄08), sent by Mr V.J. Piotrovskiy, Acting Head of the Main Directorate of Internal Affairs of St Petersburg and the Leningrad Region, Police Major General at the material time, to the heads of division of the directorate, is entitled "increasing the effectiveness of the implementation of GUVD circular no. 0215 of 30.09.2006 (§§ 6.1, 6.2 and 7)" and orders that

"1. from 2.10. - 4.10.2006 and in cooperation with the territorial directorates of the Federal Migration Service for St Petersburg and the Leningrad Region including staff of all units, large-scale measures be undertaken to identify as many citizens (*граждане*) of the Republic of Georgia as possible who are unlawfully residing on Russian territory and deport them";

"2. to "initiate" (*Инициировать*) decisions before courts in cases of violations of the rules governing the residence of foreign citizens deporting only the above-mentioned category of citizens by placing them in detention in a reception and detention centre of the Main Directorate of Internal Affairs (GUVD). The implementation of these measures is approved by the Directorate of the Federal Migration Service for St Petersburg and the Leningrad Region (UFMS) and the adoption of decisions is coordinated with the St Petersburg City Court and Leningrad Regional Court;" (the instruction in question also appears in the Annex to the PACE report and the HRW report, and is mentioned in the FIDH report, p. 26 (b) *in fine*).

(b) The second instruction of 2 October 2006 (no. 122721⁄13) and the third one (no. 122721⁄17) of 3 October 2006 supplement the first one. The second one, sent by Mr S.N. Storozhenko, head of a division of the Main Directorate of Internal Affairs of St Petersburg and the Leningrad Region at the material time, to the heads of district police departments for combating economic crime and of the Transport Department of St Petersburg, also refers to circular no. 0215. The third one, sent by Mr V.D. Kudriavtsev, Acting Head of Police of St Petersburg and of the Leningrad Region at the material time, to the heads of district police departments, orders the relevant authorities to submit daily reports on the number of Georgian nationals arrested for "administrative offences ... and violations of the regulations governing registration of home address";

ii. An order of 2 October 2006 (no. 122721⁄11) by Mr Kudriavtsev, Acting Head of Police of St Petersburg and the Leningrad Region at the material time, referring to the implementation of paragraph 3 of circular no. 0215;

iii. An information note of 18 October 2006 issued by the Federal Migration Service applying circular no. 849 of 29 September 2006 of the Ministry of the Interior of the Russian Federation indicating the measures taken to reinforce supervision of the lawfulness of Georgian citizens' residence in the Russian Federation: checks on employers recruiting Georgian citizens, checks on Georgian citizens who have committed the offences set out in Articles 18.8-18.11 of the Code of Administrative Offences, suspension of the issuing of certain documents to Georgian citizens (acquisition of Russian nationality, registration documents, temporary and permanent residence permits) and checks on the lawfulness of granting such documents (the information note also appears in the Annex to the HRW report).

32. The respondent Government submitted that all those instructions, the order and the information note had been falsified and disputed the content as alleged by the applicant Government of the two circulars nos. 0215 and 849 to which those documents referred. However, they confirmed the existence of the two circulars, but said that these could not be provided to the Court because they were classified "State secret". At the witness hearing Mr Nikishkin, Deputy Head of the Legal Department, Ministry of the Interior, Moscow, at the time of the hearing, confirmed that the instruction of 2 October 2006 (no. 122721⁄08) (see paragraph 31 above) purportedly issued by the Main Directorate of Internal Affairs of St Petersburg and the Leningrad Region was a forged document and that the two circulars nos. 0215 and 849 (the latter actually being a telegram) were classified "State secret" and that they concerned a reference to various national criminal groups, but not a selective reference to Georgian nationals. They could not be disclosed because this was forbidden under Russian law (see Annex, § 21).

33. In his annual report of 2006 Mr V.P. Lukin, Commissioner for Human Rights of the Russian Federation (Russian Ombudsman) at the material time, published the full text of the instruction of 2 October 2006 (no. 122721⁄08), on which Mr V.J. Piotrovskiy's name appears unsigned. The Commissioner said that the instruction had been sent to him by St Petersburg human rights activists and that it had been published by the local press. He commented as follows: "To call things as they are, this unprecedented document is evidence that ... most senior police official entered into an arrangement with the judicial authorities with the aim of obtaining unjustified judicial rulings in relation to – as yet unidentified – persons in breach of temporary residence procedures, ignoring the specific circumstances of each of them and on the sole basis that they were Georgian citizens." He went on to say that he had asked the General Prosecutor of the Russian Federation to check whether the document was genuine and, if so, "to take appropriate measures to bring the guilty to justice and revoke the blatantly illegal instructions contained in it" (Annual report of 2006 of the

Commissioner for Human Rights of the Russian Federation, point 7 "Inter-ethnic relations and human rights").

34. In his letter in reply of 8 December 2006, Mr A.E. Buksman, Deputy General Prosecutor of the Russian Federation at the material time, said that it "was established that the law-enforcement authorities of St Petersburg and of the Leningrad Region regularly take measures aimed at revealing foreign nationals unlawfully residing in St Petersburg and the Leningrad Region. These measures are realised in accordance with the rules of the Russian Code of Criminal Procedure, the Russian "Operational-Search Activities" Act (*Об оперативно-розыскной деятельности РФ*) and departmental regulations including those constituting a State secret. In the current year 1,069 foreign nationals were sent back from St Petersburg to their countries; 131 of them had Georgian nationality. No cases of abuse of authority were revealed on the part of officers of the militia department."

35. In his report the Commissioner described the reply from the Deputy General Prosecutor as follows: "in the best bureaucratic traditions the document gave no answer to any of the questions posed by the Commissioner. Instead, the "reply" from the Deputy General Prosecutor included a short report on the successes of the St Petersburg law-enforcement authorities and, in a reference to departmental regulations classified as "secret", confirmed that there was no evidence of the employees having exceeded their authority. Whether this means that as a result the sub-departments of the Directorate of Internal Affairs of St Petersburg and the Leningrad Region did not carry out their superior's manifestly illegal directions remains unclear."

2. Enquiries sent to various schools and replies from the Russian authorities

36. The applicant Government also submitted two letters from the Directorate of Internal Affairs of two Moscow districts – Taganskiy (Head at the material time: Mr G.S. Zakharov) and Zapadniy (Deputy Head at the material time: Mr A.V. Komarov) – sent on 2 and 3 October 2006 to schools for the purpose of identifying Georgian pupils with the aim, among other things, of "ensuring public order and respect for the law, preventing terrorist acts and tensions between children living in Moscow and children of Georgian nationality (*национальность*)" (letter from Mr Zakharov). In a letter in reply dated 4 October 2006, the director of one of those establishments at the material time (Mr Engels) said that there was no register recording pupils on the basis of their nationality (the letters from Mr Zakharov and Mr Engels also appear in the Annex to the PACE and HRW reports). The sending of these requests for information was widely commented upon in the Russian media.

37. The respondent Government did not dispute the existence of the letters and even acknowledged that other requests of the same type had been

sent to various schools at the beginning of October 2006 by the head of the Directorate of Internal Affairs of the Butyrskiy District of Moscow (Mrs N.V. Markova at the material time), on the ground that she wanted to identify cases of bribes paid to schools by illegal immigrants, and by the Head of the Juvenile Department of the Togliatti District in the Samara Region (Mrs S.V. Volkova at the material time), on the ground that she wanted to identify cases of children living in insalubrious conditions. The respondent Government submitted that the subsequent investigations had concluded that no such official instructions had been issued by the Ministry of Internal Affairs. However, where – in isolated cases – officials had been over-zealous, they had subsequently been punished for their illegal acts. The documents submitted by the respondent Government show that the officials in question were respectively reprimanded (*выговор*), downgraded and disciplined. At the witness hearing Mrs Kulagina, Inspector, Department for the Organisation of Activities of the District Police Officers and District Supervision Officers in respect of Minors, Main Division of the Interior, Samara Region, at the material time, and Mr Shabas, Deputy Head of the Department of the Interior, North-Eastern Administrative District, Moscow, at the material time, confirmed that information and explained how the official investigations had been carried out and the penalties imposed on Mrs Volkova and Mrs Markova among others (see Annex, §§ 19 and 22).

38. The respondent Government also submitted a letter of 5 December 2006 from the Deputy General Prosecutor of the Russian Federation to all prosecutors pointing out that various internal affairs directorates had acted unlawfully with regard to nationals of the Commonwealth of Independent States (CIS). He referred in particular to unjustified requests sent to schools for the purpose of identifying pupils of Georgian nationality and concluded the letter by inviting all prosecutors to intensify their supervision of the activities of those divisions with a view to guaranteeing respect for the rights and freedoms of nationals of the CIS.

3. Position of various international governmental and non-governmental organisations

39. The international governmental and non-governmental organisations, for their part, referred to coordinated action between the administrative and judicial authorities, with express reference to the instruction of 2 October 2006 (no. 122721/08) and to circular no. 0215 of the Main Directorate of Internal Affairs of St Petersburg and the Leningrad Region of 30 September 2006 (PACE report, §§ 55 and 71, HRW report, § 37, and FIDH report, pp. 26 and 27). At the witness hearing Mr Eörsi, rapporteur of the PACE Monitoring Committee at the material time, said that the expulsion of such a large number of Georgian nationals within such a short space of time could not have been done without the knowledge and instructions of fairly high-ranking persons among the Russian authorities.

40. The FIDH indicated, moreover, that "human-rights and refugees-protection organisations present in Russia consider that a campaign conducted in such an ostensible manner throughout Russian territory can only have been initiated on a written order from the hierarchy of the Ministry of the Interior. And whilst the top officials of the Federal Migration Service and the Ministry of the Interior have denied giving explicit repressive orders targeting Georgians, many members of the "Migration and Law" network of "Memorial" [Russian non-governmental human rights organisation] have seen in the regional departments or police stations written [instructions] containing all the elements present in the campaign. The case of the [secret circular issued by the Main Directorate of Internal Affairs of St Petersburg and the Leningrad Region] and letters sent to schools in Moscow (see paragraphs 36 to 37 above) cannot be regarded as isolated cases" (FIDH report, pp. 28-29; for requests for information sent to schools, see also PACE report, Annex V, and HRW report, p. 37).

C. The impugned events according to the witness statements

1. Situation of Georgian nationals under the immigration rules in the Russian Federation

41. It is in dispute between the parties whether the Georgian nationals who were expelled had complied with the immigration rules in the Russian Federation during the period in question. Many international governmental and non-governmental organisations have stressed the complexity of those rules (see paragraph 76 below).

42. With regard to the Georgian witnesses who gave evidence at the witness hearing, even though their legal situation in the Russian Federation often appeared confused, the Court notes that a majority of them were formally unlawfully resident in the Russian Federation – some for a number of years – for various reasons (for example, no valid work permit, visa or registration certificate, often issued fraudulently – unbeknown to them – by the many private agencies operating fairly widely in the Russian Federation). They stated that their papers had indeed been checked on occasions in the past, sometimes resulting in the payment of a sum of money, but that this was the first time they had been arrested and forcibly expelled from Russian territory.

43. Mr Pataridze, Consul of Georgia in the Russian Federation at the material time, said that the official procedures were difficult to carry out in practice and that many foreign nationals, including Georgians, had been tricked by private agencies, many of which acted illegally and even issued forged registration certificates. He added that in the Russian Federation recourse was commonly had to these private agencies, which advertised in all public places in the big cities (see Annex, § 13).

44. Mr Azarov, Deputy Head of the Department of Immigration Control, Federal Migration Service, Moscow, at the material time, and Mr Kondratyev, Inspector from the Division of Checkout Measures No. 2 in the same department at the material time, pointed out that only the official authorities were empowered to issue such documents and that they regularly published relevant information for the attention of foreign nationals. They confirmed the existence of such private agencies, but stressed that their activities were often illegal and were the subject of criminal proceedings, without, however, providing specific examples (see Annex, §§ 15 and 17).

2. Arrest, detention and expulsion of Georgian nationals

45. Following the witness hearing, the impugned events may be summarised as follows: identity checks of Georgian nationals were carried out in the streets, markets and other workplaces and at their homes, and they were subsequently arrested and taken to police stations. After a period of custody in police stations (ranging from a few hours to one or two days, according to the witness evidence), they were grouped together and taken by bus to the courts, which summarily imposed administrative penalties on them and gave decisions ordering their administrative expulsion from Russian territory. Subsequently, after sometimes undergoing a medical visit and a blood test, they were taken to detention centres for foreigners where they were detained for varying periods of time (ranging from two to fourteen days according to the witness evidence), and then taken by bus to various airports in Moscow, and expelled to Georgia by aeroplane. It should be pointed out that some of the Georgian nationals against whom expulsion orders were issued left the territory of the Russian Federation by their own means.

a. Conditions of arrest

46. The Georgian witnesses said that they had been arrested by Russian police officers on the pretext that their identity papers were not in order. They had often been unable to take their personal effects with them or inform their relatives. When they had asked why they were being arrested, they had been told that it was because they were Georgian and that there was an order from above to expel Georgian nationals (witness statements nos. 1, 2 and 3 – see Annex, §§ 5, 6 and 7).

47. Mr Azarov, Deputy Head of the Department of Immigration Control, Federal Migration Service, Moscow, at the material time, and Mr Kondratyev, Inspector from the Division of Checkout Measures No. 2 in the same department at the material time, said that their departments undertook, on the basis of information received, identity checks of foreign nationals or employers suspected of having broken the immigration rules in the Russian Federation.

b. Procedures before the courts

48. The Georgian witnesses all stated that a very summary procedure had been followed before the courts. Often they had not even realised that they had been brought before a court (witness statements nos. 4, 5 and 6 – see Annex, §§ 8, 9 and 10). Whilst some of them mentioned an interview with a judge, lasting five minutes on average and with no real examination of the facts of the case (witness statements nos. 1 and 3 – see Annex, §§ 5 and 7), others said that they had not been admitted to the courtroom and had waited in the corridors, or even in the buses that had delivered them to the court (witness statements nos. 2 and 7 – see Annex, §§ 6 and 11), with other Georgian nationals (their number varied between 15 and 150). They said that they had then been ordered to sign the court decisions without having had an opportunity to read the contents or being able to obtain a copy of the decision. They had not had access to either an interpreter or a lawyer (witness statements nos. 1, 2 and 4 – see Annex, §§ 5, 6 and 8). As a general rule, both the judges and the police officers had discouraged them from appealing by telling them that there was an order to expel Georgian nationals, and in any event they had been so stressed at the idea of remaining in detention any longer and so eager to return to Georgia that they would have signed "anything at all". When they had asked why they were being expelled, they had been told that it was because they were Georgians and that they should ask their President, Mr Saakashvili.

49. Mr Pataridze, Consul of Georgia in the Russian Federation at the material time, said that Russian officials had privately told him that such appeals were pointless because the decision to expel Georgians from the Russian Federation was a political one (see Annex, § 13).

50. Mr Kondratyev, Inspector from the Division of Checkout Measures No. 2, Department of Immigration Control, Federal Migration Service, Moscow, at the material time, described the procedures before the courts as follows: the defendant was brought before a judge who informed him of his rights and obligations, asked him if he wanted an interpreter and a lawyer to be present, and, if so, his request was taken into account; the judge then asked the defendant questions about his particular situation, left the room and came back with the order. If it was an expulsion order, the defendant received a copy and was taken to the detention centre for foreigners with a view to his or her expulsion. He or she had ten days in which to appeal, even after being expelled from the Russian Federation, and that time-limit could be extended (see Annex, § 17).

51. Mr Manerkin, Head of the Division for Supervision of the Execution of Federal Legislation, Prosecutor's Office, Moscow, at the material time, explained that at the relevant time his division had identified procedural irregularities particularly regarding the manner in which the Federal Migration Service had been drawing up reports on foreign nationals from a number of countries. In 22 cases those findings had led to the expulsion

orders in question being set aside. He added that the General Prosecutor in charge of the Moscow Region had requested all his divisions to ensure that the rights of all foreign nationals were duly respected. He said that there had never been any instructions restricting the rights of Georgian nationals because that would be against the law, and even a crime under Russian law.

c. Conditions of detention

52. The Georgian witnesses spoke of "overcrowding", "unbearable" and "inhuman" conditions of detention and appalling conditions of hygiene, and said that their fellow detainees had mainly been Georgian nationals, though there had sometimes been one or two other detainees of a different nationality.

53. They said that during their custody in the police stations, the cells, which were called "monkey cages", had been tiny and overcrowded, that men and women had sometimes been detained together and that they had been unable to sit down (witness statements nos. 1 and 6 – see Annex, §§ 5 and 10).

54. They said that in the detention centres for foreigners the cells were also overcrowded: the description of the size of the cells ranged from 40 to 50 m^2 for 100 detainees, 22 to 25 m^2 for 23 detainees with 10 beds (witness statement no. 3), 6 x 8 footsteps for 30 detainees with 6 beds (witness statement no. 4), and 25 m^2 with 40 detainees and 15 beds (witness statement no. 7). Other witnesses referred to tiny cells with 7 or 8 detainees (witness statements nos. 1 and 6) or with 45 detainees and 6 beds (witness statement no. 5 – see Annex, §§ 7, 8, 11, 5, 10 and 9). The beds had consisted merely of iron bars or very thin mattresses and no blankets; the detainees had had to take it in turns to sleep; a bucket had served as a toilet and had not been separated from the rest of the cells; and there had been no decent water or food.

55. Mr Pataridze, Consul of Georgia in the Russian Federation at the material time, said that he and his team had visited more than a dozen detention centres in various regions of the Russian Federation, including those of St Petersburg and Moscow. He confirmed that there had mainly been Georgian nationals detained in all the centres, that the cells were overcrowded, the conditions of detention very difficult, the hygiene appalling, and that there were too few beds and mattresses. Only the detention centre no. 1 of Moscow (model centre shown to journalists) offered better conditions of detention, though it too was overcrowded (see Annex, § 13).

56. Mr Azarov, Deputy Head of the Department of Immigration Control, Federal Migration Service, Moscow, at the material time, said that he was in charge of the eight detention centres in Moscow and that he had visited all of them: the conditions of detention were the same for all foreigners, namely, large cells of approximately 50 m^2, with beds, separate toilets,

running water and hot meals served three times per day (see Annex, § 15). Other Russian witnesses said that there had never been any complaints by the Consul of Georgia or by Georgian nationals regarding the conditions of detention.

d. Conditions of expulsion

57. The Georgian witnesses stated that they and other Georgian nationals had been taken by bus, accompanied by officers from the Russian special police force (OMON), to various Moscow airports from which they had been expelled by aeroplane to Tbilisi. They said they had been humiliated by OMON officers, such as being obliged to pay in the bus before being allowed to relieve themselves or smoke or take their personal effects (witness statements nos. 3, 4, 5 and 7 – see Annex, §§ 7, 8, 9 and 11), and subsequently having to walk or even run towards the aeroplane with their hands behind their back in human corridors formed by OMON officers. The first Georgian nationals to be expelled had been flown in a cargo plane (on 6 October 2006), and the next ones in airliners (on 10, 11 and 17 October 2006). Although the conditions of transport in the airliner had been acceptable, those in the cargo plane had been very rudimentary: the Georgian witnesses said that there had been two rows of benches on which women and children (twenty or so) had sat, with the men sitting on the floor or having to stand, and that a sort of tub had served as a toilet and had circulated between the rows. The estimated number of Georgian passengers in the planes varied between 80 and 150.

58. Mr Kondratyev, Inspector from the Division of Checkout Measures No. 2, Department of Immigration Control, Federal Migration Service, Moscow, at the material time, said that the cargo planes resembled airliners with slightly less comfort; in any event they had been equipped with seats or benches and with safety belts, and water and food had been served on board, and there had been toilets fixed to the floor. He had himself accompanied the cargo plane flight on 6 October 2006, and explained that the flight had lasted about three hours, that there had been about 150 passengers on board and they had not complained about the conditions of transport but had thanked the members of his department on arrival in Tbilisi. On the way back, the same plane had flown Russian nationals from Georgia to the Russian Federation.

59. Mr Azarov, Deputy Head of the Department of Immigration Control, Federal Migration Service, Moscow, at the material time, had been present at Zhukovskoe and Domodedovo Airports and had boarded two planes carrying Georgian nationals being expelled to Georgia. He said that the planes had been equipped with seats and benches, and that water and dry biscuits had been served on board.

60. Mr Shevchenko, Deputy Head of the Department of Immigration Control of the Federal Migration Service at the material time, stated that he

had been present at the airport when the Georgian nationals were expelled and stressed that there had been no baggage restrictions; on the contrary they had had their personal effects on them and the media had been present. Subsequently, in a letter of thanks sent by the Consul of Georgia to the head of the Federal Migration Service of the town of Derbent (Dagestan) the former had congratulated the Russian authorities on their good co-operation during the expulsion procedures, and had not filed a claim.

e. Situation in Georgia after expulsion

61. The Georgian witnesses stressed that they were relieved to be back in Georgia and did not envisage appealing against the expulsion orders to the consulate or embassy of the Russian Federation in Tbilisi. In any case, during the procedures before the courts in the Russian Federation both the judges and the police officers had told them several times that it was pointless to appeal because there was an order from above to expel Georgian nationals. Some also referred to practical obstacles such as the closure of the Russian consulate in Tbilisi, while others spoke of long queues outside the consulate.

62. Mr Vasilyev, Consul of the Russian Federation in Georgia at the material time, said that after the repatriation of some of the diplomatic staff of the Tbilisi embassy and consulate to the Russian Federation at the end of September 2006 the embassy had continued operating normally, during the usual opening hours (9 a.m. – 4 p.m.), with a reduced workforce of fifteen people (diplomats and administrative staff) at the embassy and three diplomats at the consulate. The Georgian nationals could therefore have lodged appeals or complaints – personally, or through the Ministry of Foreign Affairs of Georgia – which would have been transmitted to the appropriate authorities in the Russian Federation, but no appeal or complaint had been lodged. After diplomatic relations between the two countries had been broken off, from March 2009, the Russian Federation had kept an office open at the Swiss embassy in Georgia and Georgia had also kept one open at the Swiss embassy in the Russian Federation. The respective diplomats of both countries could have been contacted there (see Annex, § 24). In their letter of 15 April 2011 the respondent Government confirmed that following the evacuation of some of their diplomatic staff at the end of September 2006, ten members of the diplomatic staff had continued working at the Russian embassy in Tbilisi and three at the consulate.

D. The impugned events according to various international governmental and non-governmental organisations

1. Overview

63. The PACE Monitoring Committee referred to a "selective and intentional persecution campaign based on ethnic grounds, which clearly goes against the spirit of Article 14 and of Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Liberties (ECHR) ... in which this group is clearly targeted through special militia operations to hunt down its population on streets, markets or in front of strategic places (Georgian consulate in Moscow, Georgian Orthodox Church) ..." (PACE report, §§ 52-53).

64. Non-governmental organisations referred to "massive operations of control and repression directed against Georgians of Moscow and other Russian cities" (FIDH report, point II "the anti-Georgian campaign of autumn 2006", p. 20). Georgian nationals and "ethnic Georgians" were allegedly victims of a deliberate policy of detention and expulsion (HRW report, p. 1).

65. HRW cited the comments of Mrs Ella Pamfilova, then Head of the President's Advisory Council on Human Rights and Civil Society in the Russian Federation (State body advising the Russian President on all matters relating to civil society and human rights), who said that "administrative and legal measures applied [against Georgians] are unfounded: businesses employing ethnic Georgians are being closed down, visas and registration papers legally obtained by Georgian nationals are being cancelled, people are being illegally detained and [expelled] from Russia" (statement of 8 November 2006, p. 30 of the report).

66. Mrs Svetlana Gannushkina, a member of the same advisory council, and Head of the "Migration and Law" network and Chairperson of the Civic Assistance Committee, and member of the board of the "Memorial" Human Rights Centre, at the material time, said in 2006 that there had been "organized persecution of Georgian nationals". She considered that such "harassment of a specific group of people [was] a form of inadmissible discrimination [that could] in no way be viewed as a legal method of fighting illegal migration" (speech in the European Parliament on 21 November 2006).

67. Other European institutions also expressed their concern regarding the large number of Georgians expelled and asked the Russian authorities to revoke all the measures taken against Georgian nationals residing on their territory (speech of 25 October 2006 by Mrs Ferrero-Waldner, member of the European Commission for External Relations and European Neighbourhood Policy; Joint motion for a resolution of 6 March 2007 of the European Parliament on the situation in South Ossetia, points I. and 11 and

12; Statement of 15 December 2006 of the European Commission against Racism and Intolerance (ECRI)).

2. Arrest, detention and expulsion of Georgian nationals

a. Conditions of arrest and procedures before the courts

68. The PACE Monitoring Committee said that the "routine of expulsions" followed a recurrent pattern all over the country: "Georgians stopped in the street under the pretext of examination of their documents were detained no matter whether their documents were in order or not and taken to the Militia stations where they were gathered in large groups and delivered to courts, where decisions on administrative penalty with expulsion of the territory of Russia were made in accordance with preliminary agreement with the courts, with no lawyers and without the courts looking into individual circumstances, the entire procedure taking from two to ten minutes. Often people, subjected to these measures, were not admitted to the trial room, detainees were kept in corridors or even in cars in which they were delivered there" (PACE report, § 59).

69. That description tallies with that of the FIDH and HRW (FIDH report, pp. 23-26 under II-2 "Development of the crisis and type of persecutions" a) "Control and arrest operations", b) "Flagrant denial of justice and circumvention of the procedures", and HRW report, pp. 40-53 under "Arbitrary and illegal detention and expulsion of Georgians").

70. According to HRW, "while many expelled [Georgian nationals] may technically have had a judicial decision ordering their expulsion, the manner in which those decisions were reached (some in group trials), the lack of representation and capacity to mount a proper case against the expulsion, and the fact that many were effectively denied the right to appeal, points to Russia's failure to comply with its ECHR obligations" (HRW report, p. 13).

71. The FIDH, for its part, indicated that "the persons arrested were taken in groups to the courts, which in a few minutes ordered them to be expelled from Russia, preceded by a period of detention in a temporary detention centre for foreign citizens (TsVSIG), regardless of the conditions or the individual's family situation" (FIDH report, p. 25).

It added that a lawyer from "Civic Assistance", a Russian association, "witnessed on several occasions mass miscarriages of justice during the campaign: not only did the arrestees have no right to a lawyer, but they were most frequently brought in groups to the courts by police officers. Once there, the judges dealt with the cases as though on a production line and usually without those concerned by the expulsion orders being present and without even having regard to the circumstances of each case. These notices of expulsion were presented to the detainees; many signed thinking that they were signing a fine as part of a range of possible administrative penalties for offences against the immigration rules. On several occasions the persons

concerned were discouraged in advance from appealing against the order on the ground that "it would make matters worse". In some cases "agreements" were signed in the deportees' place" (FIDH report, p. 26).

It also stated that "a number of factors point to collusion between the police and the judicial authorities, establishing that this policy was devised in advance: in Moscow evidence of collusion between the police and the courts lies in the fact that the latter had not listed any other cases during the periods when the police brought Georgians before the courts. They were arrested at 9 a.m. and presented as a group before the courts at 10 a.m. The judges gave a larger number of decisions in a few days than they normally give in six months" (FIDH report, p. 26).

b. Conditions of detention and expulsion

72. With regard to the conditions of detention and expulsion, the PACE Monitoring Committee referred to the witnesses it had heard during the mission undertaken by the co-rapporteurs who spoke of "overcrowding" and "unbearable" and "inhuman" conditions of detention. They had allegedly been deprived not only of medical assistance but also of any possibility of satisfying their basic needs.

That situation had resulted in the death of a 48-year-old Georgian citizen, Tengiz Togonidze, who, according to witnesses, suffered from asthma. After being detained for two weeks without medical assistance and without being able to go out into the fresh air, he had died after a journey lasting several hours between the detention centre in St Petersburg and Moscow's Domodedovo International Airport on 17 October 2006. The Deputy Head of the Federal Migration Service at the material time, Mr Turkin, said that the detention facility in question was being closed down. The Monitoring Committee also referred to the case of a second Georgian national, Manana Jabelia, aged 52, who had died on 2 December 2006 in Moscow detention centre no. 2 after two months of inadequate medical assistance and after being refused urgent medical aid (PACE report, § 60).

Lastly, the Monitoring Committee referred to the conditions in which Georgian nationals had been transported by cargo flights at the beginning of October 2006. This had been done in violation of the norms of the International Civil Aviation Organisation as such transportation of passengers was life-threatening (PACE report, § 57).

73. The FIDH specified that there were "eight temporary detention centres for foreigners (TsVSIG) in Moscow and the surrounding areas, which were mainly converted former sobering-up cells. Centres no. 1 (Novoslobodskaya district), no. 2 (in Peredelkino) and no. 8 (in Mnevniki) were visited by staff from the "Civic Assistance" Committee. In front of the one on Dimitrovskoe Chaussée Street, there was a queue of police cars nearly 2 km long waiting to offload arrested persons at a centre with space for about 320 people. Detainees said that there had been sixteen people

instead of eight per cell, and that the food rations had not been increased. Moreover, there had been so many people that the TsVSIG had not even had time to draw up the documents discharging detainees." The FIDH also referred to four cases of death in detention or during the journey prior to expulsion (FIDH report, pp. 26-27 under (c) "Conditions of detention and deaths in detention").

74. HRW reported similar facts and also referred to four cases of death in detention (HRW report, pp. 53-57 under "Deaths of Georgians in custody", and pp. 57-63 under "Inhuman and degrading treatment").

On the first point HRW also referred to the case of Mr Togonidze and that of Mrs Jabelia, who had allegedly been subjected to very tough conditions of detention and not been given the necessary medical assistance, which had resulted in their death. The case of two other Georgian nationals who had died in detention was also mentioned. Furthermore, the Russian authorities had allegedly failed to carry out sufficient investigations following those deaths despite their obligation to do so under Article 2 of the European Convention on Human Rights.

On the second point HRW indicated that many Georgian nationals had been subjected to inhuman and degrading treatment on account of the poor conditions of detention and expulsion (overcrowded cells, lack of water and food, and transporting more than a hundred Georgian nationals by cargo plane).

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Immigration laws and particular situation of Georgian nationals

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

Since the entry into force on 29 October 2002 of the Law on the Legal Status of Foreign Nationals, all citizens of the CIS – including Georgian nationals – are required to regularise their situation by applying for a residence permit, although they were previously lawfully resident on Russian territory. Under sections 20 and 21 of that Law, they must also submit a registration application to the local offices of the Russian Federal Migration Service, in order to obtain a registration certificate indicating their place of residence. If they want to carry on a professional activity they are required to obtain a work permit and a migrant worker's card in accordance with section 13. A business visa (*деловая*) of variable duration is issued to foreign nationals wanting to take part in a seminar or having

business contacts in the Russian Federation, but does not authorise them to work there legally.

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

B. Position of various international governmental and non-governmental organisations

76. The PACE Monitoring Committee, the FIDH and the European Commission against Racism and Intolerance (ECRI) have underscored the lack of transitional provisions of the Law of 25 July 2002 on the Legal Status of Foreign Nationals in the Russian Federation and the complexity of the procedures for obtaining residence permits, registration certificates or work permits, which put migrants in an insecure position (see PACE report, § 54, FIDH report pp. 12-13, which also refers to the conclusions of 2 June 2003 of the UN Committee on the Elimination of Racial Discrimination (CERD), CERD/C/62C0/7, and ECRI's third report of 16 December 2005 on the Russian Federation, ECRI (2006) 21).

C. Administrative expulsion procedure

77. Any foreign national who infringes the immigration regulations of the Russian Federation (Articles 18.8, 18.10 and 18.11 of the Code of Administrative Offences) is liable to administrative penalties and risks expulsion (Article 3.2). Any decision concerning an accusation of an administrative nature that may result in expulsion from the Russian Federation is to be taken by a judge of an ordinary court (Article 23.1 § 3). An appeal lies to a court or appeal court within ten days (Article 30.1 § 1, 30.2 § 2 and 30. 3 § 1). This deadline may be extended at the request of the appellant (Article 30.3 § 2). An appeal against an administrative expulsion order is to be examined within one day of the lodging of the appeal documents (Article 30.5 § 3), is exonerated from court fees and is of suspensive effect (Articles 31.1, 31.2 § 2, and 31.3 §§ 1, 2 and 3). Lastly, a foreign national may also lodge an appeal with the courts of review against an administrative expulsion order that has become enforceable (judgments of the Constitutional Court of 22 April 2004 and 12 April 2005 on the constitutionality of Articles 30.11 §§ 1, 2 and 3 of the Code of Administrative Offences).

III. REQUESTS OF THE PARTIES

A. Applicant Government

78. The applicant Government asked the Court to find

> "I. Regarding admissibility:
>
> a. That the applicant's complaints are admissible as the rule regarding exhaustion of domestic remedies does not apply to these proceedings. This is because the alleged violations are part of a repetitive pattern of acts incompatible with the Convention which have been the subject of official tolerance by the Russian authorities and thus concern an administrative practice.
>
> b. Alternatively, that the applicant's complaints are admissible as the rule of exhaustion of domestic remedies is inapplicable since the domestic remedies of the Russian Federation were not effective and accessible within the meaning of the Convention and there existed special circumstances absolving Georgian citizens and individuals of the Georgian ethnicity from exhausting them.
>
> c. That the claim has been submitted within the six-month time-limit.
>
> II. Merits: That the Russian Federation has violated Articles 3, 5, 8, 13, 14 and 18 of the Convention, Articles 1 and 2 of Protocol 1, Article 4 of Protocol 4 and Article 1 of Protocol 7.
>
> III. Remedy: That the Applicant State is entitled to just satisfaction for these violations requiring the remedial measures and compensation to the injured party."

79. On the latter point they asked the Court "to award just satisfaction under Article 41, namely, compensation, reparation, *restitutio in integrum*, costs, expenses and further and other relief to be specified for all the pecuniary and non-pecuniary damage suffered or incurred by the injured parties as a result of the violations and the pursuit of these proceedings."

80. At the hearing on admissibility, the applicant Government explicitly indicated that the individual situations described in their application and referred to by the Georgian witnesses during their hearing were there only to illustrate the existence of an administrative practice. Moreover, twenty-three Georgian applicants (three of whom were heard during the witness hearing) have also lodged individual applications with the Court.

B. Respondent Government

81. The respondent Government, for their part, submitted that

> "the witness hearing by the delegation of judges of the Grand Chamber of the Court fully supports the position of the authorities of the Russian Federation that the application *Georgia v. Russia (1)* alleging a violation of Articles 3, 5, 8, 13, 14 and 18 of the Convention, Articles 1 and 2 of Protocol No. 1, Article 4 of Protocol No. 4 and Article 1 of Protocol No. 7 to the Convention is ill-founded. In the course of the witness hearing, no evidence was produced which would indicate that at the relevant time the authorities of the Russian Federation carried out administrative practices and collective expulsion of Georgian nationals.
>
> During the witness hearing, the Russian authorities' arguments were objectively substantiated that in Russia there are effective domestic remedies which the witnesses subjected to administrative expulsion from the territory of Russia, as the other Georgian nationals who believed that their rights had been violated by the Russian authorities at the relevant time, should have exhausted before appealing to the Court. Accordingly, taking into account the decision as to admissibility of interstate application *Georgia v. Russia (1)* of 30 June 2009, which joined to the merits the questions of complaints of the six-month rule and also that of exhaustion of domestic remedies, the authorities of the Russian Federation believe that this application shall not be examined on the merits (see the Court's judgment *Markin v. Russia*, application no. 59502/00, 30 March 2006)".

THE LAW

I. ESTABLISHMENT OF THE FACTS AND PRINCIPLES OF ASSESSMENT OF THE EVIDENCE

82. Before undertaking an examination on the merits and an assessment of the evidence on the basis of each complaint, the Court will set out all the written and oral evidence to which it has had regard and the principles of assessment that it will apply.

A. Establishment of the facts

83. In order to establish the facts the Court has based itself on the parties' observations and the many documents submitted by them and on the statements of the witnesses heard in Strasbourg.

84. It has also had regard to the reports by international governmental and non-governmental organisations such as the PACE Monitoring Committee, HRW, the FIDH and the annual report of 2006 of the Human Rights Commissioner of the Russian Federation (Russian Ombudsman). Some of the documents submitted by the applicant Government also appear in these reports.

1. Further documentary evidence

85. Furthermore, in letters of 28 June 2010 and 8 March 2011 and during the witness hearing the Court requested the respondent Government to produce the following additional documents:

i) monthly statistics regarding the expulsion of Georgian nationals during the years 2006 and 2007, to enable a comparison to be made between expulsions before and after the month of October 2006, during which mass arrests and expulsions of Georgian nationals allegedly began; the respondent Government replied that they kept only annual and half-yearly statistics that they had submitted to the Court;

ii) the two circulars nos. 0215 and 849 of the end of September 2006 that had been issued by the Main Directorate of Internal Affairs of St Petersburg and the Leningrad Region and the Ministry of the Interior of the Russian Federation respectively and to which the documents submitted by the applicant Government refer; the respondent Government disputed the authenticity of those documents and said that they could not submit the circulars in question because they were classified "State secret" (see paragraph 32 above);

iii) the files relating to the disciplinary proceedings brought against Russian officials who had sent requests to various Russian schools asking for lists of Georgian pupils; the respondent Government submitted a copy of several documents indicating that disciplinary penalties had been imposed on the officials in question;

iv) statistics on the number of decisions given on appeal by the Russian courts against decisions expelling Georgian nationals during the period in question (October 2006 to January 2007); in their letter in reply of 15 April 2011 the respondent Government again said that they did not have monthly statistics relating to the expulsion of Georgian nationals (the nationality of perpetrators of administrative offences did not appear in the statistics of ordinary courts and an electronic database for the entire Russian Federation had existed only since 2010), but that they could nonetheless provide information obtained manually for the period concerned from the courts of eighteen regions of the Russian Federation by providing the Court with copies of 86 appeal decisions. It should be mentioned that only 42 of these decisions concern Georgian nationals expelled during the period in question, 21 of which set aside decisions of the courts of first instance. Moreover, of the 86 appeal decisions submitted to the Court, only 8 concerned the City of Moscow and 17 the City of St Petersburg, whereas the majority of expulsions of Georgian nationals took place in those two cities. Lastly, one appeal decision out of the 8 concerning Moscow and 12 appeal decisions out of the 17 concerning St Petersburg concerned referrals back to the administrative authorities on the ground that the police officers had taken the Georgian nationals directly to the courts without first taking them to the Federal Migration Service as provided for by law.

2. Hearing of witnesses

86. During the week 31 January to 4 February 2011 the delegation of judges of the Grand Chamber heard a total of twenty-one witnesses, nine of whom had been proposed by the applicant Government, ten by the respondent Government and two chosen by the delegation.

87. The nine witnesses proposed by the applicant Government (except witness no. 8, wife of the late Mr Togonidze and who was an "indirect" witness to the events, and Mr Pataridze, Consul of Georgia in the Russian Federation at the material time) are Georgian nationals who were arrested, detained and expelled by the Russian authorities. Their evidence concerned the conditions of arrest, detention and expulsion in the autumn of 2006.

88. The ten witnesses proposed by the respondent Government are public officials of the Russian Federation, whose evidence concerned in particular the conditions of arrest, detention and expulsion of Georgian nationals, statistical data and the authenticity of the instructions issued by the Directorate of Internal Affairs of St Petersburg and the Leningrad Region and the circulars to which they refer.

89. The two witnesses chosen by the Court are Mr Eörsi, rapporteur of the PACE Monitoring Committee at the material time, and Mr Tugushi, a human-rights official with the OSCE mission in Georgia at the material time.

90. The delegation had also planned to hear other witnesses, including Mr Piotrovskiy, Acting Head of the Main Directorate of Internal Affairs of St Petersburg and the Leningrad Region at the material time, and presumed signatory to the instruction of 2 October 2006 aiming to "[increase] the effectiveness of the implementation of ... circular no. 0215 of 30.09.2006" (see paragraph 31 above). The day before his hearing the representative of the respondent Government indicated that Mr Piotrovskiy had been urgently admitted to hospital and submitted a hospital certificate to that effect.

91. The delegation had also wanted to hear Mr Lukin, Commissioner for Human Rights of the Russian Federation at the material time, but he did not reply to the Court's summons.

92. Lastly, the delegation had also wanted to hear Mrs Pamfilova, Head of the President's Advisory Council on Human Rights and Civil Society in the Russian Federation at the material time. However, it was not possible to hear her as a witness because, as explained in a letter of 15 October 2010, the respondent Government informed the Court that Mrs Pamfilova was no longer a public official but a private individual and that they were therefore unable to provide the Court with her address. It should be reiterated here that Contracting Parties have an obligation to serve any summons on a witness residing on its territory (see Rule A5 § 4, first sentence, of the Annex to the Rules of Court).

B. Principles of assessment of the evidence

93. In assessing evidence the Court has adopted the standard of proof "beyond reasonable doubt" laid down by it in two inter-State cases (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25, and *Cyprus v. Turkey* [GC], no. 25781/94, § 113, ECHR 2001-IV) and which has since become part of its established case-law (see, *inter alia*, *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 26, ECHR 2004-VII, and *Davydov and Others v. Ukraine*, nos. 17674/02 and 39081/02, § 158, 1 July 2010).

94. However, it has never been its purpose to borrow the approach of the national legal systems that use that standard in criminal cases. The Court's role is to rule not on guilt under criminal law or on civil liability but on Contracting States' responsibility under the Convention. The specificity of its task under Article 19 of the Convention – to ensure the observance by the High Contracting Parties of their engagements to secure the fundamental rights enshrined in the Convention – conditions its approach to the issues of evidence and proof. In the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or predetermined formulae for its assessment. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake. The Court is also attentive to the seriousness that attaches to a ruling that a Contracting State has violated fundamental rights (see, *inter alia*, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII, and *Mathew v. the Netherlands*, no. 24919/03, § 156, ECHR 2005-IX).

95. In establishing the existence of an administrative practice, the Court will not rely on the concept that the burden of proof is borne by one or other of the two Governments concerned, but will rather study all the material before it, from whatever source it originates (see *Ireland v. the United Kingdom* and *Cyprus v. Turkey*, cited above, ibid.). In addition, the conduct of the parties in relation to the Court's efforts to obtain evidence may constitute an element to be taken into account (see *Ireland v. the United Kingdom*; *Ilaşcu and Others*; and *Davydov and Others*, cited above, ibid.).

II. ALLEGED VIOLATION OF ARTICLE 38 OF THE CONVENTION

96. Having regard to the persistent refusal of the respondent Government to provide the Court with a copy of the two circulars nos. 0215 and 849 of the end of September 2006, issued by the Main Directorate of Internal Affairs of St Petersburg and the Leningrad Region and the Ministry of the Interior of the Russian Federation respectively (see paragraph 30 above), the Court considers it appropriate to begin its examination of the present case by analysing whether the respondent Government have complied with their procedural obligation under Article 38 of the Convention, which is worded as follows:

> "The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities."

A. The parties' submissions

1. The applicant Government

97. The applicant Government submitted that the respondent Government had not given a sufficient explanation for its refusal to provide the Court with circulars nos. 0215 and 849. Referring to the Court's relevant case-law, they asked the Court to draw favourable inferences as to the well-foundedness of their allegations and to conclude that there has been a violation of Article 38 of the Convention.

2. The respondent Government

98. The respondent Government, for their part, stated that they were not in a position to provide the Court with the circulars because these were classified "State secret" and could not be disclosed. According to the Ministry of the Interior of the Russian Federation, the circulars contained no order requiring the administrative entities of the Russian Federation to take measures wilfully infringing the rights of Georgian nationals. At the witness hearing Mr Nikishin, Deputy Head of the Legal Department, Ministry of the Interior, Moscow, at the time of the hearing, confirmed that the instruction of 2 October 2006 purportedly issued by the Main Directorate of Internal Affairs of St Petersburg and the Leningrad Region was a forgery and that the two circulars nos. 0215 and 849 (the latter being a telegram) were classified "State secret" and contained a reference to various national criminal groups, but no selective reference to Georgian nationals. Their disclosure was forbidden under Russian law (see Annex, § 21).

B. The Court's assessment

1. General principles

99. The Court reiterates the following general principles that it has developed regarding individual applications and should also be applied to inter-State applications:

> "... 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. 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. A 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 *Tahsin Acar v. Turkey* [GC], no. 26307/95, §§ 253-54, ECHR 2004-III; *Timurtaş v. Turkey*, no. 23531/94, §§ 66 and 70, ECHR 2000-VI; and *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 70, ECHR 1999-IV)."

(see *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, § 202, ECHR 2013).

2. Application of these principles

100. In the present case the Court notes that in a letter of 28 June 2010 it asked the respondent Government to provide it with a copy of circulars nos. 0215 and 849 – to which reference is made in Instruction no. 122721/08 of 2 October 2006 issued by the Main Directorate of Internal Affairs of St Petersburg and the Leningrad Region, the order of 2 October 2006 (no. 12272/11) of the Acting Head of Police of St Petersburg and the Leningrad Region, and the information note of 18 October 2006 issued by the Federal Migration Service (see paragraphs 30 to 31 above) – and which it considers as essential documents for establishing the facts of the present case.

101. At the witness hearing the delegation of judges orally reiterated to the respondent Government's representative the Court's request for a copy of the two circulars, drawing his attention to Rules 44 A-C (Duty to cooperate with the Court) and Rule 33 (Public character of documents) of the Rules of Court.

102. In a second letter of 8 March 2011 the Court repeated its request in writing and also referred to the two aforementioned Rules, stating expressly, in accordance with the wording of Rule 44C that "where a party fails to adduce evidence or provide information requested by the Court or to divulge relevant information of its own motion or otherwise fails to participate effectively in the proceedings, the Court may draw such inferences as it deems appropriate."

103. The respondent Government, for their part, did not dispute the existence of the circulars, but submitted that their content did not correspond to the applicant Government's allegations, while refusing to provide the Court with copies on the grounds that they were classified "State secret" and their disclosure was forbidden under Russian law.

104. The Court reiterates that "in cases in which there are conflicting accounts of the events, the Court is inevitably confronted when establishing the facts with the same difficulties as those faced by any first-instance court. When, as in the instant case, the respondent Government have exclusive access to information capable of corroborating or refuting the applicant [Government]'s allegations, any lack of co-operation by the Government without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant [Government]'s allegations (see *Imakayeva v. Russia*, no. 7615/02, § 111, ECHR 2006-XIII (extracts)).

105. Furthermore, as it has already indicated in cases relating to documents classified "State secret", the respondent Government cannot base themselves on provisions of domestic law to justify their refusal to comply with the Court's request for the production of evidence (see, *mutatis mutandis*, *Davydov and Others*, cited above, § 170; *Nolan and K. v. Russia*, no. 2512/04, § 56, 12 February 2009; and *Janowiec and Others*, cited above, § 206).

106. Lastly, the Court notes in the instant case that the respondent Government have failed to provide a specific explanation for the secrecy of the circulars in question. It thus has serious doubts as to that classification since even if they were internal documents, in order to be implemented the circulars had to be brought to the attention of a large number of public officials at various administrative levels.

107. The Court reiterates that one of the criteria it has adopted in assessing the secrecy of a document is whether it was known to anyone outside the secret intelligence and the highest State officials (see, *mutatis mutandis*, *Nolan and K.*, cited above, § 56, and *Janowiec and Others*, cited above, § 206).

108. Even assuming that the respondent Government had legitimate security interests in not disclosing the circulars in question, it should be pointed out that the Court had drawn their attention to the possibilities provided for in Rule 33 § 2 of the Rules of Court of limiting public access (see, *mutatis mutandis*, *Shamayev and Others v. Georgia and Russia*, no. 36378/02, §§ 15-17, 246 and 362, ECHR 2005-III, where the President of the Chamber had given assurances of confidentiality of certain documents submitted by the Russian Government).

109. Having regard to all those factors, the Court considers that the respondent Government have fallen short of their obligation to furnish all necessary facilities to the Court in its task of establishing the facts of the case, as required under Article 38 of the Convention. It will draw all the

inferences that it deems relevant regarding the well-foundedness of the applicant Government's allegations on the merits.

110. There has accordingly been a violation of Article 38 of the Convention.

III. ALLEGED EXISTENCE OF AN ADMINISTRATIVE PRACTICE, EXHAUSTION OF DOMESTIC REMEDIES, AND SIX-MONTH RULE

111. The Court reiterates that in its admissibility decision the Chamber noted the existence of "prima facie evidence" of an administrative practice, but joined to the merits "the examination of all the other questions concerning the existence and scope of such an administrative practice, as well as its compatibility with the provisions of the Convention" and the question of the application of the six-month rule. It also joined to the merits, as closely related to the existence of an administrative practice, "the question of the application of the rule of exhaustion of domestic remedies and compliance with it in the circumstances of the present case" (see *Georgia v. Russia (I)* (dec.), no. 13255/07, §§ 44-46 and 50, 30 June 2009).

A. Administrative practice and exhaustion of domestic remedies

1. The parties' submissions

a. Administrative practice

i. The applicant Government's submissions

112. The applicant Government argued, as their principal submission, that the two constituent elements of an administrative practice, namely, the repetition of acts and official tolerance, were present in this case.

113. With regard to the repetition of acts, the witnesses called by the applicant Government had confirmed to the delegation of judges of the Grand Chamber that the arrest, detention and expulsion of Georgian nationals by the Russian Federation in the autumn of 2006 had been of an organised nature. Furthermore, whilst they had never encountered any difficulties before, their papers had suddenly no longer been in order. This was further evidence that the actions of the Russian authorities had been sufficiently numerous and well organised to conclude that there had been a pattern of violations, ruling out the contention that these had been exceptional and isolated cases. The existence of an administrative practice became especially obvious if regard was had to the increased number of Georgian nationals expelled in the autumn of 2006 compared with the previous or following months and years. This was also corroborated by the fact that the respondent Government had not contested that they had

suspended postal services with Georgia, and that on 5 November 2006 the Federal Assembly (bicameral legislature) of the Russian Federation had toughened the measures enacted against violations of immigration law. Lastly, the applicant Government referred to the reports of several international governmental and non-governmental organisations (including in particular that of HRW) and the media on the problem of racism and xenophobia in the Russian Federation generally as well as the anti-Georgian policy which had manifested itself in the autumn of 2006.

114. With regard to official tolerance, the applicant Government referred in particular to the HRW report which indicated that both lower and higher levels of the Russian Government had worked together to conduct mass expulsions of Georgians. The report referred to widespread document inspections of ethnic Georgians by the police and, above all, to instructions from the Main Directorate of Internal Affairs of St Petersburg and the Leningrad Region to the police, the Federal Migration Service and the courts to take necessary actions to identify and expel Georgian nationals. Moreover, the statements of the victims and the reports by international governmental and non-governmental organisations and the media proved both the existence of instructions based on circulars nos. 0215 and 849 and the content of those circulars. The applicant Government referred in particular to the annual report of the Commissioner for Human Rights of the Russian Federation for 2006. Lastly, requests for lists of Georgian pupils with a view to identifying their parents had been sent by Russian officials to a number of schools in the Russian Federation. The fact that the persons making such requests, which were clearly illegal, had not been duly punished was further proof of the discriminatory policy conducted against Georgian nationals in the autumn of 2006.

ii. The respondent Government's submissions

115. The respondent Government denied those allegations. In their view, the witness hearing by the delegation of judges of the Grand Chamber had provided no evidence to confirm the assertions by the Georgian authorities that the Russian Federation, in response to the arrest of the Russian officers accused of espionage, had organised and authorised the oppression of Georgian nationals and organised their mass illegal arrest and collective expulsion.

116. The respondent Government submitted that their actions against Georgian nationals regarding their liability for administrative offences and the measures expelling them from Russian territory had been in accordance with the law and pursued a legitimate aim, and had never been connected with or motivated by the ethnic status of Georgian nationals or their nationality. The Russian authorities had never exercised against Georgian nationals any administrative practice or collective expulsion within the meaning of the Convention.

117. They considered in particular that the applicant Government had provided no proof of the authenticity of the instructions issued by the Main Directorate of Internal Affairs of St Petersburg and the Leningrad Region – including the one of 2 October 2006 signed by Mr Piotrovskiy of which a "purported" copy appeared in, among others, the Annex to the PACE report, the HRW report and in the report of the Commissioner for Human Rights of the Russian Federation – referring to coordination of an expulsion policy between the administrative and judicial authorities specifically targeting Georgian nationals. The very mention of such coordination was particularly absurd since the Russian courts were independent of the executive. Moreover, during the witness hearing the Russian officials had confirmed that no such instructions had ever been issued. The same was true of the order of 2 October 2006 by the Acting Head of Police of St Petersburg and the Leningrad Region and the information note of 18 October 2006 from the Federal Migration Service. The only instructions to which the Russian officials had referred had been those issued by the Deputy General Prosecutor who had asked all prosecutors to reinforce their supervision in order to guarantee respect for the constitutional rights and freedoms of CIS nationals (see paragraph 38 above). With regard to circulars nos. 0215 and 849 on which those instructions were allegedly based and the order and information note, the respondent Government disputed their content as alleged by the applicant Government.

118. Moreover, the Russian officials who had requested the production of lists of Georgian pupils from schools in the Russian Federation were isolated cases (there had been only four requests in all in respect of two administrative entities) and had been duly punished, as had been confirmed at the witness hearing.

119. The respondent Government also disputed the statistical evidence produced by the applicant Government, considering that reference by the Georgian authorities to an unprecedented mass expulsion of Georgian nationals during the period under consideration in order to substantiate allegations of a massive "anti-Georgian campaign" were not supported by any official statistical data. They contested, generally, the relevance of the information given in certain reports, including, in particular, the HRW report and the report of the PACE Monitoring Committee, alleging that this was to a large extent based on statements by the Georgian authorities or Georgian nationals and uncorroborated by documents or other admissible evidence. Those reports could not therefore be relied upon to conclude that there had been serious violations by the respondent Government.

b. Exhaustion of domestic remedies

i. The applicant Government's submissions

120. In the alternative, and in the event that the rule of exhaustion of domestic remedies were to apply in the present case, the applicant Government submitted that the remedies referred to by the respondent Government were ineffective and inaccessible in the specific context of the case. Moreover, the general context of the anti-Georgian campaign carried out by the Russian authorities and resulting in mass human-rights violations had dispensed Georgian nationals from the duty to use those remedies.

In particular, whilst they were still in the Russian Federation the Georgian nationals had not appealed against the expulsion orders because they had not been informed of that possibility and in some instances had even been forced by Russian officials to sign forms waiving their right of appeal. Subsequently, once they had been expelled, they had no longer been able to lodge an appeal because all means of communication between the two States had been cut off and it had not been possible to use the services of the Georgian consulate in the Russian Federation or those of the consulate of the Russian Federation in Georgia. Furthermore, the expulsion orders had been subjective and had infringed the rules of the Russian Code of Administrative Offences according to which such decisions could not be enforced before the end of the maximum eleven-day appeal period (see paragraph 77 above). Lastly, the deficiencies of the decisions submitted by the respondent Government in their letter of 15 April 2011 (see paragraph 85 *in fine* above) confirmed that the domestic remedies had been ineffective at the material time.

ii. The respondent Government's submissions

121. In the respondent Government's submission, it was clear from the witness hearing that all the Georgian nationals called by the applicant Government had been unlawfully resident in the Russian Federation and could have made use of accessible and effective domestic remedies by which to challenge the expulsion orders. Prior to their actual expulsion, they could have appealed against, or applied for judicial review of, or appealed on points of law against the court decisions against them. In their letter of 15 April 2011 sent in reply to the Court at the latter's request, the Russian authorities had set out in detail the legal safeguards available under Russian law providing judicial protection in the event of such violations and a list of examples of decisions of the Russian courts ruling on appeal in proceedings brought by Georgian nationals. That information was entirely consistent with the statistical data concerning the number of Georgian nationals expelled from Russia and with the statements of the Russian authorities asserting that they had never conducted an "anti-Georgian campaign" at the material time or carried out a collective expulsion of Georgian nationals.

The Georgian nationals could also have applied to the public prosecutor's office, which had power under Russian law to lodge an appeal (*npomecm*) on points of law or to request a review of the decision.

2. The Court's assessment

a. General principles

122. The Court reiterates that an administrative practice comprises two elements: the "repetition of acts" and "official tolerance" (see *France, Norway, Denmark, Sweden and the Netherlands v. Turkey*, nos. 9940-9944/82, Commission decision of 6 December 1983, § 19, DR 35, and *Cyprus v. Turkey*, cited above, § 99).

123. As to "repetition of acts", the Court describes these as "an accumulation of identical or analogous breaches which are sufficiently numerous and inter-connected not to amount to merely isolated incidents or exceptions but to a pattern or system" (see *Ireland v. the United Kingdom*, cited above, § 159, and *Cyprus v. Turkey*, cited above, § 115).

124. By "official tolerance" is meant that "illegal acts are tolerated in that the superiors of those immediately responsible, though cognisant of such acts, take no action to punish them or to prevent their repetition; or that a higher authority, in face of numerous allegations, manifests indifference by refusing any adequate investigation of their truth or falsity, or that in judicial proceedings a fair hearing of such complaints is denied". To this latter element the Commission added that "any action taken by the higher authority must be on a scale which is sufficient to put an end to the repetition of acts or to interrupt the pattern or system" (see *France, Norway, Denmark, Sweden and the Netherlands v. Turkey*, cited above, ibid.). In that connection the Court has observed that "it is inconceivable that the higher authorities of a State should be, or at least should be entitled to be, unaware of the existence of such a practice. Furthermore, under the Convention those authorities are strictly liable for the conduct of their subordinates; they are under a duty to impose their will on subordinates and cannot shelter behind their inability to ensure that it is respected" (see *Ireland v. the United Kingdom*, cited above, § 159).

125. With regard to the rule on exhaustion of domestic remedies, the Court reiterates that, according to its case-law in inter-State cases, the rule does not in principle apply where the applicant Government "complain of a practice as such, with the aim of preventing its continuation or recurrence, but does not ask ... the Court to give a decision on each of the cases put forward as proof or illustrations of that practice" (see *Ireland v. the United Kingdom*, cited above, § 159). In any event, it does not apply "where an administrative practice, namely, a repetition of acts incompatible with the Convention, and official tolerance by the State, has been shown to exist and is of such a nature as to make proceedings futile or ineffective" (see *Ireland*

v. the United Kingdom, cited above, ibid; *Akdivar and Others v. Turkey*, 16 September 1996, § 67, *Reports of Judgments and Decisions* 1996-IV; and *Cyprus v. Turkey*, cited above, § 99).

126. However, the question of effectiveness and accessibility of domestic remedies may be regarded as additional evidence of whether or not such a practice exists (see, in particular, *Cyprus v. Turkey*, cited above, § 87).

127. The Court considers that an examination of this question jointly with the question of the existence of an administrative practice is particularly appropriate in the present case.

b. Application of these principles

i. Administrative practice

128. In the present case the Court is not required to give a ruling on individual violations of rights guaranteed by the Convention; however, the individual cases that have been brought to its attention can be examined as evidence of a possible practice (see *Ireland v. the United Kingdom*, cited above, § 157 *in fine*).

129. In order to determine whether or not there was an administrative practice, the Court will assess the evidence available to it in the light of the criteria defined above (see paragraphs 93 to 95 above).

130. In that connection it notes first of all that the statistical data adduced by the parties differs as to the exact number of Georgian nationals arrested, detained and expelled during the period in question (end September 2006 to end January 2007) (see paragraphs 27 to 28 above).

131. Indeed, the applicant Government claimed that 4,634 expulsion orders had been issued against Georgian nationals during that period, of whom 2,380 had been detained and forcibly expelled, and the remaining 2,254 had left the country by their own means, with a sharp increase in the number of expulsions recorded from the beginning of October 2006 as compared with the previous period.

132. The respondent Government, for their part, while maintaining that they had only annual or half-yearly statistics, stated that in 2006, 4,022 administrative expulsion orders had been issued against Georgian nationals and added that between 1 October 2006 and 1 April 2007, 2,862 Georgian nationals had been the subject of expulsion orders.

133. The Court notes that the respondent Government submitted statistics in respect of a period ranging from 1 October 2006 to 1 April 2007, which does not correspond to half a calendar year and suggests that monthly statistics were collected.

134. Having regard to the failure to communicate monthly statistics for the years 2006 and 2007, the Court is not in a position to accept that the

number indicated by the respondent Government corresponds to the exact number of Georgian nationals expelled during the period in question.

135. Accordingly, it considers that there is nothing enabling it to establish that the applicant Government's allegations as to the number of nationals expelled during the period in question and their sharp increase as compared with the period preceding October 2006 are not credible. In its examination of the present case it therefore assumes that during the period in question more than 4,600 expulsion orders were issued against Georgian nationals, of whom approximately 2,380 were detained and forcibly expelled.

136. In the light of all the material in its possession, the Court observes that the events in question occurred at the same time, namely, at the end of September or the beginning of October 2006: issuing of the circulars and instructions, mass arrests and expulsions of Georgian nationals, flights from Moscow to Tbilisi and letters sent by Russian officials to schools. The concordance in the description of the impugned events given by the international governmental and non-governmental organisations is also significant in this regard (see paragraphs 63 to 74 above).

137. The respondent Government disputed the probative value of the information contained in the reports by these organisations.

138. However, the Court would reiterate that, being "master of its own procedure and its own rules, it has complete freedom in assessing not only the admissibility and relevance but also the probative value of each item of evidence before it" (see *Ireland v. the United Kingdom*, cited above, § 210 *in fine*). It has often attached importance to the information contained in recent reports from independent international human-rights-protection associations or governmental sources (see, *mutatis mutandis*, *Saadi v. Italy* [GC], no. 37201/06, § 131, ECHR 2008; *NA. v. the United Kingdom*, no. 25904/07, § 119, 17 July 2008; *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, §§ 227 and 255, ECHR 2011; and *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 118, ECHR 2012). In order to assess the reliability of these reports, the relevant criteria are the authority and reputation of their authors, the seriousness of the investigations by means of which they were compiled, the consistency of their conclusions and whether they are corroborated by other sources (see, *mutatis mutandis*, *Saadi*, cited above, § 143; *NA.*, cited above, § 120; and *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, § 230, 28 June 2011).

139. In the instant case, having regard to the thoroughness of the investigations by means of which these reports were compiled and the fact that in respect of the points at issue their conclusions tally and confirm the statements of the Georgian witnesses, the Court does not see any reason to question the reliability of these reports.

140. Moreover, the Court considers that following its finding of a violation of Article 38 of the Convention, there is a strong presumption that

the applicant Government's allegations regarding the content of the circulars ordering the expulsion specifically of Georgian nationals are credible.

141. The same applies to the authenticity of the other documents submitted by the applicant Government and referring to these circulars, including in particular Instruction no. 122721/08 of 2 October 2006 issued by the Main Directorate of Internal Affairs of St Petersburg and the Leningrad Region (see paragraph 31 above).

142. That Instruction, which implements circular no. 0215 of the Main Directorate of Internal Affairs of St Petersburg and the Leningrad Region of 30 September 2006, expressly mentions the expulsion of "citizens of the Republic of Georgia" unlawfully resident in the Russian Federation. It orders the expulsion of "only" those citizens by placing them in detention in a reception and detention centre of the Main Directorate of Internal Affairs. Above all, it indicates that "the adoption of decisions is coordinated with the St Petersburg City Court and Leningrad Regional Court".

143. The Court also refers to the reports of the governmental and non-governmental organisations referring to this Instruction (see the PACE and HRW reports, to which it is annexed, and the FIDH report, p. 26 b) *in fine* – see paragraphs 39 to 40 above), and to the finding of the Commissioner for Human Rights of the Russian Federation, who mentioned it in his report of 2006, considering that the reply from the Deputy General Prosecutor to his request for information as to the authenticity of that instruction was unsatisfactory (see paragraph 35 above). It should be noted in this connection that in his reply of 8 December 2006 the Deputy General Prosecutor did not say that the instruction in question was not authentic (see paragraph 34 above).

144. Lastly, it is not disputed that at the beginning of October 2006 letters were sent by officials from the directorates of internal affairs of various Moscow districts and the Samara Region to school principals requesting a list of Georgian pupils for various reasons (such as to maintain public order, prevent acts of terrorism and tensions between children living in Moscow and Georgian children, detect cases of bribes paid to schools by illegal immigrants, identify cases of children living in insalubrious conditions) (see paragraphs 36 to 37 above).

145. It should be noted that no request of this type was sent prior to the beginning of October. Even if not many were sent and the possibility cannot be ruled out that they were sent by zealous officials acting on their own initiative, it is a striking fact that these letters were sent at the same time as the date of the circulars and instructions. Moreover, at the witness hearing the Russian officials confirmed that such actions were strictly prohibited by law and so it is surprising that several officials broke the law in force simultaneously and on their own initiative. Lastly, the Court notes that the

penalties imposed on the officials amounted to a reprimand, a downgrading and disciplinary measures (see paragraph 37 above).

146. Accordingly, it considers that the evidence submitted by the respondent Government – particularly the two letters of December 2006 from the Deputy General Prosecutor and the reports of investigations by the Russian authorities following the requests for information sent to various schools – is not capable of refuting the allegations of "official tolerance" of such illegal acts by the Russian authorities.

ii. Domestic remedies

147. With regard to the effectiveness and accessibility of the domestic remedies, the Court notes first of all that the statements of the Georgian witnesses match each other regarding the conditions of their arrest and the very summary procedures before the courts in the Russian Federation (see paragraphs 45 to 46 and paragraphs 48 to 49 above).

148. The same is true of the description of those events by the international governmental and non-governmental organisations, which refer in particular to coordination between the administrative and judicial authorities (see paragraphs 39 to 40 and paragraphs 68 to 71 above).

149. The Court notes that the Georgian nationals were arrested, detained and expelled for alleged breaches of Articles 18.8, 18.10 and 18.11 of the Code of Administrative Offences (for example, no valid work permit, visa or registration certificate) and that the orders were issued by the ordinary courts.

150. It does not doubt that remedies exist before the higher courts in the Russian Federation against arrest and detention and against expulsion orders, as stated by the respondent Government in their various sets of observations and as described by the Russian officials at the witness hearing (see also *Niyazov v. Russia*, no. 27843/11, §§ 87 et seq., 16 October 2012).

151. However, the Court must take realistic account not only "of the existence of formal remedies in the legal system of the Contracting State concerned but also of the general and political context in which they operate, as well as the personal circumstances of the applicants" (see, *mutatis mutandis*, *Akdivar and Others*, cited above, § 69).

152. Having regard to all the material in its possession, the Court considers that during the period in question there were real obstacles for the Georgian nationals in using those remedies, both during the proceedings before the Russian courts in the Russian Federation and once they had been expelled to Georgia.

153. It considers that in the Russian Federation those obstacles arose as a result of the procedures carried out before the Russian courts as described by the Georgian witnesses, namely, that they had been brought before the courts in groups. Whilst some referred to an interview with a judge lasting an average of five minutes and with no proper examination of the facts of

the case, others said that they had not been allowed into the courtroom and had waited in the corridors, or even in the buses that had delivered them to the court, with other Georgian nationals. They said that they had subsequently been ordered to sign the court decisions without having been able to read the contents or obtain a copy of the decision. They had had neither an interpreter nor a lawyer. As a general rule, both the judges and the police officers had discouraged them from appealing, telling them that there had been an order to expel Georgian nationals.

154. Furthermore, the climate of precipitation and intimidation in which these measures were taken also explains the reluctance of the Georgian nationals to use those remedies.

155. In that connection the Court accords more credibility to the description of those procedures by the Georgian witnesses, which matches that of the international governmental and non-governmental organisations, than that of the Russian officials which appears improbable having regard to the number of Georgian nationals expelled during the period in question.

156. In Georgia, over and above the psychological factor, it considers that there were practical obstacles in using these remedies because of the closure of transport links between the two countries. Furthermore, it was very difficult to contact the consulate of the Russian Federation in Georgia, which was very short staffed with only three diplomats at the material time.

157. The Court considers, further, that as no monthly statistics were provided on the number of expulsion orders issued against Georgian nationals by the Russian courts specifically during the period in question, the documents submitted by the respondent Government in their letter of 15 April 2011 (see paragraph 85 *in fine* above) do not provide adequate proof that those remedies were effective and accessible at the material time and had a reasonable prospect of success.

158. In particular, the number of appeal decisions (42) submitted appears minimal having regard to the number of territorial entities existing in the Russian Federation and to the number of expulsion orders issued against Georgian nationals during that period (see paragraph 135 above). The number of appeal decisions submitted also appears derisory for the cities of Moscow (8) and St Petersburg (17), considering that most of the expulsions of Georgian nationals during the period in question were carried out in those cities, where the majority of them also live.

iii. Conclusion

159. Having regard to all those factors, the Court concludes that from October 2006 a coordinated policy of arresting, detaining and expelling Georgian nationals was put in place in the Russian Federation which amounted to an administrative practice for the purposes of Convention case-law. Accordingly, the objection raised by the respondent Government on grounds of non-exhaustion of domestic remedies must be dismissed.

B. Six-month rule

160. The Court reiterates "that in the absence of remedies, this time-limit is to be calculated from the date of the act or decision which is said not to comply with the Convention" (see, *inter alia*, *Georgia v. Russia (I)*, cited above, § 47).

161. Although the Chamber reserved the question in order to join it to the merits, neither of the two Governments submitted any observations in that regard. The applicant Government merely asked the Court to find that the application had been lodged within the six-month time-limit provided for in the Convention.

162. In the present case the application was lodged with the Court on 26 March 2007, whilst the orders expelling Georgian nationals complained of by the applicant Government were issued after 27 September 2006.

163. Accordingly, the Court considers that the six-month time-limit provided for in the Convention has been complied with.

IV. ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL No. 4

164. The applicant Government relied on Article 4 of Protocol No. 4, which reads as follows:

> "Collective expulsion of aliens is prohibited."

A. The parties' submissions

1. The applicant Government

165. The applicant Government submitted that the respondent State had collectively expelled Georgians from the territory of the Russian Federation, and denied them the right to have their cases examined by a court. A matter of serious concern, in their view, was the fact that during the judicial proceedings the persons subject to an expulsion order had never had their case examined on the merits. As could be ascertained from the witness hearing and the reports of the international governmental and non-governmental organisations, the courts had not wished to hear the submissions of the Georgian nationals, and the latter had been unable to submit their grounds of appeal against their expulsion. The judges had used the same standard form for all the expulsion orders, merely entering the relevant names and dates, without examining the factual circumstances of each case. Some of the victims had not even had the opportunity of appearing before the court.

2. The respondent Government

166. The respondent Government disputed those allegations and submitted that the present case differed greatly from the case of *Čonka v. Belgium* (no. 51564/99, ECHR 2002-I), because the authorities of the Russian Federation had never stated that they had collectively expelled Georgian nationals and had issued no such instructions to the relevant officials. Moreover, the Georgian nationals had not been summoned before the relevant authorities of the Ministry of the Interior and a large number of them had been able to leave the Russian Federation by their own means. Lastly, every Georgian national against whom proceedings had been brought for an administrative offence and who had been the subject of an administrative expulsion order had had his or her case individually examined in accordance with Russian law. The respondent Government challenged the credibility of the statements of the Georgian witnesses in that connection and referred to those of the Russian officials. According to the respondent Government, the present case more closely resembled the case of *Sultani v. France* (no. 45223/05, ECHR 2007-IV (extracts)) because, as in that case, the respondent Government had organised, in October 2006, special direct flights transporting Georgian nationals between Moscow and Tbilisi on the basis of agreements with the Georgian embassy in the Russian Federation, owing to the fact that air links between the Russian Federation and Georgia had been suspended. The expulsion of illegal immigrants and persons who had otherwise infringed the statutory provisions on residence in Russian territory was a sovereign right and an obligation of the Russian State in order to guarantee national and international security.

B. The Court's assessment

1. General principles

167. The Court reiterates its case-law according to which "collective expulsion, within the meaning of Article 4 of Protocol No. 4, is to be understood as any measure compelling aliens, as a group, to leave a country, except where such a measure is taken following, and on the basis of, a reasonable and objective examination of the particular case of each individual alien of the group" (see *Čonka*, cited above, § 59). The Court has subsequently specified that "the fact that a number of aliens are subject to similar decisions does not in itself lead to the conclusion that there is a collective expulsion if each person concerned has been given the opportunity to put arguments against his expulsion to the competent authorities on an individual basis" (see, among other authorities, *Sultani*, cited above, § 81, and *Hirsi Jamaa and Others*, cited above, § 184). That does not mean, however, that where there has been a reasonable and objective examination of the particular case of each individual "the

background to the execution of the expulsion orders plays no further role in determining whether there has been compliance with Article 4 of Protocol No. 4" (see *Čonka*, cited above, ibid.).

168. With regard to the scope of application of Article 4 of Protocol No. 4, the Court notes that the wording of the provision does not refer to the legal situation of the persons concerned, unlike Article 1 of Protocol No. 7 which the Court will examine below (see paragraphs 228 to 231 below). Moreover, it can be seen from the commentary on the draft of Protocol No. 4 that, according to the Committee of Experts, the aliens to whom Article 4 refers are not only those lawfully residing within the territory, but also "all those who have no actual right to nationality in a State, whether they are merely passing through a country or reside or are domiciled in it, whether they are refugees or entered the country on their own initiative, or whether they are stateless or possess another nationality" (Article 4 of the Committee's final draft, p. 505, § 34).

169. In accordance with that interpretation, in the cases that have been brought before it the Court has applied Article 4 of Protocol No. 4 to persons who, for various reasons, were residing within the territory of a State or were intercepted on the high seas on ships flying the flag of the respondent State and returned to the originating State (see, *inter alia*, *Čonka*; *Sultani*; and *Hirsi Jamaa and Others*, cited above).

2. Application of these principles

170. In the present case Article 4 of Protocol No. 4 is therefore applicable independently of the question whether or not the Georgian nationals were lawfully resident within the territory of the Russian Federation.

171. On the merits, the Court must determine whether the expulsion measures were taken following, and on the basis of, a reasonable and objective examination of the particular situation of each of the Georgian nationals whilst having regard to the general context at the material time.

172. In that connection it refers here as well to the concordant description given by the Georgian witnesses and international governmental and non-governmental organisations of the very summary procedures conducted before the Russian courts (see paragraphs 48 to 49 and paragraphs 68 to 71 above).

Thus, the PACE Monitoring Committee said that the "routine of expulsions" followed a recurrent pattern all over the country: "Georgians stopped in the street under the pretext of examination of their documents were detained no matter whether their documents were in order or not and taken to the Militia stations where they were gathered in large groups and delivered to courts, where decisions on administrative penalty with expulsion of the territory of Russia were made in accordance with preliminary agreement with the courts, with no lawyers and without the

courts looking into individual circumstances, the entire procedure taking from two to ten minutes. Often people, subjected to these measures, were not admitted to the trial room, detainees were kept in corridors or even in cars in which they were delivered there" (PACE report, § 59).

173. Furthermore, the international organisations indicated that the mass arrests and expulsions of Georgian nationals had started at the beginning of October 2006 and referred to coordination between the administrative and judicial authorities (see paragraphs 39 to 40 and 68 to 71 above).

174. In the Court's view, the present case more closely resembles the above-cited case of *Čonka*, in which it found that there had been collective expulsion having regard to all the circumstances surrounding the implementation of the expulsion orders, than the case of *Sultani*, in which it held that the relevant authority had taken account of the personal situation of the applicant – an asylum seeker of Afghan nationality – and the alleged risks in the event of his return to his country of origin.

175. The particularity of the present case lies in the fact that during the period in question the Russian courts made thousands of expulsion orders expelling Georgian nationals (see paragraph 135 above). Even though, formally speaking, a court decision was made in respect of each Georgian national, the Court considers that the conduct of the expulsion procedures during that period, after the circulars and instructions had been issued, and the number of Georgian nationals expelled – from October 2006 – made it impossible to carry out a reasonable and objective examination of the particular case of each individual.

176. Furthermore, the conclusion reached by the Court regarding the implementation in the Russian Federation of a coordinated policy of arresting, detaining and expelling Georgian nationals from October 2006 (see paragraph 159 above) also shows that the expulsions were collective in nature.

177. That finding does not call into question the right of the States to establish their own immigration policies. It must be pointed out, however, that problems with managing migratory flows cannot justify a State's having recourse to practices which are not compatible with its obligations under the Convention (see, *mutatis mutandis*, *Hirsi Jamaa and Others*, cited above, § 179).

178. Having regard to all the foregoing factors, the Court considers that the expulsions of Georgian nationals during the period in question were not carried out following, and on the basis of, a reasonable and objective examination of the particular case of each individual and that this amounted to an administrative practice in breach of Article 4 of Protocol No. 4.

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

179. The applicant Government relied on Article 5 §§ 1 and 4 of the Convention, the relevant parts of which read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
>
> ...
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. The parties' submissions

1. The applicant Government

180. In the applicant Government's submission, it was clear from all the records of the witness hearing that the arbitrary fashion in which the Georgian nationals had been arrested and detained rendered their arrest and detention unlawful for the purposes of Article 5 § 1 of the Convention. Moreover, the Georgian nationals' inability to challenge the lawfulness of their arrest and detention had infringed Article 5 § 4 of the Convention. Arresting Georgians with a view to expelling them had taken the form of mass operations that had included searching for them outside churches, in market places, on the streets and in schools, as well as in their homes and at their workplace.

2. The respondent Government

181. The respondent Government disputed the applicant Government's allegations and maintained that the arrests of Georgian nationals with a view to their expulsion had been carried out in accordance with Russian law with the aim of combating illegal immigration. In that connection they put forward the same arguments as under Article 4 of Protocol No. 4 (see paragraph 166 above).

B. The Court's assessment

182. The Court observes at the outset that it is not in dispute between the parties that the arrests in question took place with a view to expelling the

Georgian nationals from Russian territory, so Article 5 § 1 (f) of the Convention is applicable in this case. "Where the 'lawfulness' of detention is in issue, including the question whether 'a procedure prescribed by law' has been followed, the Convention refers essentially to the obligation to conform to the substantive and procedural rules of national law, but it requires in addition that any deprivation of liberty should be in keeping with the purpose of Article 5, namely to protect the individual from arbitrariness" (see, among other authorities, *Čonka*, cited above, § 39, and *Shamayev and Others*, cited above, § 397).

183. By virtue of paragraph 4 of Article 5, arrested or detained persons are entitled to a review bearing upon the procedural and substantive conditions which are essential for the "lawfulness", in the sense of the Convention, of their deprivation of liberty. The notion of "lawfulness" must have the same meaning under paragraph 4 of Article 5 as in paragraph 1, so that the detained person is entitled to a review of the "lawfulness" of his detention in the light not only of domestic law but also of the text of the Convention, the general principles embodied therein and the aim of the restrictions permitted by Article 5 § 1 (see *Chahal v. the United Kingdom*, 15 November 1996, § 127, *Reports of Judgments and Decisions* 1996-V; *mutatis mutandis*, *Stanev v. Bulgaria* [GC], no. 36760/06, § 168, ECHR 2012; and *Idalov v. Russia* [GC], no. 5826/03, § 160, 22 May 2012).

184. The Court considers that in the present case the complaints raised under Article 5 §§ 1 and 4 of the Convention are closely linked to those raised under Article 4 of Protocol No. 4.

185. The expulsions of the Georgian nationals were preceded by mass arrests – in the street, at their workplace or at their homes. The Court refers in this connection to the concordant description of the conditions of arrest by the Georgian witnesses and the international governmental and non-governmental organisations (see paragraphs 45 to 46 and paragraphs 68 to 71 above). Moreover, it has concluded that a coordinated policy of arresting, detaining and expelling Georgian nationals was implemented in the Russian Federation from October 2006 (see paragraph 159 above).

186. Accordingly, the fact that those expulsions were described as "collective" by the Court means, in the circumstances of the case, that the arrests that preceded them were arbitrary.

187. Having regard to the foregoing findings, the Court considers that the arrests and detentions of Georgian nationals during the period in question amounted to an administrative practice in breach of Article 5 § 1 of the Convention.

188. In the absence of effective and accessible remedies available to Georgian nationals against the arrests, detentions and expulsion orders during the period in question (see paragraphs 151 to 158 above), the Court considers that there has also been a violation of Article 5 § 4 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

189. The applicant Government relied on Article 3 of the Convention, which reads as follows:

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

A. The parties' submissions

1. The applicant Government

190. The applicant Government submitted that the serious overcrowding in the cells, the inadequacy of the sleeping facilities, the lack of hygiene or privacy of the sanitary facilities, the fact that the detainees lived, slept and used the toilets in the same room, the examples of deaths and serious illnesses among the detainees and all the other circumstances described above clearly showed that the Russian Federation had failed to comply with the obligations incumbent upon it under the Convention. They added that the transport conditions, particularly in the buses and the cargo plane, had been especially humiliating and referred to the statements of the Georgian witnesses in that connection. Accordingly, the applicant Government requested the Court to conclude that there had been a violation of Article 3 of the Convention.

2. The respondent Government

191. The respondent Government disputed those allegations and submitted that contradictory statements had been made by the Georgian witnesses in their description of the conditions of detention in the temporary detention centres for foreigners in particular, and that these also conflicted with the documents supplied by the Russian authorities or the statements of other witnesses. Accordingly, those statements could not amount to proof "beyond a reasonable doubt". They added that none of the persons interviewed who had been detained in those centres had told the Court that their conditions of detention were in any respect different from those of nationals of other countries being held in the same detention centres for foreigners or sharing their cell. Referring to the statements of the Russian officials, they submitted, lastly, that the transport by air had been carried out in decent conditions and the same aeroplanes had been used to expel other foreign nationals.

B. The Court's assessment

1. General principles

192. The Court reiterates its recent case-law on Article 3 of the Convention that it has summarised in its pilot judgment *Ananyev and Others v. Russia*, and reproduced in its judgment *Idalov v. Russia*:

> " ... Article 3 enshrines one of the most fundamental values of democratic societies. The Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see, for example *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).
>
> Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see, among other authorities, *Vasyukov v. Russia*, no. 2974/05, § 59, 5 April 2011).
>
> In the context of deprivation of liberty the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000‑XI, and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006).
>
> When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The length of the period during which a person is detained in the particular conditions also has to be considered (see, among other authorities, *Alver v. Estonia*, no. 64812/01, § 50, 8 November 2005).

(see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 139-42, 10 January 2012, and *Idalov*, cited above, §§ 91-94; regarding transport conditions, see also, *mutatis mutandis*, *Khudoyorov v. Russia*, no. 6847/02, §§ 116 et seq., ECHR 2005-X (extracts)).

2. Application of these principles

193. The Court notes that the Georgian nationals were first detained in police stations (for periods ranging from a few hours to one or two days,

according to the witness statements) and then in detention centres for foreigners (for a period ranging from two to fourteen days according to the witness statements), and then taken by bus to various airports in Moscow and expelled to Georgia by aeroplane (see paragraph 45 above). Some of the Georgian nationals against whom expulsion orders were issued left the Russian Federation by their own means.

194. The parties disagreed on most aspects of the conditions of detention of the Georgian nationals. However, where conditions of detention are in dispute, there is no need for the Court to establish the veracity of each and every disputed or contentious point. It can conclude that there has been a violation of Article 3 on the basis of any serious allegation which the respondent Government do not dispute (see, *mutatis mutandis*, *Idalov*, cited above, § 96).

195. In that connection the Court will also examine the evidence before it.

196. It notes firstly that, even if during the witness hearing some of the Georgian witnesses made contradictory statements regarding certain points (particularly regarding the size of the cells), their description of the conditions of detention in the police stations and the detention centres for foreigners and the conditions of expulsion to Georgia are generally consistent and correspond to those of the international governmental and non-governmental organisations (see paragraphs 52 to 55 and 72 to 74 above). These organisations indicated indeed that many Georgian nationals were subjected to inhuman and degrading treatment on account of the poor conditions of detention and expulsion (for example, overcrowded cells, lack of food and water, lack of hygiene and transport of more than a hundred Georgian nationals by cargo plane).

197. Furthermore, Mr Pataridze, Consul of Georgia in the Russian Federation at the material time, said that he and his team had visited more than a dozen detention centres in different regions of the Russian Federation, including those in St Petersburg and Moscow. He confirmed that it was mainly Georgian nationals who had been held in all these centres, that the cells had been overcrowded, the conditions of detention very difficult, the hygiene appalling and that there had been too few beds and mattresses.

198. The Court does not doubt that the conditions of detention were extremely difficult given the large number of Georgian nationals detained with a view to their expulsion in such a short time. In that connection it finds the statements of the Georgian witnesses at the witness hearing more credible than those of the Russian officials, who described very good conditions of detention.

199. Having regard to all the material submitted to the Court, it appears first and foremost undeniable that the Georgian nationals were detained in cells in police centres or severely overcrowded detention centres for

foreigners. In any event the personal space available to them did not meet the minimum standard as laid down in the Court's case-law (see, among many other authorities, *Idalov*, cited above, § 101). Moreover, the Georgian nationals had to take it in turns to sleep because of the lack of individual sleeping places.

200. The extreme lack of space in a prison cell weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned detention conditions were "degrading" within the meaning of Article 3 of the Convention (see *Ananyev and Others*, cited above, § 143).

201. Generally speaking, the Court has indicated on several occasions that overcrowding in Russian prisons was a matter of particular concern to it. In a large number of cases, it has consistently found a violation of the applicants' rights on account of a lack of sufficient personal space during their detention (see, *inter alia*, *Idalov*, cited above, § 97, and *Solovyevy v. Russia*, no. 918/02, § 123, 24 April 2012). The present case, which concerns detention centres for foreigners, is no exception in this respect.

202. The Court also refers to the report of the European Committee for the Prevention of Torture (CPT) on the Russian Federation of December 2001 in which it stated that it was very concerned about the conditions of detention of foreign nationals in these centres, stressing overcrowding in cells (report to the Russian Government on the CPT's visit to the Russian Federation from 2 to 7 December 2001, § 32, CPT/Inf (2003) 30).

203. Furthermore, the Court cannot but note in the present case that the evidence submitted to it also shows that basic health and sanitary conditions were not met and that the detainees suffered from a lack of privacy owing to the fact that the toilets were not separated from the rest of the cells.

204. In that connection the Court reiterates that the inadequacy of the conditions of detention constitutes a recurring structural problem in the Russian Federation which results from a dysfunctioning of the Russian prison system and has led the Court to conclude that there has been a violation of Article 3 in a large number of judgments since the first finding of a violation in 2002 in the case of *Kalashnikov v. Russia* (no. 47095/99, ECHR 2002-VI) and to adopt a pilot judgment in the above-cited case of *Ananyev and Others*. The Court therefore sees no reason to depart from that conclusion in the present case.

205. Having regard to all the foregoing factors, the Court concludes that the conditions of detention caused undeniable suffering to the Georgian nationals and should be regarded as both inhuman and degrading treatment which amounted to an administrative practice in breach of Article 3 of the Convention.

206. Accordingly, the Court does not consider it necessary to examine the remainder of the parties' observations on the conditions of expulsion of the Georgian nationals during the period in question.

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION TAKEN TOGETHER WITH ARTICLE 4 OF PROTOCOL No. 4 AND WITH ARTICLE 5 §§ 1 and 4 AND ARTICLE 3 OF THE CONVENTION

207. The applicant Government alleged that there had been a violation of Article 13 of the Convention taken in conjunction with Article 4 of Protocol No. 4 and Article 5 §§ 1 and 4 and Article 3 of the Convention. Article 13 is worded as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

208. As they had indicated in their previous observations, the applicant Government submitted that Georgian nationals had not had effective and accessible remedies against the arrests and expulsion orders during the period in question (see paragraph 120 above).

209. The respondent Government disputed those allegations (see paragraph 121 above).

B. The Court's assessment

210. The Court reiterates that Article 13 of the Convention requires "the provision of a domestic remedy to deal with the substance of an 'arguable complaint' under the Convention and to grant appropriate relief" (see, *inter alia*, *Čonka*, cited above, § 75).

211. Having regard to its finding of a violation of Article 4 of Protocol No. 4 and of Article 5 §§ 1 and 4 and Article 3 of the Convention, the Court cannot but conclude that the complaints made by the applicant Government are "arguable" for the purposes of Article 13.

212. Indeed, the finding of a violation of Article 4 of Protocol No. 4 and of Article 5 § 4 of the Convention in itself means that there was a lack of effective and accessible remedies. Accordingly, there is no need to examine separately the applicant Government's complaint of a violation of Article 13 of the Convention taken in conjunction with those Articles.

213. Furthermore, the Court has already found that there were no effective and accessible remedies for the Georgian nationals against the arrests, detentions and expulsion orders during the period in question (see paragraphs 151 to 158 above).

214. It therefore concludes that there has been a violation of Article 13 of the Convention taken in conjunction with Article 5 § 1.

215. With regard to the complaint under Article 13 of the Convention taken in conjunction with Article 3, the Court notes that in its above-cited pilot judgment, *Ananyev and Others*, it found that at the relevant time there was no effective remedy in the Russian legal system that could be used to put an end to the conditions of inhuman and degrading detention or to obtain adequate and sufficient redress in connection with a complaint about inadequate conditions of detention (see *Ananyev and Others*, cited above, § 119).

216. Accordingly, it considers that this case is no different and therefore concludes that there has been a violation of Article 13 of the Convention taken in conjunction with Article 3.

VIII. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 4 OF PROTOCOL No. 4 AND ARTICLE 5 §§ 1 and 4 AND ARTICLE 3 OF THE CONVENTION

217. The applicant Government alleged a violation of Article 14 of the Convention taken in conjunction with Article 4 of Protocol No. 4 and Article 5 §§ 1 and 4 and Article 3 of the Convention. Article 14 is worded as follows:

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

A. The parties' submissions

218. The applicant Government maintained that the arrests, detentions and expulsions of Georgian nationals had been based on their national origin and on their ethnic origin and not on their situation under the immigration rules in the Russian Federation. In their submission, the arrests had been a measure of reprisal against Georgia, and not based on individual acts by the victims. Moreover, that allegation was supported by the HRW report, according to which amongst those expelled had been Georgians lawfully resident in the Russian Federation, such as persons of Georgian origin with Russian nationality, holders of residence or work permits, of perfectly valid visas and whose residence had been registered, ethnic Georgians – some of whom had been waiting for their passport or visa to be renewed – or students registered in Russian universities.

219. The respondent Government, for their part, denied all the allegations relating to arrests and expulsions of Georgian nationals on the basis of their nationality or their ethnic origin. They repeated the statements they had made in their earlier observations, namely, that Georgian nationals

had been arrested, detained and expelled as part of the general policy of combating illegal immigration on the grounds that they were not lawfully resident in the Russian Federation (no valid visa, residence or work permit, or certificate of registration – see paragraph 25 and paragraphs 115 to 116 above). In that connection the hearing of witnesses had shown that the procedure applied to Georgian nationals had been exactly the same as that implemented in respect of other foreign nationals who had committed the same type of offences. They submitted, further, that the applicant Government's allegations regarding the expulsion of Russian nationals of Georgian origin during the relevant period were unfounded.

B. The Court's assessment

220. The Court considers that, in the circumstances of the case, the complaints lodged by the applicant Government under Article 14 of the Convention taken in conjunction with Article 4 of Protocol No. 4 and Article 5 §§ 1 and 4 of the Convention are the same – although submitted under a different angle – as those that it has already examined under the latter two Articles, and in respect of which it has found a violation. Accordingly, it considers that it is unnecessary to determine whether there has in the instant case been a violation of Article 14 taken in conjunction with those provisions on account of discriminatory treatment against the Georgian nationals.

221. It also considers it unnecessary to determine whether there has been a violation of Article 14 of the Convention taken in conjunction with Article 3, given that the inadequacy of the conditions of detention in Russian prisons concerned all the detainees regardless of their nationality.

IX. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 4 OF PROTOCOL No. 4 AND ARTICLE 5 §§ 1 and 4 AND ARTICLE 3 OF THE CONVENTION

222. The applicant Government relied on Article 18 of the Convention, which is worded as follows:

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

223. The Court reiterates that Article 18 does not have an autonomous role. It can only be applied in conjunction with other Articles of the Convention (see, *inter alia*, *Gusinskiy v. Russia*, no. 70276/01, § 73, ECHR 2004-IV; *Mudayevy v. Russia*, no. 33105/05, § 127, 8 April 2010; *Lutsenko*

v. Ukraine, no. 6492/11, § 105, 3 July 2012; and *Tymoshenko v. Ukraine*, no. 49872/11, § 294, 30 April 2013).

224. The Court has already observed the existence of an administrative practice in breach of Article 4 of Protocol No. 4 and Article 5 § 1 and Article 3 of the Convention taken alone and found that there has been a violation of Article 5 § 4. Accordingly, it does not consider it necessary to examine the same issues under Article 18 of the Convention.

X. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 7

225. The applicant Government relied on Article 1 of Protocol No. 7, which provides:

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

A. The parties' submissions

226. The applicant Government submitted that many of the expelled Georgian nationals had been lawfully resident in the Russian Federation and referred to the HRW report in that connection.

227. According to the respondent Government, barring very few exceptions all Georgian nationals expelled by administrative order following judicial proceedings had been unlawfully resident in Russian territory as their papers had not been in order. Accordingly, Article 1 of Protocol No. 7, which applied only to persons lawfully resident in the territory of a State, was inapplicable to the present case.

B. The Court's assessment

228. The Court notes that Article 1 of Protocol No. 7 refers expressly to aliens "lawfully resident in the territory of a State".

229. Having regard to all the material in its possession, the Court considers that it has not been established that during the period in question there were also arrests and expulsions of Georgian nationals lawfully resident in the territory of the Russian Federation.

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

231. There has therefore been no violation of Article 1 of Protocol No. 7.

XI. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION AND OF ARTICLES 1 AND 2 OF PROTOCOL No. 1

232. The applicant Government relied on Article 8 of the Convention, which provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

233. They also relied on Protocol No. 1, of which Articles 1 and 2 provide:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

> "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

A. The parties' submissions

234. The applicant Government referred to their previous observations before the Chamber regarding the alleged violation of Article 8 of the Convention and Article 1 of Protocol No. 1.

They submitted in particular that the individual expulsion orders had not taken account of the family situation of the persons concerned, which had had the effect of separating families (sometimes very young children had thus been left to their own devices) contrary to the requirements of Article 8 of the Convention. Furthermore, the disclosure by schools and universities

of information about the origin, family situation and address of the Georgian pupils was not provided for by law and had also infringed this Article.

Moreover, the conditions of arrest and detention of Georgian nationals had often led them to abandon their property; the removal measures and the suspension of communications between the Russian Federation and Georgia had prevented them from subsequently taking the necessary steps to protect their property, resulting in a violation of Article 1 of Protocol No. 1.

Lastly, the closure of Russian schools in Georgia had removed Georgian pupils' access to education in Russian and was in breach of Article 2 of Protocol No. 1.

235. The respondent Government stressed in that connection too that the applicant Government had not submitted any evidence in support of their allegations.

With regard to Article 8 of the Convention, they stated on the first point that it had been very difficult for the Russian courts to obtain information about the exact family situation of Georgian nationals, and reiterated that strictly speaking there was no right to family reunification. On the second point, they maintained that if such requests for information had been made by the Russian authorities the officials in question had subsequently been duly punished.

With regard to Article 1 of Protocol No. 1, Georgian nationals had not been deprived of their right of property and could have brought any action relating to the possession and enjoyment of their property.

Lastly, regarding Article 2 of Protocol No. 1, Russian schools in Georgia were run by the Russian Ministry of Defence and had been closed following the departure of the Russian soldiers from Georgia.

B. The Court's assessment

236. The Court considers that the complaints raised by the applicant Government under these Articles are not sufficiently substantiated and that the evidence before it is insufficient to conclude that there has been a violation.

237. There has therefore been no violation of Article 8 of the Convention and of Articles 1 and 2 of Protocol No. 1.

XII. ARTICLE 41 OF THE CONVENTION

238. 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."

239. The applicant Government asked the Court "to award just satisfaction under Article 41, namely, compensation, reparation, *restitutio in integrum*, costs, expenses and further and other relief to be specified for all the pecuniary and non-pecuniary damage suffered or incurred by the injured parties as a result of the violations and the pursuit of these proceedings." (see paragraph 79 above).

240. The Court considers that the question of the application of Article 41 of the Convention is not ready for examination.

FOR THESE REASONS, THE COURT

1. *Holds*, by sixteen votes to one, that there has been a violation of Article 38 of the Convention;

2. *Holds*, by sixteen votes to one, that in the autumn of 2006 a coordinated policy of arresting, detaining and expelling Georgian nationals was put in place in the Russian Federation which amounted to an administrative practice for the purposes of Convention case-law;

3. *Dismisses*, by sixteen votes to one, the preliminary objection of the respondent Government concerning non-exhaustion of domestic remedies in that regard;

4. *Holds*, unanimously, that the applicant Government's application was lodged within the six-month time-limit provided for in Article 35 § 1 of the Convention;

5. *Holds*, by sixteen votes to one, that the expulsions of Georgian nationals during the period in question amounted to an administrative practice in breach of Article 4 of Protocol No. 4;

6. *Holds*, by sixteen votes to one, that the arrests and detentions of Georgian nationals during the period in question amounted to an administrative practice in breach of Article 5 § 1 of the Convention;

7. *Holds*, by sixteen votes to one, that the lack of remedies available to Georgian nationals against the arrests, detentions and expulsion orders during the period in question amounted to a violation of Article 5 § 4 of the Convention;

8. *Holds*, by sixteen votes to one, that the conditions of detention of Georgian nationals during the period in question amounted to an administrative practice in breach of Article 3 of the Convention;

9. *Holds*, by sixteen votes to one, that it is not necessary to examine under Article 3 of the Convention the remainder of the parties' observations on the conditions of expulsion of Georgian nationals during the period in question;

10. *Holds*, by thirteen votes to four, that there has been a violation of Article 13 of the Convention taken in conjunction with Article 5 § 1 of the Convention;

11. *Holds*, by sixteen votes to one, that there has been a violation of Article 13 of the Convention taken in conjunction with Article 3 of the Convention;

12. *Holds*, unanimously, that it is not necessary to examine the complaints made by the applicant Government under Article 13 of the Convention taken in conjunction with Article 4 of Protocol No. 4 and Article 5 § 4 of the Convention;

13. *Holds*, by sixteen votes to one, that it is not necessary to examine the complaints raised by the applicant Government under Article 14 of the Convention taken in conjunction with Article 4 of Protocol No. 4 and Article 5 §§ 1 and 4 and Article 3 of the Convention;

14. *Holds*, by sixteen votes to one, that it is not necessary to examine the complaints raised by the applicant Government under Article 18 of the Convention taken in conjunction with Article 4 of Protocol No. 4 and Article 5 §§ 1 and 4 and Article 3 of the Convention;

15. *Holds*, by sixteen votes to one, that there has been no violation of Article 1 of Protocol No. 7;

16. *Holds*, unanimously, that there has been no violation of Article 8 of the Convention and of Articles 1 and 2 of Protocol No. 1;

17. *Holds*, unanimously, that the question of the application of Article 41 of the Convention is not ready for decision;

accordingly,

a) reserves the said question in whole;

b) invites the applicant Government and the respondent Government to submit in writing, within twelve months from the date of notification of this judgment, their observations on the matter and, in particular, to notify the Court of any agreement that they may reach;

c) reserves the further procedure and delegates to the President of the Court the power to fix the same if need be.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 3 July 2014.

Michael O'Boyle	Josep Casadevall
Deputy 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) partly dissenting opinion of Judge López Guerra joined by Judges Bratza and Kalaydjieva;

(b) partly dissenting opinion of Judge Tsotsoria;

(c) dissenting opinion of Judge Dedov.

J.C.M.
M.O'B.

PARTLY DISSENTING OPINION OF JUDGE LÓPEZ GUERRA JOINED BY JUDGES BRATZA AND KALAYDJIEVA

My partly dissenting opinion relates to the Grand Chamber's finding of a violation of Article 13 of the Convention taken in conjunction with Article 5 § 1 (point 10 of the operative part of the judgment), as well as to its reasoning in support of that finding (see paragraphs 210-14).

As is apparent from an examination of the Convention provisions themselves, as well as from the Court's case-law, once it is established that there has been a violation of Article 5 § 4, there is no need to examine a further complaint of a violation of Article 13 in conjunction with Article 5 § 1, since that complaint is subsumed in the previous finding.

Article 13 requires that an effective remedy be provided in respect of violations of the Convention. Where a violation of Article 5 § 1 is in issue, Article 5 § 4 lays down more stringent procedural requirements as to the provision of a remedy, since it requires that there be some form of judicial proceedings which an arrested or detained person is entitled to take by which a court can examine the lawfulness of the arrest or detention (the Convention's equivalent of *habeas corpus*). In that connection Article 5 § 4 constitutes the *lex specialis* concerning arrest or detention and lays down the "effective remedy" which is required in cases of violations of Article 5 § 1. Having found a violation of the Convention based on that *lex specialis*, re-examination of the same matter by the Grand Chamber under the *lex generalis* of Article 13 is therefore redundant. This is the position already well established in the Court's case-law (see, for example, *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 95, Series A no. 12, and *Khadisov and Tsechoyev v. Russia*, no. 21519/02, § 162, 5 February 2009).

PARTLY DISSENTING OPINION OF JUDGE TSOTSORIA

I regret that I cannot subscribe to some of the conclusions of the majority. I particularly disagree, first of all, with the Court's finding that it was not necessary to examine the complaints under Article 18 taken in conjunction with Article 5 of the Convention[1], under Article 14 of the Convention taken in conjunction with Article 4 of Protocol No. 4 and Article 5 §§ 1 and 4 of the Convention or to examine the discriminatory nature of the arrests, detentions and expulsion of Georgians under Article 3 of the Convention, and, secondly, that there has been no violation of Article 1 of Protocol No. 7 to the Convention. Although I fully endorse the conclusion that there was an administrative practice in breach of Article 3 based on the conditions of detention, I am unable to agree with the majority's decision not to examine the conditions of expulsion under Article 3 of the Convention and subsequently not to establish a breach of Article 13 in relation to the same complaint.

I wish to set out my own views here on some of the significant issues in order to clarify the grounds for my dissent. The point of departure is Article 18 of the Convention, as this provision relates to the pivotal question raised in the present case – the prohibition of *détournement de pouvoir*.

I. Violation of Article 18 taken in conjunction with Article 5 of the Convention

This inter-State case is probably the most vivid example of the use of restrictions permitted under the Convention for purposes other than those for which they have been prescribed.

The case-law regarding Article 18 makes it clear that the whole structure of the Convention rests on the general assumption that public authorities in the member States act in good faith. However, any public policy or an individual measure may have a "hidden agenda", and therefore the presumption of good faith is rebuttable *(*see, among others, *Khodorkovsky v. Russia*, no. 5829/04, § 255, 31 May 2011, and *Lutsenko v. Ukraine*, no. 6492/11, § 106, 3 July 2012). In individual applications the Court has established that an applicant alleging a limitation of his or her rights and freedoms for an improper reason must convincingly show that the real aim of the authorities was not the same as that proclaimed (or as can be reasonably inferred from the context) (see *Lutsenko*, cited above, § 106). Therefore, when an allegation under Article 18 is made the Court applies a

1. In the light of the scope of the applicant State's complaints (see heading IX of the judgment), Article 18, which provision has no autonomous role, could be invoked only in conjunction with Article 5, as a violation of the former can only arise where the right or freedom concerned is subject to restrictions permitted under the Convention (see *Gusinskiy v. Russia*, no. 70276/01, §73, 19 May 2004).

very exacting standard of proof (see *Tymoshenko v. Ukraine*, no. 49872/11, § 295, 30 April 2013).

The Court finds a violation of Article 18 of the Convention when it concludes that the whole legal machinery of a State is misused *ab initio*, which is an indication that from beginning to end the authorities have acted in bad faith and in blatant disregard of the Convention (see *Khodorkovskiy*, cited above, § 260). In most cases the "purpose" referred to in Article 18 is not documented (compare *Gusinskiy v. Russia*, no. 70276/01, §§ 75-78, 19 May 2004). As was correctly noted in the joint concurring opinion of Judges Jungwiert, Nußberger and Potocki in *Tymoshenko*, cited above, knowledge about a "hidden agenda" is within the sphere of the authorities and is thus not accessible to an applicant, so the Court should accept evidence of the authorities' improper motives which relies on inferences drawn from the concrete circumstances and the context of the case. Otherwise the protection granted by Article 18 would be ineffective in practice.

In a democracy a State may limit an individual freedom in the interests of the freedom of all.[2] An abuse of rights occurs whenever a State avails itself of its rights in such a way as to inflict an injury on another State which cannot be justified by a legitimate consideration, that is to say, when its actions, although strictly speaking "legal", are coloured by bad faith.[3]

In the present case the Court established that the arrest and detention of Georgians under Article 5 § 1 (f) had been arbitrary owing to the collective nature of the expulsions (see paragraph 186). Further, the absence of effective and accessible remedies available to Georgians gave rise to a breach of Article 5 § 4 (see paragraph 188). The question arises whether, despite the arbitrariness, the arrests and detentions were nevertheless ordered in good faith or whether the real aim of the authorities was different from that stated and was motivated by an ulterior intention which can be proved according to the standards required by the Convention (see the joint concurring opinion of Judges Jungwiert, Nußberger and Potocki in *Tymoshenko*, cited above).

Ulterior motives and a hidden agenda of the respondent State authorities are barely below the surface here. The Court has established an **administrative practice** – that is, the repetition of acts contrary to the Convention and official tolerance of those acts – of arrests and detentions in breach of Article 5 § 1 of the Convention (see paragraph 187). Official tolerance of such acts in itself implies the existence of "improper motives".

2. Collected edition of the "Travaux préparatoires" of the European Convention on Human Rights. Vol. 5/Council of Europe. The Hague; Boston; London; Dordrecht; Lancaster: Martinus Nijhoff, 1979, p. 290.

3. Guy S. Goodwin-Gill, "The Limits of the Power of Expulsion in Public International Law", *British Yearbook of International Law*, Vol. 47, Issue 1, 1975, pp. 79-80, with further references.

The Court's finding of an administrative practice of collective expulsion of Georgians is a crucial consideration as the latter is inseparable from the preceding arbitrary arrests and detentions. The respondent State authorities kept Georgians in detention on purpose, in order to cause distress and suffering, and did not allow their voluntary return[4], contrary to the Court's established case-law that an arrest and detention under Article 5 must be carried out in good faith. All the above-mentioned factors lead to the conclusion that mass expulsion was clearly employed for ulterior motives and should thus *per se* constitute an *abus de droit*.[5] This finding should be read in line with the Court's statement that problems with managing migratory flows cannot justify a State's having recourse to practices which are not compatible with its obligations under the Convention (see paragraph 177).

Moreover, the Court did not overlook the political context of the case. As emphasised in the judgment, political tensions between the two States reached their climax at the time of the arrest of four Russian servicemen in Tbilisi on 27 September 2006 (see paragraph 22). Subsequently the same date is used for calculating the six-month time-limit (see paragraph 162). The Russian State Duma did not conceal in its Resolution of 4 October 2006 on the Anti-Russian and undemocratic policy of the Government of Georgia that the rapid deterioration of the relationship between the two States was a consequence of the arrest of Russian military servicemen by Georgia.[6]

The Russian response to the arrest of its servicemen instigated the unprecedented and massive harassment of Georgians in the Russian Federation, resulting in particular in interference with the rights and freedoms guaranteed under the Convention. That policy was intended as – and has in fact been – a basis for illegitimate, arbitrary and disproportionate reprisal measures. It was implemented through a series of related steps that occurred simultaneously and which included, but were not limited to, the adoption and implementation of circulars and instructions aimed at the identification, mass arrest, detention and expulsion of Georgians in geographically distant areas of Russia, the closure of land, air and maritime communications between the two States immediately following the political tensions in late September 2006, and the unilateral imposition of an economic embargo on Georgia, including the interruption of all postal communications (see paragraphs 22 and 136).

I appreciate that the Court requires concrete evidence to establish a violation of Article 18 of the Convention and that the standard of proof is

4. It should be noted that some of the Georgians against whom expulsion orders were issued left Russia by their own means (see paragraph 45 of the judgment).

5. Jean-Marie Henckaerts, "Mass Expulsion in Modern International law and Practice", 1995, Martinus Nijhoff Publishers, The Hague/Boston/London, p. 17.

6. Resolution of State Duma No. 3536-4 ГД, see Annex to *Georgia v. Russia (no. I)* (dec.), no. 13255/07, 30 June 2009, pp. 12-13.

high. However, in this case the Court was acting as a first-instance tribunal "being a master of its own procedure and its own rules" and had "complete freedom in assessing not only the admissibility and relevance but also the probative value of each item of evidence before it" (see paragraphs 104 and 138). The Court had proof that followed from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact, emanating from various sources. As a consequence, despite conflicting accounts of the events and the lack of cooperation by the respondent State, which had exclusive access to the information, the Court established the existence of an administrative practice (see paragraphs 129 and 159).

The illegal anti-Georgian policy should be viewed in the light, and as a direct result, of the political statements made by leading members of the Russian Government, including the President, Foreign Minister, Deputy Head of the Federal Migration Service, Speaker of the State Duma and Defence Minister.[7] The law-enforcement agencies often accused the entire Georgian diaspora of being criminals.[8] In addition, the above-mentioned Resolution of Russia's State Duma urged and authorised the Russian Government to take all necessary measures, including financial and economic sanctions, against Georgia and threatened to apply stricter measures in the future. Those pronouncements, supplemented by an extensive media campaign, were immediately regarded as an instruction "to wage an organized persecution of Georgian nationals."[9] According to Human Rights Watch, "*this was a coordinated campaign orchestrated at senior levels of government that singled out Georgians for a specific period. ... It suggests that Russia will interrupt peoples' lives in order to serve foreign policy interests*."[10]

7. Ibid, Annex pp. 8-11 and 117-22; The Report by Human Rights Watch (HRW) "Singled Out. Russia's detention and expulsion of Georgians", Volume 19 No.5 (D), October 2007, pp. 2, 22, 30-33.
8. Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) of the Parliamentary Assembly of the Council of Europe, "Current Tensions between Russia and Georgia," AS/Mon(2006)40 rev, 22 January 2007, § 63; HRW, "Singled Out", cited above, p. 32.
9. See Svetlana Gannushkina, Human Rights in Russia: Year 2006, European Parliament, Directorate General External Policies of the Union, p.4, available at: http://www.europarl.europa.eu/RegData/etudes/note/join/2006/348611/EXPO-DROI_NT(2006)348611_EN.pdf, p. 4, accessed on 10.03.2014.
10. Russia Targets Georgians for Expulsion, Human Rights Watch, 1 October 2007, available at: http://www.hrw.org/news/2007/09/30/russia-targets-georgians-expulsion, accessed on 05.06.2012.

The whole anti-Georgian campaign was retaliation, employed for ulterior motives contrary to the rules of international law[11] rather than a legitimate migration control measure as claimed by the respondent State. It is equally difficult to accept the respondent State's arguments that the measures were aimed, *inter alia,* at fighting criminality and organised crime in Russia, as there was no indication regarding the arrest of any Georgian criminal, influential or otherwise, at that time. As witnessed, during the campaign the Russian authorities targeted those who were the most vulnerable. The Georgian witnesses before the Court recalled that they had been systematically told about the political motivation for the arrests, detentions and expulsion (see paragraphs 48 and 49). In paragraph 52 of its Report, the Monitoring Committee of the Council of Europe (hereafter "the PACE report") concluded that "the massive campaign launched as from the end of September against Georgian citizens and persons of Georgian ethnicity ... was a political campaign".[12]

Regretfully, the present case has not been the only instance when the respondent State has used migration control for political purposes. The case of the mass deportation of Tajik migrants in 2011 after the conviction of two pilots (one of them being a Russian citizen) by the Tajik authorities,[13] which bears a striking resemblance to the present case, as well as the expulsion of Moldovan nationals weeks before the Eastern Partnership Summit in 2013 when the Association Agreement between Moldova and the European Union was due to be initialled,[14] should have been instructive to the Court.

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11. See James Crawford, "The International Law Commission's Articles on State Responsibility", Introduction, Text and Commentaries, Cambridge University Press, 2007, pp. 281-305; James Crawford, Alain Pellet, and Simon Olleso,."The Law of International Responsibility", Oxford University Press 2010, pp. 470-73; Jean-Marie Henckaerts, "Mass Expulsion in Modern International law and Practice", cited above, p. 46.

12. For the causes of the conflict between the two States see the PACE report.

13. The European Commission against Racism and Intolerance (ECRI), Fourth report on the Russian Federation adopted on 16 December 2005, §167; See also" Tajikistan ready for talks, Moscow threatens deportations over jailed pilot", available at: http://en.rian.ru/world/20111111/168596798.html accessed on 25.04. 2012; "Mass deportation of Tajiks as pilot row escalates" by Tom Washington, at 11/11/2011 13:10, available at: http://www.themoscownews.com/politics/20111111/189196644.html, accessed on 25 April 2012; "Russia to deport Tajik immigrants over jailed pilot case" available at: http://rt.com/news/prime-time/tajikistan-russia-pilots-swap-105/, accessed on 25.04.2012.

14. See European Parliament Resolution on the Pressure Exerted by Russia on Eastern Partnership Countries (in the context of the upcoming Eastern Partnership Summit in Vilnius), No. 2013/2826(RSP), September 10, 2013; "Russia Pressures Former Soviet Republics to Join his Economic Union", by Editorial Board, September 29, 2013, available at http://www.washingtonpost.com/opinions/putin-pressures-former-soviet-republics-to-join-his-economic-union/2013/09/29/d169d736-2610-11e3-b75d-5b7f66349852_story.html, accessed on 02.03.2014; Россия начала депортацию

The respondent State's practice of abusing the migration system, in breach of fundamental rights, in furtherance of its foreign-policy agenda represents a serious instance of *détournement de pouvoir* and should not therefore go without an adequate assessment. The Court should have expressed its firm position that mass violations of human rights can never be the means of achieving political goals or solving political problems. Failure to do so is tantamount to overlooking a serious misuse of the Convention system, especially in the context of inter-State applications and when establishing the existence of an administrative practice. As correctly stated in the joint concurring opinion of Judges Jungwiert, Nußberger and Potocki in the case of *Tymoshenko v. Ukraine*, cited above, "in interpreting Article 18 of the Convention the direct link between human rights protection and democracy must be taken into account". This is true, since the Convention was designed to maintain and promote the ideals and values of a democratic society (see *Refah Partisi (The Welfare Party) and Others v. Turkey*, nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 86, 13 February, 2003). Moreover it is obvious that "when governments resolve their problems by dumping helpless individuals across the border, they are acting at the vanishing point of common sense and good faith. Where dialogue and cooperation disappear, compliance with international law is at high risk".[15] As observed, the arbitrary arrests and detentions of Georgians were intrinsically linked to their collective expulsion, which in itself "is a danger for the peaceful co-existence of countries" posing a threat to democracy, and may even be a "prelude to war"[16], as evidenced by a recent concrete example.

Referring to the circumstances of the case as explained above, the Court should have examined Article 18 in conjunction with Article 5 and should have come to the conclusion that the whole legal machinery of the respondent State was misused and that from beginning to end the Russian authorities had acted with bad faith and in blatant disregard of the Convention that amounted to an administrative practice in breach of the above-mentioned provisions.

молдавских гастарбайтеров на родину, 17 September 2013, available at: http://www.grenada.md/post/rossiea_na4ala_deport_v_md, accessed on 07.10.2013.

15. Jean-Marie Henckaerts, "Mass Expulsion in Modern International law and Practice", cited above, p. 47.

16. Klaus Dieter Deumeland, "Das Verbot der Xenelasie bei Ausweisung von Ausländern in der Bundesrepublik Deutschland", 22 AWR 182, 186 (1984) in Jean-Marie Henckaerts, "Mass Expulsion in Modern International law and Practice", cited above, p. 25.

II. Violation of Article 14 of the Convention taken in conjunction with Article 4 of Protocol No. 4 and Article 5 §§ 1 and 4 of the Convention

The Court concluded that from October 2006 until the end of January 2007, a coordinated policy of arresting, detaining and expelling of Georgian nationals, amounting to an administrative practice, was implemented in the Russian Federation (see paragraph 159). It is obvious that Georgians, as a specific group, were targeted and discriminated against on the basis of their ethnic and national origin as a result of the respondent State's policy. While I fully subscribe to the discriminatory context of the present inter-State application duly highlighted in the judgment (see, for example, paragraphs 140-41, 152, 175-76, and 185), I regret that the majority did not address the issue of a violation of Article 14 taken in conjunction with Article 4 of Protocol No. 4 and Article 5 §§ 1 and 4 of the Convention separately (the discrimination complaints under Article 3 of the Convection will be discussed in the following section).

In these proceedings the ethnic and national aspects are so closely intertwined that they should be examined together. For the purposes of this opinion, the term "Georgian" covers both ethnicity and nationality. "Ethnic Georgians", "Georgian nationals" and "Georgians" are used interchangeably by the applicant State. The term "Georgians" used by the respondent State authorities in the context of expulsion, such as "all Georgians shall go", "you Georgians shall leave Russia" implied more ethnicity than nationality. Official documents that were released by the respondent State during the anti-Georgian campaign denoted ethnicity (for example the enquiries sent to various schools using "*национальность*" see paragraph 36 of the judgment) and citizenship (such as instructions and circulars, using "*гражданство*" – see paragraph 31 of the judgment).[17] Similarly, the international governmental and non-governmental organisations indicated that this campaign was based on ethnic and national origin (see paragraphs 63-67 the judgment).

17. Nationality is defined in formal terms of State membership in the West, but increasingly in terms of ethnicity and culture as one moves East. In the Russian Federation the terms "nation" and "nationality" (*национальность)* denote an ethnic concept rather than State membership – citizenship in Russian (*гражданство)*; hence the divergence in the terms. See Eric Lohr, "Russian Citizenship from Empire to Soviet Union", Harvard University Press, 2012, p. 3, Azar Gat with Alexander Yakobson, "Nations*:* The Long History and Deep Roots of Political Ethnicity and Nationalism", Cambridge University Press, 2013, pp. 359-60; Şener Aktürk, "Regimes of Ethnicity and Nationhood in Germany, Russia and Turkey", Cambridge University Press 2012.

The principle of respect for and protection of human rights on a non-discriminatory basis is recognised as an international legal standard.[18] Prohibition of discrimination has crystallised into a *jus cogens* norm. It is established in the Court's case-law that ethnicity and race are related and overlapping concepts (see, among other authorities, *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, § 43, 22 December 2009, and *Timishev v. Russia*, no 55762/00 and 5597/00, § 55, 13 March 2006) and that discrimination on account of one's actual or perceived ethnicity, as a form of racial discrimination, requires special vigilance and a vigorous reaction from the authorities (see *Timishev*, cited above, §§ 55- 56).

Furthermore, the Court has developed the approach that "where a substantive Article of the Convention or its Protocols has been relied on both on its own and in conjunction with Article 14 and a separate breach has been found of the substantive Article, it is not generally necessary for the Court to consider the case under Article 14 as well, though the position is otherwise if a clear inequality of treatment in the enjoyment of the right in question is a fundamental aspect of the case" (see, among others, *Timishev v. Russia*, cited above, § 53; *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 89, 29 April 1999; *Dudgeon v. the United Kingdom*, no. 7525/76, § 67, 22 October; see also the partly dissenting opinion of Judge Keller in *Sukran Aydin and Others v. Turkey*, nos. 49197/06, 23196/07, 50242/08, 60912/08 and 14871/09, 22 January 2013).

The violation of the rights of Georgians based on their nationality and ethnic origin was deeply rooted in discrimination, which is the fundamental aspect of the present case. Accordingly, failure to examine Article 14 artificially reduces the scope of the non-discrimination provision of the Convention and disregards the very core feature of this inter-State application, especially considering that the Court's practice regarding Article 14 has already been the subject of criticism.[19]

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18. See Dissenting opinion of Judge Tanaka in *South West Africa* case, ICJ, Judgment of 18 July 1966 Judgment, pp. 284-317, James Crawford, "Brownie's Principles of Public International Law", 8th edition, Oxford University Press, 2012, pp. 644-46.

19. Harris, O'Boyle & Warbrick, "Law of the European Convention on Human Rights", 2nd edition, Oxford University Press, 2009, p 578; Samantha Knights, "Freedom of Religion, Minorities, and the Law", Oxford University Press, 2007, pp. 56-57, Janneke Gerards, "The Discrimination Grounds of Article 14 of the European Convention on Human Rights", *Human Rights Law Review* Vol. 13 no.1, 2013, pp. 99-124; Ivana Radacic, "Gender Equality Jurisprudence of the European Court of Human Rights", The European Journal of International Law Vol. 19 no. 4, 2008, pp. 841-57; Dissenting opinion of Judge Bonnello in *Anguelova v. Bulgaria*, no. 38361/97, ECHR 2002-IV.

The principle of non-discrimination imposes distinct limitations on the liberty of States in their treatment of aliens[20] and should be read together with the guarantees of procedural rights in expulsion proceedings.[21] A common standard is that expulsions must not discriminate in purpose or effect on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. This is particularly relevant to cases of collective expulsion of aliens as they carry the risk of discrimination and often involve expulsion on the very ground of membership of a specific group.[22]

The State's discretionary power of expulsion is also limited by an obligation to take account of the legal context in which it is exercised.[23] In the present case, ethnic and national origins were determining factors for the actions of the Russian authorities in their detention, treatment and collective expulsion of Georgians.

The general problem of racial discrimination, xenophobia and intolerance in the Russian Federation is well-documented.[24] It is recognised that vulnerable groups (including peoples from the Caucasus) suffer from aggravated discrimination and are subject to racial/ethnic profiling, racially targeted inspections and unlawful practices by law-enforcement bodies.[25]

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20. Guy S. Goodwin-Gill, "The Limits of the Power of Expulsion in Public International Law", cited above, p.75.

21. "Migration and International Human Rights Law". Practitioners guide no. 6; International Commission of Jurists, 2011, p.128 with further references; See Henckaerts, "Mass Expulsion in Modern International law and Practice", cited above, pp. 21-28.

22. Ibid, Henckaerts, "Mass Expulsion in Modern International law and Practice", p. 21.

23. Guy S. Goodwin-Gill, "The Limits of the Power of Expulsion in Public International Law", cited above, p. 154.

24. See, among others, Concluding Observations of the United Nations Human Rights Committee: Russian Federation, UN Doc. CCPR/C/79/Add.54, 26 July 1995; Concluding Observations of the United Nations Human Rights Committee: Russian Federation, UN Doc. CCPR/CP/79/RUS 6 November 2003; Concluding observations of the Committee on the Elimination of Racial Discrimination: Russian Federation, 21 March 2003. CERD/C/62/CO/7; The European Commission against Racism and Intolerance (ECRI), Third report on the Russian Federation Adopted on 16 December 2005, ECRI Fourth Report on the Russian Federation, cited above; Annual Reports of the Commissioner for Human Rights of the Russian Federation are available in Russian at: http://ombudsmanrf.org/doklady; Amnesty International, Dokumenty! Discrimination on Grounds of Race in the Russian Federation, at 11 (AI Index EUR 46/001/2003), available at: http://www.amnesty.org/fr/library/asset/EUR46/001/2003/en/70300437-d760-11dd-b024-21932cd2170d/eur460012003en.pdf, accessed on 20.05.2012.

25. Implementation of General Assembly Resolution 60/251 of 15 March 2006 entitled "Human Rights Council" Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Doudou Diène Addendum Mission to the Russian Federation, A/HRC/4/19/Add.3, 30 May 2007 §76; Open Society Justice Initiative, "Ethnic Profiling in the Moscow Metro," Open Society Institute Justice Initiative, 2006 available at http://www.opensocietyfoundations.org/sites/default/files/metro_20060613.pdf, p. 15-17, accessed on 19.05.2012.

The existence of institutionalised discrimination, especially in the field of migration, has been considered particularly acute.[26] As confirmed by a Russian NGO, Memorial, a "repressive mechanism" against foreign citizens was created in the Russian Federation well before the anti-Georgian campaign to be used to pursue political goals.[27] The PACE report, in § 54, also notes the existence of "repressive mechanisms [directed] against foreign citizens" created by Russian legislation. The statement of the Deputy Director of the Federal Migration Service of the Russian Federation that *"for the citizens of Georgia [these] quotas will not be provided - neither for residency, nor for work"* is additional proof that at the material time the authorities directed the existing discriminatory mechanism against Georgians.[28]

The Court, while establishing the existence of an administrative practice of collective expulsion under Article 4 of Protocol No. 4, reiterated the importance of the background to the expulsion (see paragraph 167) having regard to the general context of the selective, organised and intentional persecution campaign of the Russian authorities *vis-à-vis* Georgians (see, for example, paragraphs 63-71 and 171-76). It is also noted that domestic remedies, otherwise in place in the respondent State, were ineffective and inaccessible for Georgians against arbitrary arrests, detentions and expulsions (see paragraphs 150-58 and 188).

The Georgian witnesses heard by the Court confirmed that the underlying reason for the abuse of their rights, unlike other nationalities at the material time, was their ethnicity. Witnesses recalled being insulted, threatened and told: "*you have to leave Russia, there is no room for you*" and "*you're being deported because you're Georgians*",[29] "*be happy you're still alive*" (see paragraph 46, and Annex, § 6). There was an overwhelming public perception that the expulsion campaign was directed particularly against ethnic Georgians. In the case of G.V., cited by the respondent State as an example of a successful appeal at national level, the claimant argued

26. Ibid, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Addendum Mission to the Russian Federation, §76.

27. Memorial Human Rights Center. The Civic Assistance Committee. On anti-Georgian campaign launched on the territory of Russia, p. 3, available at: http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/memorial_/memorial_en.pdf, accessed on 24.02.2014.

28. Russia Cancels Employment Quotas for Georgians, Civil Georgia, 5 October, 2006, available at: http://www.civil.ge/eng/article.php?id=13783, accessed 24.02.2014.

29. Witness Statement no.2, Verbatim Record of the oral evidence given by the witnesses before the delegation of judges of the Grand Chamber from 31 January to 4 February 2011 (hereafter "Verbatim Record"), pp. 35, 37.

that he should not have been expelled because, among other reasons, he was not ethnic Georgian, despite his Georgian citizenship.[30]

The policy of discrimination is further evident from various circulars and instructions (for example ordering the expulsion specifically of Georgian citizens, letters sent to schools requesting information about Georgian children and their parents (see paragraphs 31, 36, 140-44) issued by the authorities in a short period of time in different regions of the respondent State. Expelled persons were subjected to ethnic profiling, were searched, stopped and arrested in streets, at their workplaces, homes, schools and outside churches, primarily on account of their appearance/perceived membership of a particular ethnic group, without even checking the relevant documents, followed by formal acknowledgement of their Georgian nationality (see, by comparison, *Timishev*, cited above, in which freedom of movement of an applicant of Chechen origin was restricted owing to his ethnicity and the absence of the relevant record in the identity documents did not create any problem).

It would be arduous to depict all the discriminatory aspects of the campaign targeting Georgians, with which the entire judgment is imbued, on account of their range and scale. It is increasingly clear that the arrests, detentions and collective expulsion of Georgians from the Russian Federation were carried out on account of their ethnic and national origin. However, no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified even in the context of the fight against illegal migration (see, *mutatis mutandis*, *Timishev*, cited above, § 58, and *D.H. and others v. the Czech Republic* [GC] no.57325/00, § 176, 13 November 2007).

The circumstances surrounding the coordinated policy of arrest, detention and expulsion of Georgians in the respondent State between October 2006 and January 2007 should have led the Court to find an administrative practice in breach of Article 14 in conjunction with Article 4 of Protocol No. 4 and Article 5 §§ 1 and 4 of the Convention as Georgians, targeted as a group, were deliberately removed from the protection of the Russian legal system and became victims of **racial discrimination** unlike other foreign nationals in the same situation at the material time.

30. Materials submitted by the respondent State on 16.03.2009 for the hearing on admissibility of the application, pp. 199-200 (in Russian), an English translation of the same document was provided on 06.04.2009, pp. 215-16.

III. Violation of Article 3 of the Convention, taken separately, on account of the seriousness of the discriminatory treatment suffered by Georgians

In the present case the Court should also have examined the applicant State's allegation regarding the discriminatory nature of the arrests, detentions and expulsions of Georgians under Article 3 of the Convention since in some circumstances discrimination may be so serious as to constitute in itself degrading treatment within the meaning of Article 3. In the *East African Asians* case, the Commission opined that "*a special importance should be attached to discrimination based on race, and publicly to single out a group of persons for differential treatment on the basis of race might, in certain circumstances, constitute a special form of affront to human dignity; whereas, therefore, differential treatment of a group of persons on the basis of race might be capable of constituting degrading treatment in circumstances where differential treatment on some other ground, such as language, would raise no such question*" *(*see *East African Asians v. the United Kingdom*, nos. 4403/70-4419/70, 4422/70, 4423/70, 4434/70, 4443/70, 4476/70-4478/70, 4486/70, 4501/70 and 4526/70-4530/70 (joined), Commission decision of 14 December 1970, Decisions and Reports (DR), p. 62).

In its case-law the Court/Commission has considered the ethnic/racial factor in relation to a breach of Article 3, noting that by virtue of Article 3 "the State's discretion in immigration matters is not of an unfettered character, for a State may not implement policies of a purely racist nature, such as a policy prohibiting the entry of any person of a particular skin colour" (see *Abdulaziz, Cabales, and Balkandali v. the United Kingdom*, nos. 9214/80, 9473/81 and 9474/81, § 84, 28 May 1985). Moreover, the State's treatment of a particular group of persons for the very reason that they belong to the specific community in question has been established as amounting to discrimination motivated by ethnic origin, race and religion (see *Cyprus v. Turkey* [GC], no. 25781/94, § 309, ECHR 2001-IV). Prolonged deplorable living conditions caused by discriminatory treatment are considered to cause considerable mental suffering, diminishing human dignity and amounting to degrading treatment (see *Moldovan and Others v. Romania (2)*, nos. 41138/98 and 64320/01, §§ 110-11, 30 November 2005). Furthermore, segregating Roma children in educational institutions on the basis of their ethnic origin creates, in the Court's opinion, a rebuttable presumption of discrimination of a type which of itself may amount to degrading treatment *(see Horvath and Vadászi v. Hungary (dec.)*, no. 2351/06, 9 November 2010). The standard applied in the *East African Asians* case has most recently been reaffirmed in *Abdu v. Bulgaria*, no. 26827/08, § 38, 11 March 2014.

In the present proceedings the Court should have attached special importance to the existence of an administrative practice in the respondent State *vis-à-vis* Georgians from the standpoint of discrimination under Article 3. The Court has established, among other reasons, a climate of intimidation at the material time (see paragraph 154) and psychological factors (see paragraph 156) as circumstances influencing the ability of Georgians to exhaust domestic remedies in the respondent State. It has been emphasized that many detained Georgians had been so stressed at the idea of remaining in detention any longer and so eager to return to Georgia that they would have signed "anything at all" (see paragraph 48).

The Court should have given careful consideration to the evidence that the arrest of Georgians, their placement in detention centres, denial of their voluntary return and their consequent expulsion and harassment and humiliation during transport was a deliberate policy of the respondent State. Many Georgians were forced to go through the whole cycle. The witness statements and the findings of the international governmental and non-governmental organisations unequivocally indicate that arrested persons were placed in deplorable conditions, which exceeded the already notorious situation in the detention facilities of the respondent State. In her testimony witness no.1, describing the treatment in the detention facility, said: "*[w]hen we said that we wanted some water, we wanted to drink, we were told that "there's some water in the toilet, you can drink from the toilet ... They did everything to strip away our dignity"*.[31]

Police and judges systematically humiliated Georgians because of their origin. For instance, witness no.1 recalled her treatment in a court: "*I insisted that I would be prepared to go back to Georgia at my own expense and under my own steam and I was told no, you will be sent to Georgia as a prisoner, as a detainee. And if you have any problems with that, go ask your President Saakashvili*",[32] witness no.7 testified: "*we were told all the time "don't say anything, don't do anything, you are Georgians*."[33]Those awaiting deportation in the Moscow airports were exposed to the public in a humiliating manner and made to run through a human corridor composed of Special Purpose Police Officers (OMON) with their hands behind their back (see paragraph 57). Witness no. 3 said that following their arrival at Domodedovo Airport a "...*corridor ... was formed by the officers. We had to put our hands on our heads and we were told to run, and those who didn't run, who walked slowly, were actually even hit by the officers and asked to go faster*."[34]

31. Witness statement no. 1, Verbatim Record, p. 20.
32. Witness statement no. 1, Verbatim Record, p. 22.
33. Witness statement no. 7, Verbatim Record, p. 112.
34. Witness statement no. 3, Verbatim Record, p. 57.

The Court considers such behaviour and attitude of officials and judges as an aggravating factor in the examination of an applicant's complaints about discrimination under Article 3 of the Convention (see *Moldovan v. Romania (2),* cited above, §§110-11). What else can the above-described behaviour of the officials be if not discrimination amounting to degrading treatment under Article 3 of the Convention?

Georgians were thus subjected to disrespect for their personality throughout the entire process starting from illegal ethnic profiling and ending with their expulsion and the methods used that caused them considerable mental suffering, diminishing their human dignity and arousing in them such feelings as to cause humiliation and debasement (see, by contrast, *Sejdić and Finci v. Bosnia and Herzegovina,* cited above, § 58). This is why the trauma experienced by the victims was still visible more than five years following the events, during the witness hearing in Strasbourg.

It is undisputed that the State's obligations under Article 3 comprise the duty not only to prohibit certain misconduct, but also to investigate the existence of a possible link between racist attitudes and an act of violence if an inference of discrimination is to be rebutted (see *Abdu v. Bulgaria*, cited above, and *B.S. v. Spain*, no 47159/08, §§ 58-60, 24 July 2012).[35] The respondent State, however has not undertaken any effective investigation into the specific allegations. The only investigation conducted by the relevant authorities concerning the enquiries sent to various schools for the purpose of identifying Georgian pupils was illusory, as illustrated by the imposition of purely nominal penalties (see paragraphs 37 and 145). This, among other factors, allowed the Court to conclude that "evidence submitted by the respondent Government.... is not capable of refuting the allegations of "official tolerance" of such illegal acts by the Russian authorities" (see paragraph 146)". This situation is further aggravated in the light of the fact that impunity for hate crimes against members of ethnic, religious and national minorities has been a particularly acute problem in the respondent State.[36]

35. James A. Goldston, "Race Discrimination in Europe: Problems and Prospects" EHRLR, Issue 5, Sweet & Maxwell LDT, 1999, pp. 463-83.

36. See ECRI Third report on the Russian Federation, §§50 and 54; ECRI Fourth report on the Russian Federation §§80-81; Human Rights First, Violent Hate Crime in the Russian Federation p. 2. Available at: https://www.humanrightsfirst.org/wp-content/uploads/pdf/080908-FD-individual-upr-russian-fed.pdf, accessed 24.02.2014; Amnesty International Russian Federation. Violent Racism Out of Control, EUR 46/022/2006, 3 May 2006, available at: http://www.amnesty.org/en/library/asset/EUR46/022/2006/en/35a59479-d432-11dd-8743-d305bea2b2c7/eur460222006en.html#0.3.3.2.Citizenship%20issues|outline, accessed on 14.05.2013.

Having regard to all the above-mentioned factors, it is evident that at the material time Georgians – being the victims of racial discrimination – were singled out for differential treatment publicly and with the aim, among other things, of causing humiliation and debasement that represents an administrative practice of degrading treatment for the purposes of Article 3 of the Convention.

IV. Violation of Article 3 of the Convention based on the conditions of expulsion

Torture and inhuman and degrading treatment are prohibited in all circumstances. Inhuman treatment includes such treatment as deliberately causing severe mental and physical suffering. While examining the violation of Article 3, account should be taken of the cumulative effects of the conditions, and specific allegations (see, *mutatis mutandis*, *Idalov*, [GC], no. 5826/03, § 94, 22 May 2012).

The Court has never been seized with an application regarding transport conditions during expulsion; it has, however, found a breach of Article 3 in cases involving poor transport conditions of regular detainees (see, among others, *Khudoyorov v. Russia*, no. 6847/02, §§ 116-20, ECHR 2005-X, and *Yakovenko v. Ukraine* (no. 15825/06, § 113, 25 October 2007). In *Pantea v. Romania* (no. 33343/96, §§ 186-87, 3 September 2003*)*, the Court held that transport conditions might constitute either an independent or an aggravating issue, and combined with other aspects, could lead to a violation of Article 3 of the Convention. The Court should have used the opportunity, as it usually does, to develop its jurisprudence in relation to transport conditions during expulsion procedures with regard to Article 3, especially given that there are no detailed regulations regarding methods of expulsion of aliens in international and regional human-rights instruments as such cases are covered by general provisions emanating from States' international obligations.[37]

The European Committee for the Prevention of Torture (CPT) has developed special guidelines on deportation procedures by air. When assessing the compatibility of the process with the relevant European standards, the CPT monitors the whole period from detention to deportation, since "deportation operations by air entail a manifest risk of inhuman and degrading treatment. This risk exists both throughout preparations for

37. Catherine Phuong, "Minimum Standards for Return Procedures and International Human Rights Law", European Journal of Migration and Law 9 (2007), p. 120; Walter Kälin, "Aliens, Expulsion and Deportation", 2013 Max Planck Institution for Comparative Public Law and International law, Heidelberg and Oxford University Press, Max Planck online dictionary, as of October 2010, §21.

deportation and during the actual flight."[38] The Parliamentary Assembly also voiced its concern with regard to protecting safety and dignity during expulsions.[39] Furthermore, the Committee of Ministers, in its Guidelines for Forced Return, emphasises the need to ensure that an alien is "fit to fly" especially in cases of removal by air.[40]

According to the UN Human Rights Committee, States are obliged to ensure deportation without infringement of the rights and dignity of deportees especially if during the expulsion such provisions as respect for the right to life and prohibition of torture, inhuman or degrading treatment are triggered.[41] The requirement to implement deportation having due regard to the human rights and dignity of aliens was voiced by the UNHCR, deploring practices of return that endanger physical safety and reiterating that "irrespective of the status of the persons concerned, returns should be undertaken in a humane manner and in full respect for their human rights and dignity and without resort to excessive force".[42]

There is a consensus among migration-law experts that expulsion has to be carried out in accordance with the general standards of international law on the treatment of aliens, with due regard being paid to dignity and basic human rights[43] and should not be implemented "at all costs".[44] It is particularly important to ensure that the conditions surrounding the expulsion are humane, expulsion is well prepared and coordinated, no bodily harm is caused to expellees and they are granted with sufficient time to prepare their departure. Adequate precautions have to be taken to ensure that the expulsion does not cause additional, unnecessary hardship."[45]

In the particular circumstances of the case, the Court should have examined the whole period from detention to deportation in the light of

38. "Deportation Procedures by Air", Extract from the 13th General Report on the CPT's Activities, CPT/Inf (2003) 35, 10 September 2003, §§ 28, 31.
39. Parliamentary Assembly of the Council of Europe Recommendation 1547 (2002), "Expulsion Procedures in Conformity with Human Rights and Enforced with Respect for Safety and Dignity".
40. Council of Europe: Committee of Ministers, Twenty Guidelines on Forced Return, 4 May 2005, Guideline 16.
41. See UN Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee, Switzerland, UN Doc CCPR/CO/73/CH, 12 November 2001, §13, UN Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Concluding Observations on Belgium, CCPR/C/79/Add.99, 19 November 1998, §15.
42. Executive Committee Conclusion on International Protection, Conclusion No. 85 (XLIX), 9 October 1998, lit. bb.
43. Guy S. Goodwin-Gill, "The Limits of the Power of Expulsion in Public International Law", cited above, p. 155.
44. See "Twenty Guidelines on Forced Return", cited above, Guideline 17.
45. Jean-Marie Henckaerts, "Mass Expulsion in Modern International law and Practice", cited above, pp. 40-41.

Article 3 as a "continuing situation" (see, *mutatis mutandis*, among other authorities, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 75, 10 January 2012; *Lutokhin v. Russia*, no. 12008/03, §§ 40-42, 8 April 2010; *Seleznev v. Russia*, no. 15591/03, § 36, 26 June 2008; and *Guliyev v. Russia*, no. 24650/02, § 33, 19 June 2008). It is apparent from the witness statements and the reports by the international governmental and non-governmental organisations that Article 3 was violated in detention facilities (rightly found by the Court to be contrary to Article 3, see paragraph 205), as well as during the transport of deportees from detention centres to airports and in the process of their removal by air (see paragraphs 57, 72-74, and Annex, §§ 5-13).

While I accept that where conditions of detention are in dispute, there is no need to establish the veracity of each and every disputed or contentious point if there has been a violation of Article 3 on the basis of any serious allegation which the respondent Government do not dispute (see paragraph 194), such an approach cannot, however, rectify inhuman treatment that was inflicted on expellees outside the actual places of detention. Where specific allegations regarding a breach of Article 3 are made (see, *mutatis mutandis, Idalov*, cited above, § 94) that go well beyond the long-recognised problems of detention conditions in the respondent State, the Convention protection should extend to and not cease outside the detention facilities.

The majority of Georgians were arrested and detained in Moscow and St Petersburg – two cities with the highest rates of congestion – and were expelled from Moscow airports. Transport from the detention facilities to the airports took an excessively long time: sometimes as much as 9-12 hours. These facts cannot be disregarded, especially in conjunction with the conditions and treatment that the expellees were subjected to first in the detention facilities and subsequently in the buses/vans. Specifically, harsh transport conditions became a tool for the relevant authorities to inflict excessive humiliation on the deportees. Witnesses noted that the buses transporting them to the airport were very dirty; there was no fresh air; deportees were not given access to a toilet; in some cases electric shocks were applied them; and police officers extorted money for various needs (see Annex, §§ 7-9, 11). For example, witness no. 4 indicated that *"vans were driving slowly and every time we wanted to have a smoke or wanted to go to the toilet we had to pay for it".*[46] Many witnesses stressed that during the slow journey to the airports they were not allowed to open windows. Allegedly, this was a reason for the death of a Georgian national, Mr Tengiz Togonidze, who suffered from acute asthma. He was detained in the St Petersburg detention centre for foreign nationals and died during transport, immediately after he had left a bus following a long drive to

46. Witness Statement no. 4, Verbatim Record, p. 65

Moscow airport (see paragraph 72). Two other Georgians died in detention centres owing to lack of medical assistance.

The Court should also have attached particular importance to the fact that, according to the witness statements, between three and five OMON officers were present during every means of transport, whether by bus or van (see Annex, §§ 5, 7, 8, 11). Under the Russian legislation, the OMON is used in cases of security concerns, including during mass disturbances. Its officers undergo special training and are more heavily armed than the ordinary police. The presence of these officers in buses/vans represented an additional factor of emotional/psychological distress for the expellees and was clearly not dictated by circumstances of necessity. The witness testimonies also indicate that the Russian authorities treated the expellees as criminals. Such an approach contravenes internationally accepted expulsion procedures according to which an expelling State should "ensure the expelled persons are not considered criminals".[47]

The Court should also have examined the conditions of Georgian nationals in the cargo plane of the Ministry of Emergency Situations (IL 76) used to deport up to 150 passengers on 6 October 2006. Witnesses and the international governmental and non-governmental organisations give concordant descriptions to the effect that the flight conditions in the cargo plane were particularly alarming (see paragraphs 57, 72, 74). Witness no. 5 described the flight conditions as follows: "*[W]e were packed like sardines, I couldn't imagine that so many people could fit in one plane... I would not believe that I would come home alive and I think that was a general feeling*".[48] Unbearable conditions in the cargo plane were assessed by the PACE in § 57 of its report in the following terms "*[transportation by cargo plane] was done in violation of the norms of the International Civil Aviation Organization as such transportation of passengers is life-threatening.*" Although States can choose the means of transport for expulsion, they have an obligation to ensure adequate conditions so that the life, health and dignity of deportees are respected.

Due to the absolute character of Article 3 enshrining fundamental values of democratic society, its requirements should be respected at every phase of expulsion. On the basis of all the above-mentioned factors, the question arises as to whether it was acceptable for the Court to examine a violation of Article 3 exclusively with regard to the detention conditions and without an assessment of a "continuing situation", including the transport conditions and the method of expulsion of Georgians, especially in the light of the particularly vulnerable situation in which these individuals found themselves.

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47. Parliamentary Assembly Recommendation 1547 (2002), cited above, §h(vii); See also François Crépeau, "Migrants Rights are Human Rights". Interights Bulletin, Volume17, No. 1, 2012, p.4.

48. Witness Statement no. 5, Verbatim Record, p. 89.

In the specific circumstances of the present case the Court should have found that the expulsion conditions also caused undeniable suffering to Georgians that should be regarded as both inhuman and degrading treatment amounting to an administrative practice in breach of Article 3 of the Convention. It also follows that there was a breach of Article 13 in conjunction with Article 3 in relation to the conditions of expulsion.

V. Violation of Article 1 of Protocol No. 7 to the Convention

The present case has revealed that there may be situations where aliens are not "lawful residents" for the purposes of Article 1 of Protocol No.7 only or primarily on account of legislative, structural or other problems in a receiving State. In these circumstances such persons should be considered as *de facto* lawfully resident aliens and hence should fully benefit from the guarantees of Article 1 of Protocol No.7.[49] In recent years there has been a marked trend towards human rights based regulations in Europe[50] in the area of migration and the extension of the principle of procedural (minimum) safeguards to "unlawful" aliens in European and international law.[51]

49. For criticism associated with the legal framework of Article 1 of Protocol No. 7 and the need for flexibility in applying it, see Jean-Marie Henkaerts "Mass Expulsion in Modern International law", cited above, pp. 37-39.

50. Albert Kraler, "Fixing, Adjusting, Regulating, Protecting Human Rights – The Shifting Uses of Regularizations on the European Union", European Journal of Migration and Law 13, Issue 3, 2011, p. 303.

51. See Twenty Guidelines on Forced Return, cited above, Guideline 2; Report of the International Law Commission on the work of its fifty-second session, 1 May - 9 June and 10 July - 18 August 2000, Syllabuses on Topics Recommended for Inclusion in the Long-term Program of Work of The Commission, 4. Expulsion of Aliens (Emmanuel A. Addo), pp. 142-3; Sean D. Murphy, The Expulsion of Aliens and Other Topics: The Sixty-Fourth Session of the International Law Commission, George Washington School of Law Faculty Publications & Other Works, 2013, pp. 4-7 available at: http://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1910&context=faculty_publications, accessed on 22.02.2014; Draft Articles on the Expulsion of Aliens, Art. 1(1). Report of the International Law Commission on the Work of its Sixty-Fourth Session, A/CN.4/L.797.

While I agree that States have a sovereign right to establish their own immigration policies (see paragraph 177 of the judgment), sovereignty should not be a negative concept by which States barricade themselves against international scrutiny and involvement, but rather as a positive one entailing responsibility for the protection and general welfare of everyone under their jurisdiction.[52] Appreciating modern-day challenges of migration control and the standards established by the Convention, the problem at stake is the implementation of a discretionary power of a State, which by its nature cannot be unlimited, given that abuse thereof may lead to violation of the Convention and general international law (see, among others, *Chahal v. the United Kingdom* [GC], no.22414/93, § 73, 15 November 1996, and *Ahmed v. Austria* no. 25964/94, § 38, 17 December 1996). That power must be exercised in such a way as not to infringe rights under the Convention and an individual should be expelled only "in pursuance of a decision reached in accordance with law" and subject to the exercise of certain procedural guarantees (see *Nolan and K. v. Russia,* no. 2512/04, § 114, 12 February 2009).

According to the Court's case-law, the notion of "expulsion" under Article 1 of Protocol No. 7 of the Convention, which provides protection to aliens lawfully residing in a Contracting State, is an autonomous concept. The Court has shown flexibility in applying Article 1 of Protocol No. 7 despite the absence of the formal legal status of the applicant (see, for example, *Nolan and K.*, cited above, § 111).

In the present case, the majority considered that there had been no violation of Article 1 of Protocol No. 7 because all the Georgians arrested and expelled from the respondent State were unlawful residents (see paragraphs 229 and 231). I cannot agree with this conclusion since it is not supported by the available evidence and even contradicts the Court's own finding in paragraph 42, as will be explained below. While some of the expellees were indeed illegally present in the respondent State, this circumstance should not have led the Court to make such an absolute assertion. This consideration also finds resonance in the position of the respondent State, which does not deny that there were exceptions when legally present Georgian nationals were expelled (see paragraph 227). The expulsion of Georgians legally present in the respondent State was also

52. Francis Madding Deng, "The Global Challenge of Internal Displacement", Journal of Law & Policy, Vol. 5, 2001, p. 144, cited in Satvinder S. Juss, International Migration and Global Justice (Law and Migration), Ashgate Publishing Company, 2006, p. 48; See also Satvinder S. Juss. "Free movement and the World Order", International Journal of Refugee Law, Vol.16, No.3. Oxford University Press 2004, pp. 289-335, Third report on the Expulsion of Aliens, By Mr Maurice Kamto, Special Rapporteur A/CN.4/581, International Law Commission Fifty-ninth session, Geneva, 7 May-8 June and 9 July-10 August 2007, pp. 8-10.

corroborated by the international governmental and non-governmental organisations (see paragraphs 65 and 172).

Furthermore, it is noteworthy that owing to the peculiarities of inter-State applications the Court was neither required to nor technically capable of establishing the legal status of each and every deportee (see paragraph 128). The Court had difficulty even defining the legal status of seven witnesses interviewed during the witness hearing, emphasizing that "their legal situation in the Russian Federation often appeared confused" and came to conclusion that "the majority" (**but not all**) of Georgian nationals who gave evidence at the witness hearing were formally unlawfully resident in the Russian Federation (see paragraph 42). In the light of all the above-mentioned factors, and without thoroughly analysing the main aspects and the reasons connected to the legal status of the expellees, the general conclusion regarding the illegal nature of the presence of Georgians on the territory of the respondent State is not accurate.

Russian migration legislation and practices made it impossible for most migrants to "legalise" their presence in the respondent State. This problem affected the status of expelled Georgians as well. The Court notes the international governmental and non-governmental organisations' assessment of the Russian migration legislation and practice as "complex" and placing migrants in an insecure position (see paragraph 76). While "complexity" is a common feature in such an extensive and intricate field as migration policy, in the present case the structural problems triggered by corruption, discrimination, xenophobia, mismanagement and arbitrariness lie at the very heart of this "complexity" and increase the vulnerability of migrants as illustrated below.

The reform of the residence registration system, being a part of the general migration policy, was among the Russian Federation's obligations on accession to the Council of Europe and the country has subsequently been repeatedly reminded of this commitment (see *Bolat v. Russia*, no. 14139/03, § 50, 5 October 2006).[53] The internal registration system, known as *propiska*, is one of the sources of the problems. In addition, a large number of citizens of the former Soviet Union (Russia being the

53. Parliamentary Assembly, Opinion No 193 (1996) on Russia's Request for Membership of the Council of Europe, §7 viii; Parliamentary Assembly Resolution 1277 (2002) Honouring of obligations and commitments by the Russian Federation, §8 xii, Committee of Ministers. *Propiska* system applied to migrants, asylum-seekers and refugees in Council of Europe member states: effects and remedies Parliamentary Assembly Recommendation 1544 (2001) (Reply adopted by the Committee of Ministers on 27 February 2003 at the 829th meeting of the Ministers' Deputies), CM/AS(2003)Rec1544 final 28 February 2003, Resolution CM/ResCMN(2007)7 on the implementation of the Framework Convention for the Protection of National Minorities by the Russian Federation; Guidelines on the Treatment of Chechen Internally Displaced Persons (IDPs), Asylum Seekers and Refugees in Europe, European Council on Refugees and Exiles, PP1/03/2007/EXT/CR, available at: http://www.unhcr.org/refworld/pdfid/4603bb602.pdf.

successor of the Soviet Union), despite having lived for a long time or permanently in Russia, have been considered as illegal migrants since the entry into force of the 2002 Federal Laws on 1) Citizenship and 2) the Legal Status of Foreign Nationals. Systemic problems related to overwhelming bureaucracy in obtaining registration and work permits, regular labour inspections, arbitrary refusal or unlawful additional requirements imposed by police, as well as concerns regarding the use of residence registration as a means of discrimination against certain ethnic groups and the existence of a mechanism of extortion have been voiced by many international bodies.[54] The PACE report (§ 54) concludes that it is beyond doubt that irregularities in the legal status of many Georgians residing in Russia at the material time were caused by a "structural problem of Russia's immigration policies".

The complexity of the immigration process and the difficulty in communicating with the Federal Migration Services – the entity officially in charge of registration issues – was such that migrants, including Georgians, constantly applied for assistance to many private agencies operating widely in the respondent State, some of them apparently illegally (see paragraph 42)[55]. The Russian authorities were not able to provide any example of making such companies accountable for their illegal actions (see paragraph 44). Under these conditions, it is obvious that Georgians, acting in good faith, had a legitimate expectation that their registration would be carried out in compliance with the law in force and never questioned the legality of the services provided by these agencies (see, *mutatis mutandis*, *Lelas v. Croatia*, no. 55555/08, § 74, 20 May 2010) while their registration documents created no serious problems over the years (payment of a sum of money – see paragraph 42, which actually amounted to a bribe, was not an indication that the document was fraudulent).

Various aspects of the deficiencies related to Russian migration legislation and practice, such as the creation of artificial impediments in granting or extending registration (see *Bolat v. Russia*, cited above), problems associated with the status of citizens of the former USSR (see *Tatishvili v. Russia*, no. 1509/02, 22 February 2007), the practice of

54. Among others, see Concluding Observations of the Committee on Elimination of All forms of Discrimination to Russian Federation 2003, cited above, §§13-14; see also Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, cited above, §§39-40, 74, 76, ECRI, Third Report cited above, pp.16, 19, 37-40, ECRI's Fourth Report, cited above, pp. 10-11, 20-21, 32-33; HRW, Singled Out, cited above, p. 26.

55. Andrei Yakimov, "Legal Lawlessness", Bulletin No 30, 16 May 2011, The Anti-discrimination Center "Memorial", available at: http://adcmemorial.org/www/218.html?lang=en, accessed on 28.05.2012, "Tajikistan: Exporting the Workforce – At What Price? Tajik Migrant Workers Need Increased Protection", Preliminary Conclusions of an FIDH Investigative Mission, May 2011, available at: http://www2.ohchr.org/english/bodies/cmw/docs/ngos/FIDH_Tajikistan15.pdf, accessed on 22.05. 2012.

arbitrary cancellation of visas (see *Nolan and K. v. Russia, cited above*) and the discriminatory application of domestic procedures (see *Timishev*, cited above), have been examined by the Court and found to be contrary to the Convention.

The manner in which expulsion procedures were conducted against Georgians at the material time made it impossible to carry out a reasonable and objective assessment of each individual case leading to a violation of Article 4 of Protocol No. 4 to the Convention (see paragraphs 175 and 178). This, among other things, implies that the domestic courts' examination of these cases excluded any determination of the individual status of the deportees (especially in the absence of relevant databases), including whether the case concerned former USSR citizens, stateless persons, or refugees, or whether visa/and or registration documents were indeed forged as often claimed by the authorities purely on the basis of a visual inspection of documents (instances of passports containing a visa and a registration card being destroyed by law-enforcement officials were also reported). In fact, many of the victims referred to in the case file are refugees from Abkhazia, Georgia. It is widely acknowledged that former inhabitants of Abkhazia, who came to Russia as a result of the 1992-93 armed conflict, were largely affected by the persecution campaign.[56] The case of Manana Jabelia, a Georgian refugee who died in the detention facility, is self-evident. She was held in detention contrary to the Moscow City Court's decision overturning her expulsion order.[57] Furthermore, the information note of the Federal Migration Service dated 18 October 2006 indicates the measures taken to reinforce supervision of the lawfulness of Georgian citizens' residence, including "suspension of the issuing of certain documents to Georgian citizens (acquisition of Russian nationality, registration documents, temporary and permanent residence permits)" (see paragraph 31). Hence it follows that in the preceding period the authorities, among other actions, artificially caused the conversion of many Georgians into irregular migrants thus creating the preconditions for their expulsion.

The vast majority of Georgians had valid long-term business visas. According to statistical data, the Consular Office of the Russian Federation in Georgia issued 70,000 business visas to Georgians in 2004, 90,000 in 2005, and 75,000 in the first half of 2006 (see Annex, § 24) while business activities and the exchange of scientific information between the two countries were already hindered a long time ago. It is acknowledged that the system of migration and employment for foreigners not only fails to eliminate irregular immigration, but actually encourages it[58] and the

56. See Gannushkina, "Human Rights in Russia", cited above, p.4; "On anti-Georgian Campaign Launched on the Territory of Russia", Memorial Human Rights Center, cited above, p.1; HRW, "Singled Out", cited above, pp. 63-65; PACE report, § 62.
57. HRW, "Singled Out", cited above, see pp. 55-57.
58. ECRI, Fourth Report, cited above, pp. 32-33.

authorities benefit from the bureaucratic procedures.[59] In fact, in the Russian context possession of a valid long-term business visa creates a legitimate expectation of legal residence and admittance of an individual to seek work. The Russian authorities were, or should have been, aware of this situation. Therefore, the respondent State should bear responsibility for creating and maintaining a system which on the one hand allowed Georgians to receive long-term business visas and on the other made it practically impossible for them to fully legalise their presence and work in the country.

State policies and ambiguity of the rules regarding migration status and expulsion of aliens represent only part of the defective system which carries the risk of being used against minorities "should political disputes emerge between Russia and the migrants' home country".[60] The present case is an example of the materialisation of this risk, in which the system was fully directed against Georgians in the light of intensive political and media encouragement. This is particularly striking when is recalled that the vast majority of Georgians lived in the Russian Federation for several years, were frequently stopped and checked but were never subject to forcible expulsion (see paragraph 42).

The finding of no violation of Article 1 of Protocol No. 7 in the present case leaves the respondent State unaccountable for its actions, thus excluding any guarantee that a similar practice of misuse of the registration system by disregarding the safeguards enshrined in Article 1 of Protocol No. 7 of the Convention will not persist. The risk of a restrictive interpretation of Article 1 of Protocol No. 7 was recognised by the Court in the case of *Nolan and K.* (cited above, § 111). In the latter case the Court considered that cancellation of a visa by the border police "[could not] deprive the applicant of his status of "lawful resident", given that "were it otherwise, a decision to expel would in itself remove the individual from the protection of Article 1 of Protocol No. 7 with the result that its guarantees would have no sphere of application at all". The threat of removing procedural protection from aliens is further aggravated by the special scope of Article 4 of Protocol No. 4 to the Convention and the inapplicability of Article 6 of the Convention to migration claims (see, for example, *Maaouia v. France*, no. 39652/98, § 40, 5 October 2000) ultimately limiting the safeguards provided for by Article 13 of the Convention (see *Kuric and Others v. Slovenia*, §§ 369-72 cited above, and *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

The respondent State manipulates the existing deficient migration legislation and practices and shows no political will to resolve long-standing problems; at the same time, it never hesitates to grant citizenship, through simplified procedures, to the residents of former Soviet Republics when this

59. Report of the Commissioner for Human Rights in the Russian Federation for the Year 2007, available in Russian at: http://ombudsmanrf.org/doklady, pp. 90-91.
60. See, HRW, "Singled Out", cited above, p. 2.

is politically advantageous. In the light of this situation, the Court should have extended the protection of Article 1 of Protocol No. 7 to those aliens who were not capable of regulating their stay in the respondent State owing to the defective migration system. To do otherwise is tantamount to depriving those most vulnerable of certain fundamental guarantees provided for by the Convention. In addition, it should also be borne in mind that among the expellees were Georgians residing perfectly legally in the Russian Federation and those who artificially became "unlawful" migrants by the actions of the authorities themselves.

Having regard to the above-mentioned factors and considering that neither interests of public order nor reasons of national security justifying expulsions existed, I consider that during the period in question the respondent State also arrested, detained and expelled Georgians lawfully resident in the territory of the Russian Federation and that this amounted to an administrative practice in breach of Article 1 of Protocol No. 7 to the Convention.

DISSENTING OPINION OF JUDGE DEDOV

I regret that I cannot share the opinion of the majority, who have found a violation of various Articles of the Convention in the present case. In my view, the Court has taken a controversial approach to the establishment of the facts, assessment of the evidence and application of its own case-law which is hardly acceptable in a situation of strong political opposition between the high authorities of the applicant and respondent States. In such a situation the Court has to carefully examine all the materials and make well-founded conclusions in order to avoid any concerns being raised about its impartiality. This task would be much easier if the hearings and deliberations in any inter-State case were held by the Court only after peaceful negotiations had been conducted between the parties to mitigate political and emotional tensions. Without such measures a rational analysis of cases like this can never be successful.

Establishment of facts

Generally, international reports are very helpful in extradition cases in establishing the risk of ill-treatment. They are considered as a reliable source of information if they are of a neutral or official character, up to date and contain information about concrete facts without allegations and value judgments which may impair the impartiality of the Court. In the present case the Court has established the facts on the basis of various reports by international organisations, quoting from them at length throughout the judgment, in particular in paragraphs 40, 63-71, 114, 148, 172 and 173, notwithstanding the fact that the international organisations have already made their own assessments and conclusions but expressed these in the form of allegations and value judgments such as: “mass expulsion”, “mass arrests”, “a campaign conducted in such an ostensible manner”, “repressive orders targeting Georgians”, “arrestees have no right to a lawyer”, “production line ... without those concerned by the expulsion orders being present”, “collusion between the police and the judicial authorities”, “selective and intentional persecution campaign based on ethnic grounds”, “visas and registration papers legally obtained were cancelled, people were illegally detained and expelled”, “organized persecution of Georgian nationals”, “harassment of a specific group of people was a form of inadmissible discrimination”, “mass miscarriage of justice”, “evidence of collusion between the police and the courts”, “[Georgians] were presented as a group before the courts”, “deliberate policy of detention and expulsion”, “people are being illegally detained and expelled”, “flagrant denial of justice and circumvention of the procedures”, “arbitrary and illegal detention and expulsion”, “many were effectively denied the right to appeal”, and so on.

The international organisations made their overall legal assessment of the events in their reports without providing any documentary evidence to support their conclusions, and the Court has accepted their approach without verifying the actual facts. It appears that the Court has accepted the results of their legal assessment and established the facts on the basis of the reports (see paragraphs 136-39, 152, 153, 159, 185 and 196 of the judgment).

In particular, the statement of the PACE Monitoring Committee about "the complexity of the procedures for obtaining ... permits, which put migrants in an insecure position" (see paragraph 76) was made without any analysis of Russian law and the Court was not in a position to make such an analysis either. The witness statements of Georgian citizens are expressed in similar terms, such as "summarily imposed administrative penalties" (see paragraph 45). The Court has followed all these statements and reproduced them in its own judgment. Furthermore, the Court has concluded that the Georgian witnesses made "contradictory statements" which were at the same time "consistent and correspond[ed] to those of the international organisations" (see paragraph 196).

I understand that such organisations, serving as human-rights activists, are committed to doing everything possible to protect human rights and are not limited by any instruments in the achievement of their goals, so such reports may exaggerate the gravity of violations. However, if the Court is to be guided and limited by universal principles of fair trial, it should not allow its impartiality to be called into question because of emotional statements made in the reports.

The above-mentioned procedural deficiencies lead to problems with application of the Court's own case-law in relation to administrative practice and collective expulsion.

Administrative practice

Although the existence of an administrative practice was established by the Court in paragraphs 159 and 178, it is difficult to understand why the issue of an administrative practice was raised in this case since collective expulsion was allegedly exercised over a very short period of time and no complaints were raised before or after the impugned events. I presume that the status of an inter-State case does not in itself lead to a finding of the existence of an administrative practice.

The Court established the existence of an administrative practice in two inter-State cases which differ substantially from this case. In *Ireland v. the United Kingdom* the events related to the years between 1971 and 1975, and in *France, Norway, Denmark, Sweden, Netherlands v. Turkey* there were actual violations of Article 6 over three years, from 1980 to 1982. In the present case the action in question was organised within the space of one or two months and never occurred before or afterwards. The measure was

applied not to all Georgian citizens, but to those who had illegally stayed in Russia, and many officials were punished for their mistakes.

An administrative practice consists of a repetition of violent acts and their official tolerance. This means that the Court should first find a violation as a result of one act or a short series of acts and then establish their repetition and official tolerance. In this case the Court has departed from that approach by establishing the existence of an administrative practice without finding even one concrete example of a violation based on documentary evidence. It has wrongly applied the concept of an administrative practice to collective expulsion, as in the latter case the Court should verify the existence of the collective nature of an action but not the repetition of isolated acts.

As regards tolerance in the sense of an administrative practice, this has not been confirmed by the Court. The "secret" instructions were very problematic in the eyes of the Court. However, the police orders to search for unlawful residents cannot themselves be regarded as violent acts. To overcome this obvious obstacle the Court – at the cost of objectivity – has established the existence of an administrative practice which involves not just the police but all other authorities, including supervising prosecutors and judges. Furthermore, the Court has accepted in paragraph 159 that it was a "coordinated policy of arresting, detaining and expelling Georgian nationals" and that conclusion is based on value judgments with no factual basis.

The instructions and circulars "to identify all citizens of the Republic of Georgia" were mitigated by the prosecutors, who were instructed to intensify their supervision of the actions of internal-affairs officials with a view to guaranteeing respect for the rights and freedoms of CIS nationals, including the right to be protected against discrimination, and disciplining officials (see paragraphs 37-38). Thus the task of the Russian authorities was to concentrate on those who were unlawfully resident in Russia.

Accordingly, I cannot accept that the assessment made by the Court in paragraphs 171-76 of the judgment is well-founded. The Court refers to "a production line", "collusion between the police and the judicial authorities", "thousands of expulsion orders", although the number does not matter; a "coordinated policy" with no factual basis other than the wording of the Instruction of 2 October 2006 ordering that "decisions be initiated before the Russian courts" which itself merely means that the administrative authorities are obliged to apply to the courts because the latter are empowered to make decisions on expulsion, so demonstrates that the procedure was conducted in accordance with domestic law.

Ultimately, in paragraphs 175 and 178 of the judgment, the Court has concluded that there was no "reasonable and objective examination of the particular case of each individual", but there is no indication of any individual circumstances being established by the Court in the judgment and

no assessment was made as to whether or not any of those circumstances were properly considered by the Russian judges and police officers. On the contrary, the Court is in possession of the expulsion files of Georgian witnesses provided by the respondent Government, but remains reluctant to take them into account.

I believe that the Instruction of 2 October 2006, which orders that "decisions be initiated before the courts", does not in itself mean that there was an organised and coordinated action against Georgians by Russian courts and prosecutors and thus that the courts were not impartial and independent, as was stated in various reports and easily accepted by the Court without verifying the facts. This Instruction merely obliges the authorities to bring actions in the courts as the judges alone are authorised to expel unlawful residents from Russia.

Collective expulsion

The "collective expulsion of aliens" within the meaning of Article 4 of Protocol No. 4 is defined by the Court as "any measure of the competent authority compelling aliens as a group to leave the country, except where such a measure is taken after and on the basis of a reasonable and objective examination of the particular cases of each individual alien of the group" (see *Henning Becker v. Denmark; Andric v. Croatia; and Čonka v. Belgium*). It means at the very least that the expulsion of a group of persons as a result of internal procedures does not automatically lead to the conclusion that there has been a "collective expulsion of aliens" (see *M.A. v Greece; Berisha and Haljiti v. "the former Yugoslav Republic of Macedonia"; and Dritsas v. Italy*).

It is clear, for example, from the case of *Hirsi Jamaa and Others v. Italy* that the removal of aliens to a third State was carried out without any examination of their cases by the competent (migration or judicial) authorities. As regards the particular circumstances of the individuals concerned, in the *Čonka v Belgium* case the authorities made no reference to the applications for asylum and concentrated only on the expiry of the three-month permit (see *Čonka*, cited above, §§ 61-63) issued to the four applicants. In the present case the applicant Government have not provided proof of any such claims or applications. By contrast, the expulsion decisions are evidence that the case of each Georgian citizen was reasonably and objectively examined by the Russian courts.

Establishment of the individual circumstances is vital for a reasonable judgment. This general approach has always been taken by the Court, in particular in the following manner: "the Court would not require evidence of individual circumstances only in the most extreme cases where the general situation of violence in the country of destination is of such intensity as to create a real risk that any removal to that country would

necessarily violate Article 3 (see *Savriddin Dzhurayev v. Russia*, no. 71386/10, § 153, 25 April 2013; *N.A. v. the United Kingdom*, no. 25904/07, §§ 115-16, 17 July 2008; and *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, § 217, 28 June 2011). In previous cases the Court has preferred to establish the individual circumstances, but that approach was not taken in this case.

The applicant Government stated that four persons had valid visas which had expired in 2007, without attaching any copies of those visas and expulsion decisions or any other documents to their application. It seems unrealistic that the Russian court would conclude that a person was illegally resident if he or she had a valid visa, especially as the respondent State presumably acted in good faith (according to the Court's case-law) and there is a very strong presumption that Russian judges abide by their oaths and duties. By contrast, all documents provided to the Court by the Russian Government prove that the police officers and judges carefully examined all the individual circumstances of each person.

Moreover, according to the judgments of the Russian courts eligible for examination by the Court, the Russian judges reviewed and assessed the particular circumstances of each person. However, in my view, the Court failed to examine the relevant documentation or to assess it impartially.

I cannot believe that the Russian judges (when issuing the expulsion orders) said that the only reason was because the persons concerned were Georgians or that they advised them not to appeal. That would undermine the independence, impartiality and professional aptitude of all judges in Russia. I understand that in such a politically sensitive case it is not easy to remain within the judicial terminology used in the Convention (collective expulsion) and avoid using politically loaded terms and value judgments such as "mass expulsion", "collusion" between authorities, "coordinated policy", "reprisal". However, the international reports containing such politically loaded value judgments cannot be used as evidence before the Court.

I do not doubt the capacity of Russian courts or the professional ethics of Russian judges. I would need to see proof that a Russian judge could expel a trainee who was lawfully registered in a Russian university or any other high-ranking professional who worked with Russian specialists. Neither the reports, nor the applicant Government, nor their witnesses, nor ultimately the judgment itself, provide any examples or concrete evidence to support their statements about a miscarriage of justice. But anyone can find thousands of examples of Georgians who lawfully stay in Russia and make successful professional careers for themselves there.

Noting that more than 58,000 persons in total were expelled in 2006, the expulsion of 4,500 Georgian citizens cannot be a basis for concluding that the procedure did not afford sufficient guarantees that the personal circumstances of each of those concerned had been genuinely and

individually taken into account (see *Čonka*, cited above, § 63). Even if it could, the Court also needs to state concrete examples and concrete personal circumstances to support that conclusion. The reference to thousands of orders issued by the courts (with a huge capacity of more than 30,000 judges) or to "a coordinated policy" (which implies a lack of impartiality of the judges) in paragraph 176 does not satisfy the criteria established in the Court's case-law.

Assessment of evidence

The above-mentioned deficiencies have led to a one-sided assessment of the evidence by the Court. In particular, the Court has accepted allegations and value judgments regarding alleged summary procedures and mass expulsions without considering any decisions of the Russian courts and ignoring the judgments of the appellate courts evidencing numerous successful appeals. According to the appeal judgments, all applicants were represented by lawyers or relatives. Expulsion decisions were quashed on the basis of the individual circumstances of each applicant: lawful residence of relatives, ownership of immovable property, age and poor state of health, medical treatment and status of Abkhazian refugees.

The Court is in possession of files of the Georgian witnesses containing documents which prove that they were not lawfully resident in Russian territory. Their statements to the Court contradict the expulsion decisions, police enquiries, their own written explanations and other documents. According to the decisions, the witnesses appeared before the Russian judges and made their statements and gave explanations which were reasonably assessed by the national courts. These facts refute allegations of a summary procedure.

Moreover, the Court states in paragraph 85 (iv) of the judgment that only 42 appeal decisions concern Georgian nationals expelled in the period in question, which is not correct as all 86 appeals refer to the impugned events if the date of the first-instance court's decision is taken into account. I presume there were hundreds of unsuccessful appeals. The Court did not mention that the Russian Government had submitted examples of successful appeals and it gave no reasons why the appeals were not relevant to conclude that this was not a coordinated action or a miscarriage of justice. In my view, in paragraph 158 of the judgment the Court has misconstrued the number of appeal decisions by failing to regard them as examples of successful appeals but interpreting them as an exhaustive and minimal number. That approach, which allows the Court to ignore the documentary evidence and to make one-sided conclusions, is, in my view, incompatible with the principle of a fair trial.

The Court also stated that only a small percentage of appeal decisions were delivered in Moscow and St Petersburg, yet it has established that

expulsion orders were issued in other regions of Russia and that the total number of expelled persons – amounting to thousands – concerned the whole country, whereas in Moscow and St Petersburg the number amounts to several hundred. This raises doubts about allegations of persistent and intolerable overcrowding in cells.

I am very sorry about those who died while in detention, and this fact should be subjected to the Court's scrutiny in order to obtain a legal assessment in terms of adequate medical assistance, but the Court has simply referred to a "large number of cases" where "it has consistently found a violation" (see paragraph 201). The Court has not given any detailed description of the conditions; nor has it considered whether there was distress or hardship of an intensity actually exceeding the unavoidable level of suffering inherent in detention as was done in both the principal cases of *Ananyev v. Russia* and *Idalov v. Russia* cited in § 192 of the judgment (see also *Shishkov v. Russia*, §§ 89-94, as an example of the general approach). In the case of *Idalov*, where the parties disagreed on most aspects of the conditions of detention, the Court noted that it had recently found a violation of Article 3 on account of overcrowding in the same remand prison (see *Skachkov v. Russia* and *Sudarkov v. Russia*) at around the same time as the facts in issue in that case (see *Idalov*, § 97). By contrast, in all extradition cases concerning the same period or following the impugned events, the applicants never complained about poor conditions of detention (see *Muminov v. Russia*, no. 42502/06, 11 December 2008; *Karimov v. Russia; Sidikovy v. Russia*; *Bakoyev v. Russia; Zokhidov v. Russia;* and *Azimov v. Russia).*

The Court did not find that any requests had been made by the Russian Ombudsman, the Consul of Georgia in the Russian Federation, prosecutors or other officials after their numerous inspections of the detention centres. All this information was provided by the Russian Government but again ignored by the Court. By contrast, in paragraphs 184-86 the Court has concluded that there was a violation of these rights on the basis of previous statements (collective expulsion, administrative practice and absence of effective remedies which I criticised above). It is interesting to note that the Court's case-law requires that an arrested person should be promptly brought before a judge who should speedily decide the lawfulness of his detention. This was done promptly and speedily, but again, in paragraphs 204 and 205 of the judgment, the Court has clearly refused to adopt its well-established approach in the present case and take into account the short period of detention.

The Russian Government have confirmed and proved that there were appeals and that those who voluntarily left the country were not prevented from appealing or hiring a lawyer, and had the time and opportunity to do so (see paragraph 85). However, the Court (as the master of its own procedure) has come to the exact opposite conclusion (see paragraphs 152-54).

The Court specifically noted the Russian Government's failure to provide it with monthly statistics. However, the Court has established a "sharp increase" in the number of expulsions (see paragraphs 131 and 135) without taking into account annual statistics and the fact that the total number of expelled persons in 2006 was ten times higher. It did not observe that the successful appeals were on grounds of personal circumstances and not just procedural ones (see paragraph 85 (iv)) and also diminished the significance of the appeal decisions by reducing the territory of action to the cities of Moscow and St Petersburg as if all the expelled persons lived in those two cities.

The Court has attached decisive weight to the absence of monthly statistics, concluding that the statistics provided by the Russian Government were not credible for the purpose of determining whether there was an administrative practice (see paragraph 134). At the same time the Court has considered irrelevant the figures in relation to the expulsion of immigrants from other States and, more importantly, has not mentioned the statistics produced by the Russian Supreme Court which prove that in 2005 the total number of expelled persons (about 79,000) was much higher than in 2006 (about 58,000), the year of the impugned events. In the following years the number of expulsions fell to 29,000 in 2007 and to 23,000 in 2008, but remained very high. Such a large number of expulsions cannot in themselves be considered as collective expulsions since such statistics are quite normal for the situation in Russia, where mass unlawful immigration has a strong historical and economic background, and therefore the impugned events do not look extraordinary. Moreover, according to the official statistics of the Federal Migration Service, in the "new Russia" period (1992-2006) more than 150,000 Georgian nationals were granted Russian citizenship, and more than 73,000 of them enjoyed that right within the five years preceding the impugned events.

Considering the situation as a whole, owing to the inter-State tensions and the suspension of all links between the two States (see paragraph 22), friendly relations between the authorities (but not between ordinary people) came to an end, which meant that the Russian authorities stopped tolerating the unlawful residence of many Georgians in Russian territory for many years. The message was so clear and evident that half the unlawful residents preferred to leave Russia voluntarily. That fact was mentioned in the judgment, but not properly assessed in accordance with the Court's case-law. For example, in the case of *De Bruin v. the Netherlands* (no. 9765/09, 27 July 2013, inadmissibility decision) the Court confirmed the State's authority to withdraw previous official tolerance,stating: "it cannot follow, however, that a "right" to commit acts prohibited by law can arise from the absence of sanctions, not even if public authority renounces the right to prosecute. Such renunciation, even if delivered in writing to a

particular individual, is not to be equated with a license granted in accordance with the law" (ibid., § 58).

Lastly, the Court found no violation of Article 1 of Protocol 7, confirming in paragraph 229 of the judgment that, "having regard to all the material in its possession, it has not been established that there were ... arrests and expulsions of Georgian nationals lawfully resident in the territory of the Russian Federation". This position of the Court can be interpreted as follows: although the Russian authorities expelled only unlawful residents, they violated the Convention prohibition on collective expulsion. This is a self-contradictory position. The Georgian Government had their own logic, persuading the Court that there had been a collective expulsion and that the expelled persons had valid permits to stay in Russian territory. This is why the Georgian Government complained under Article 1 of Protocol 7. However, the Court (as a master of its own procedure) preferred to take a completely different approach, which creates fresh doubts as to the justification, in terms of the rule of law, of the findings of violations.

ANNEX

List of witnesses heard by the Court at the Witness hearing conducted in Strasbourg from 31 January to 4 February 2011

A. Witnesses proposed by the applicant Government

1. **witness no. 1**[1]
2. **witness no. 2**
3. **witness no. 3**
4. **witness no. 4**
5. **witness no. 5**
6. **witness no. 6**
7. **witness no. 7**
8. **witness no. 8**
9. **Mr PATARIDZE Zurab,**

   Consul of Georgia in the Russian Federation at the material time

B. Witnesses proposed by the respondent Government

1. **Mr AZAROV Nikolay Petrovich,**

   Head of the Department of Immigration Control, Federal Migration Service, Moscow, at the time of the witness hearing; Deputy Head of the same department at the material time

1. The names of the Georgian witnesses who do not have an official function have been anonymised.

2. **Mr KARMOLIN Aleksey Aleksandrovich,**

Without employment at the time of the witness hearing; Inspector of the Group for Execution of the Administrative Legislation, Directorate of Internal Affairs for the District of "Khamovniki", Moscow, at the material time

3. **Mr KONDRATYEV Vladislav Yurevich,**

Head of the Division of Checkout Measures No. 2, Department of Immigration Control, Federal Migration Service, Moscow, at the time of the witness hearing; Inspector in the same department at the material time

4. **Mr KORMYSHOV Yevgeniy Ivanovich,**

Deputy Head of the Division for Navigation, Federal Marine and River Transport Agency at the time of the witness hearing as well as at the material time

5. **Ms KULAGINA Tatiyana Vasiliyevna,**

Senior Inspector, Department for the organisation of activities of the District Police Officers and District Supervision Officers in respect of Minors, Main Division of the Interior, Samara Region, at the time of the witness hearing; Inspector in the same department at the material time

6. **Mr MANERKIN Yevgeniy Nikolayevich,**

Head of the Division for Supervision of the Execution of Federal Legislation, Prosecutor's Office, Moscow, at the time of the witness hearing as well as at the material time

7. **Mr NIKISHKIN Konstantin Sergeyevich,**

Deputy Head of the Legal Department, Ministry of the Interior, Moscow, at the time of the witness hearing; member of another department at the material time

8. **Mr SHABAS Sergey Mikhaylovich,**

Deputy Head of the Department of the Interior, North-Eastern Administrative District, Moscow, at the time of the witness hearing; Deputy Head of the Civil Security Force in the same department at the material time

9. Mr SHEVCHENKO Kirill Dmitryevich,

Expert from the Russian representation with the International Organisation for Migration at the time of the witness hearing; Deputy Head of the Department of Immigration Control of the Federal Migration Service at the material time

10. Mr VASILYEV Valeriy Anatolyevich,

Adviser (Head of Department) to the Ministry of Foreign Affairs, Moscow, at the time of the witness hearing; Consul of the Russian Federation in Georgia at the material time

C. Witnesses chosen by the Court

1. Mr TUGUSHI George,

Public Defender (Ombudsman) in Georgia and member of the European Committee for the Prevention of Torture (CPT) at the time of the witness hearing, Human Rights Officer with the OSCE mission to Georgia at the material time

2. Mr EÖRSI Mátyás,

Rapporteur of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE) at the material time

Witness hearing summary

241. A delegation of five Grand Chamber judges composed of Josep Casadevall, Anatoly Kovler, Mark Villiger, Isabelle Berro-Lefèvre and Nona Tsotsoria held a witness hearing in camera in the Human Rights Building in Strasbourg from 31 January to 4 February 2011 in the presence of the parties' representatives.

242. The delegates heard twenty-one witnesses in total, nine of whom were proposed by the applicant Government, ten by the respondent Government and two chosen by the Court.

243. The witness statements can be summarised as follows.

A. Witnesses proposed by the applicant Government

244. The first nine witnesses (except for witness no. 8, wife of the late Mr Togonidze and who was an "indirect" witness to the events, and Mr Pataridze, Consul of Georgia in the Russian Federation at the material time) are Georgian nationals who were arrested, detained and expelled by

the Russian authorities. Their statements concerned the conditions of arrest, detention and expulsion in the autumn of 2006.

1. Witness no. 1, born in 1967, married, mother of two adult sons

245. She said that she had arrived in the Russian Federation in September 2006, that she was an "internally displaced person" from Abkhazia and that she had been arrested at her home in Moscow on 11 October 2006 with her two sons, then aged 18 and 20 respectively, by police officers from the Kuzminki District (Moscow). When she asked why she was being arrested, the police officers replied that an order had been issued for the arrest and detention of all Georgians. She had then been taken to a police station in the Kuzminki District in a cell called a "monkey cage" and had remained in police custody for two days and two nights, together with other male detainees whom she described as common criminals; she had been the only woman and the only Georgian amongst the detainees.

She described the conditions of detention in the "monkey cage" as inhuman, horrible and unbearable: there had been insufficient seating room for the 20 detainees, who had had to take turns sitting down, and when they had asked for water, they had been told they could drink the toilet water. On the second day her husband had visited her and brought her medicines (including an ointment).

She and 15 other Georgians had then been taken to a court, where they had gone before the judge one by one. She had been asked to sit down on a chair, and the judge had said: "you are going to be expelled, aren't you?" and when she had asked why she was going to be expelled the judge had answered: "it's because you have Saakashvili as President, you ought to talk to him" and she had not been allowed to speak. A police officer had then asked her to sign the court decision and the only thing she had understood was that she had 10 days in which to leave Russian territory; she had had neither a lawyer nor an interpreter, but had been so frightened for herself and her children that she had been ready to sign anything at all to be able to return to Georgia. The whole episode had lasted approximately 10 minutes. She stated that she had said she was ready to leave the territory of the Russian Federation by her own means, but that she had been told that she was going to be forcibly expelled as a detainee. She said she had signed a document saying that she had no financial means, and explained that another Russian police officer had advised her to make a statement to that effect.

She had subsequently been separated from her sons, gone back into the "monkey cage" and been subjected to a medical examination that had included a blood test.

She had then been detained for 4 days in a detention centre for women in Butyrskaya Prison in Moscow city centre (where there had been many other

Georgian women, and the centre was so overcrowded that they had found it hard to find a space for her) in a cell with 7 other women in unbearable conditions. The cell was very small, there was one bunk bed with very thin mattresses, no water, blankets or toilets (just a bucket). She had a cut on her hand, was feverish and was not given any medical assistance. Her husband had visited her on her second day in the detention centre.

Subsequently, on 17 October 2006, she and some other Georgian nationals had been taken to Domodedovo Airport in Moscow by officers of the special police force (OMON) and flown back to Georgia. Her sons, of whom she had had no further news, had remained in detention for a further 18 days and had joined her in Georgia afterwards. As the Russian consulate in Georgia had been closed, she had been unable to seek a remedy.

With regard to her legal situation in the Russian Federation, she had had a one-year business visa that had been issued by the Russian consulate in Georgia for her stay in the Russian Federation, but an invalid registration certificate (issued by a private agency, of which there were many in Moscow, and with a discrepancy between the address indicated on the certificate and the address where she had been living at the time of her arrest). She said that she had lived in Moscow for a number of years before returning there in September 2006, had already had her papers checked in the past but without this having led to any consequences.

2. Witness no. 2, born in 1942, married

246. He said that he had lived in the Russian Federation for 13 years and that he had been arrested by officers from the Federal Migration Service on 6 October 2006 at 5.25 p.m. in the flat where he had been living and where he had had a painting job, and taken to the police station. He had not been allowed to take his belongings on the grounds that he would be questioned for only 20 minutes. When he had asked why he was being arrested, he had been told that it was because he was Georgian and because of Saakashvili.

He had been held for one night in a police cell. The next day he and approximately 150 other Georgians had been taken to a court by bus, but – like all the other Georgians – he had not been allowed to get off the bus. Only two of them, who had signed the court decisions in the corridors of the court, had been allowed off. He had had to wait approximately 40 minutes in the bus and had been forced to sign the court decision under the threat of "be happy you're still alive". He had then been given a blood test, during which a large quantity of blood had been taken from him; he claimed that it had been almost half a litre because he had seen the plastic bottle entirely filled, and that the needles had not been disinfected.

The bus had then taken all the Georgians to prison, and he had been detained for 5 days in a detention centre, where all the detainees had been Georgians, before being expelled to Georgia by aeroplane.

With regard to the conditions of detention, there had been 12 bunk beds for 25 people, with only iron bars "as could be seen in certain films about the Gestapo": no mattresses or blankets, and they had had to take it in turns to lie down. Three days later they had been provided with some very thin mattresses, but too few. The prisoners had always taken it in turns to sleep, there had been one toilet in the cell that was not partitioned off from the rest of the cell and from which a trickle of water ran that was drunk by the detainees; the food had been so bad that he had drunk only tea for 5 days.

Compared to those conditions of detention, the conditions of the flight back to Georgia on 11 October 2006 had, in his words, been "heavenly".

With regard to his legal situation in the Russian Federation, he said that when he had returned there in October 2005 he had had a business visa that had expired in April 2006, and stated that he had applied for it to be extended. That information had been marked in his passport at the time, which he had carried with him at all times, but which had since expired.

3. Witness no. 3, born in 1977

247. He stated that he had lived in Moscow from 2004 to 2006 and was a trained doctor. On 6 October 2006, while he was on his way to a Moscow hospital where he was finishing his training as a house doctor, he had been arrested by two police officers who had asked him to show them his papers.

As he had not had his passport with him, but just a temporary document, he had been arrested and taken to the police station where he had been put in a cell with 3 other Georgians. When he had asked why he was being arrested, the police officers had replied that an order had been issued for the expulsion of all Georgians.

A few hours later he had been grouped together with approximately 110 other Georgian detainees. They had all been taken in several cars to a court, and then to a court hearing room where they had been summoned to appear one by one before a judge. During the interview, which had lasted 5 minutes, the judge had asked him to give his name and particulars. When he had tried to explain his situation, the judge had told him that he should just ask Mr Saakashvili. When he had asked whether he could appeal he had been told that this would serve no purpose because an order had been received from above.

He had then been taken by bus to a special detention centre in Dmitrovskaya where he had remained for 5 days before being expelled by plane to Georgia on 10 October 2006.

With regard to the conditions of detention in the detention centre, he stated that he had been held with approximately 100 other people of various nationalities (Georgians, Uzbeks, Tajiks and others) in a large room measuring 40 to 50 m^2, with no tables, chairs or anything. He spent the first night there and the next day 28 Georgians were asked to come out, their

fingerprints were taken and they were then put into different cells. The conditions in the new cell were slightly better: there were about 23 detainees in a room measuring between 22 and 25 m^2 and there were 10 beds. There was a bad smell in the toilets; they were not partitioned off from the rest of the cell; and the tap water was yellow. The food was disgusting, but they had paid the guards for reasonably decent food. One person had fallen ill, so the detainees had banged on the doors and the Consul of Georgia had arrived and the person in question had been able to leave the cell.

On the departure date, 10 October 2006, a group of approximately 23 Georgians had been taken to the airport, where some other buses had also brought Georgian nationals. In each bus there were three police officers in the front and two in the back. In the bus they had had to pay for everything, for example some police officers had demanded 200 roubles, others 500, to make a telephone call. The Georgians had subsequently been expelled like cattle, as they had had to run with their hands behind their back along human corridors formed by the OMON officers. The conditions of transport in the Ministry of Emergency Situations plane had been acceptable.

With regard to his legal situation in the Russian Federation, this appeared confused. During the hearing the representative of the respondent Government submitted a document stating that he had already been sentenced on 19 May 2005 by the Regional Court of Tverskoy (Moscow) to a fine of 1,000 roubles and administrative expulsion because he had been in possession of neither a visa nor a valid registration certificate. The representative of the respondent Government also submitted a document of 20 September 2006 from Moscow Hospital indicating that he had been expelled from the university for failing to pay the enrolment fees. Both documents had been sent to the Agent of the applicant Government.

The witness said that he had already been subjected to checks in the past but that there had never been any consequences.

4. Witness no. 4, born in 1982, married

248. He stated that he had been arrested in Moscow by officers from the Federal Migration Service while he was visiting his father, who was a taxi/mini-bus driver, and where he was working as an apprentice. The officers confiscated his identity papers and asked him to report to the police station.

The third time he reported there, he was taken by car to a building he had identified as a court from the plaque outside. Four other people, three of whom were Georgians, had been waiting outside a room. During his interview with someone he thought was a judge, which lasted two minutes, she had asked him whether he understood Russian. After that, he had been peremptorily ordered to sign a court decision that he had not had time to read and was not given to him. When he asked why he had been detained,

one of the officers had told him that there had been an order from above to expel all Georgians and that it was pointless to appeal. He had mentioned operation "Gazelle" and operation "Crocodile".

He had then been taken back to the police station and put in a cell called the "monkey cage" for 8 to 9 hours. From his cell he could see the Georgian President on television, and he was told that he had been detained because of that man. He could see that the other cells were overcrowded.

He was then taken to a detention centre for foreigners where he and 17 other people had had to wait many hours outside before being placed in a cell. It had been nearly midnight by then and he had remained in detention in that centre for about 8 hours. There had been about 30 detainees of Georgian nationality, one of Uzbek nationality and three of Tajik nationality in a cell measuring 6 by 8 steps. There had been 6 beds in all, with no mattresses or blankets, just metal frames. The toilets had not been partitioned off from the rest of the cell and there had been no water. He had neither eaten nor drunk anything throughout his period of detention.

On 6 October 2006 a number of vans with about 7 people inside accompanied by OMON officers had taken the detainees to the airport. Inside these vans the detainees were ordered not to open the windows and they had had to pay for everything: for example 200 roubles to be allowed to smoke; 300 roubles to urinate. After walking along human corridors formed by the OMON officers, they had been put onto a cargo plane. There had been two rows of seats in the plane with about twenty women and children sitting on them, the men had been sitting on the floor and there had been a sort of tub which had served as a toilet and had circulated between the rows. There had been about 80-90 Georgians in the plane. With regard to his legal situation in the Russian Federation, he had a business visa but no work permit. During the hearing the representative of the respondent Government maintained that the residential block referred to in his registration certificate as his place of residence had been made the subject of a demolition order and that the address of the company where he worked did not exist. The witness said that he had lived at the address given in his registration certificate and that his papers had been checked in the past but that there had never been any consequences.

5. Witness no. 5, born in 1964, married to witness no. 6

249. He stated that he had arrived in the Russian Federation in 2003 and had first worked on a market stall and then as a driver. He stated that his papers had been checked on 30 September 2006 in the Moscow underground and that the police officers had taken his passport away. He had been told to go to the Migration Service to retrieve his passport and had gone there several times.

On 3 October 2006 he had been taken, handcuffed, to another building, without realising that it was a court. There were three other Georgians and they had been asked to sign an initial document in a corridor before being taken into the corridor of another building where they had also been made to sign a document. He had not had time to read them and had not received a copy.

He had subsequently been placed in police custody in a police station, where he had remained for a whole night. The next day he had been given a blood test. He had been beaten with a truncheon because he had been scared of the blood test and had not wanted to go into the room. When he asked why he had been arrested he was told that there had been an order from the Russian President that all Georgians had to leave the Russian Federation.

He had then been taken to a detention centre for foreigners in Dimitrovskoe Chaussée Street where he had been undressed and examined. He had then been placed in detention in a small cell in which there were 40 to 45 detainees, 43 of whom were Georgian and 2 Tajik. There were 6 beds and they had had to take turns sitting down; it had been impossible to lie down.

On 5 October 2006, the day before he was expelled, he had been taken to another cell containing mattresses and blankets and where there had been NTV journalists interviewing the detainees. Once the journalists had left, however, they had had to go back to their former cell.

The detainees had then been grouped together and taken in buses containing about thirty seats to the airport escorted by three guards before being expelled in a cargo plane. They had been made to pay 200 roubles in those buses for permission to smoke or 300 roubles to urinate. He saw one fellow detainee being beaten by the guards because he had smoked a cigarette without having paid the 200 roubles.

There had been no seats or other amenities in the cargo plane; it had been overcrowded and the Georgians had either been standing up or sitting on suitcases. A tub had served as a toilet and had been skidding around the floor before being stabilised. The flight had lasted 2 hours and 15 minutes, and a ration of dry biscuits had been distributed just before take-off. He stated that he had left practically all his belongings behind and had been able to take only a few personal effects that had been brought to him by a Russian colleague.

With regard to his legal situation in the Russian Federation, he had a business visa but no work permit. The representative of the respondent Government said that in 2003 he had been sentenced to a fine for fraud. The witness confirmed that he had had to pay a fine at the time.

6. Witness no. 6, born in 1969, married to witness no. 5

250. She stated that she had arrived in the Russian Federation in 2003 and had worked on a market stall selling fruit and vegetables. When her husband was arrested, she had contacted a lawyer with a view to obtaining her husband's release from detention but the lawyer had discouraged her from doing so saying that it would be a waste of money because Georgians were now being hunted down in the Russian Federation.

Someone had given her an address to go to in order to avoid being forcibly expelled. She had gone there on 10 October 2006 with two children of friends, aged 14 and 16, from whom she had been separated (it had taken the parents 2 days to find the children, despite help from the Consul).

She and 3 other people had then been taken to another building where she had been asked whether she spoke Russian and, when she said she did, even though she had specified that she did not understand legal terms in Russian, she had been asked to sign some papers that she had not been given time to read. She could see a judge some distance away through a door and then realised that she was in a court. She did not receive a copy of the court decision and when she asked why she had been arrested she was told that it was because she was Georgian. She was also told that she could appeal against the expulsion order, but that there was no point because she would in any case be unsuccessful.

She had subsequently been placed in a temporary cell in a small building in which the cells were divided by iron bars, where she had remained for 4 hours with 4 Russians and 6 Georgians (7 men and 3 women). She had then been given a blood test.

She had then been taken to a detention centre for women and put in a cell where there were 8 women altogether. There were two beds with metal frames, very thin mattresses on which they could not lie down; the food was disgusting and there was no drinking water, just water from the toilets (a bucket). One person had fallen ill and there was no medical assistance. There had been mainly Georgian women in the cell.

She had remained in the cell for 7 days before being expelled to Georgia on 17 October 2006 in an airliner. She had not known that she could appeal against the expulsion order. Once back in Georgia, there had been many people waiting in front of the Russian consulate and she had abandoned any idea of bringing proceedings in respect of the case.

With regard to her legal situation in the Russian Federation, she had a business visa and a registration certificate (issued by a private agency of which there were many in Moscow).

7. Witness no. 7, born in 1956

251. He stated that he had arrived in the Russian Federation in July 2006 and had been arrested on 5 October 2006 in the street in Moscow as he was getting ready to go and visit some relatives. He is a qualified engineer but was unemployed at the relevant time. He referred to the political tensions that had existed between Russia and Georgia when he had returned to the Russian Federation in July 2006.

He had been taken to a building at the Federal Migration Office and then to a court, where he had been able to see a judge but had not been able to talk to her directly. It was the police officers who had asked the questions and had presented him with pre-printed documents on which he had had to write his name and quickly sign various papers prepared in advance. The whole episode had lasted between 30 and 40 minutes for 4 people.

He had subsequently been taken back to the police station before being driven away with 2 other people in a black car to a clinic for a blood test. He had then been put in a cell in a detention centre for foreigners in Dimitrovskoe Chaussée Street for a day and a night with no food. The cell measured approximately 25 m^2, with 15 beds that had no mattresses or blankets and there had been 40 detainees in all. The toilets were not separated from the rest of the cell. Five of the detainees were from Central Asia (Uzbeks, Tajiks) and the others were Georgians.

He and some other detainees had then been taken by bus to the airport; there had been 4 OMON officers in each bus and the detainees had been made to pay 100 roubles for permission to smoke, 200 roubles to telephone, 500 roubles to urinate and 300 roubles to have their personal effects brought to the airport.

He had then boarded a military plane bound for Georgia. There had been between 150 and 200 passengers on board. Some detainees had managed to get a seat but many had remained standing. Once back in Georgia, he had not envisaged appealing because he never wanted to return to the Russian Federation.

With regard to his legal situation in the Russian Federation, he had a business visa but, according to the representative of the respondent Government, an invalid registration certificate (issued by a private agency and with a discrepancy between the address of his place of residence and the one appearing on the certificate). The representative of the respondent Government maintained that this witness had been held in the same cell as other witnesses who had all described the conditions of detention in different ways. The witness disputed having been held in the same cell as those witnesses. He reaffirmed that he had been living at the same address as the one indicated on his registration certificate and that he had been arrested while he was unemployed. Furthermore, he confirmed that his

papers had been checked in the past but that there had been no consequences.

8. Witness no. 8, born in 1959, wife of the late Mr TOGONIDZE, who had died while being expelled from the Russian Federation

252. She stated that she had arrived in St Petersburg with her husband on 17 November 2004 on a three-month visa. They had sold lemons on a stand near an underground station and had remained in the Russian Federation for 2 years without a valid visa. She had returned to Georgia in May 2006.

She had learnt of the conditions of detention and the death of her husband from other Georgians who had been detained with him. In addition to that, he had managed to obtain a mobile telephone and had called her on 14 October 2006 to tell her that he was going to be expelled to Georgia on 16 October 2006 and that he hoped he would survive until then because there was no air in the cell and he was dying. He had been held in a detention centre in St Petersburg since 2 October 2006 and had told her that the conditions of detention were horrible, that there had been no medical assistance or food or water and that they had been treated like animals, with men and women being held together. He had asked to see a doctor but had been insulted. She explained that her husband had suffered from asthma but had been able to lead a normal life thanks to the sprays that he had always carried with him and to his treatment. The autopsy indicated that he had died of tuberculosis, but she was surprised by that because he had never had tuberculosis. She then explained that her husband had been taken to the airport by bus, had asked for a window to be opened so that he could breathe but that as he had been unable to pay, the police officers had fired at him with a laser pistol. When she had learnt of her husband's detention, she had asked a friend there to contact a lawyer but the lawyer had not been allowed to go to the detention centre.

9. PATARIDZE Zurab, Consul of Georgia in the Russian Federation at the material time

253. He stated that he had been Consul in the Russian Federation from 2004 to May 2009. At the material time 6 people had been working at the only office of the Georgian consulate in Moscow and about 200,000 Georgians had been resident in the Russian Federation.

He described a major change in the situation between the beginning and the end of September 2006, saying that it was then that the massive ethnic persecutions against Georgians had started. The consulate had been inundated with telephone calls and requests for assistance from relatives of persons detained, and between 200 and 300 Georgian nationals had gone to the consulate every day. There had been a real climate of panic and

Georgians had not dared go out into the street any more. Even Russian citizens of Georgian origin who had been working for Georgian businesses had contacted the consulate. In his view, the procedures followed were unlawful because Georgian nationals had been arrested without any court decision and even people aged under 18 had been placed in detention. He gave the example of a woman who had been detained with her five-month-old baby. During that period Georgian nationals were being arrested everywhere: in the street, near the consulate and near the Georgian Orthodox Church. The existence of a massive campaign was also evidenced by the fact that before the end of September 2006 the consulate had issued between 10 and 15 travel documents per day whereas after that date, some 150 documents were being issued per day. Those documents were necessary to secure the expulsion of Georgian nationals and the Federal Migration Service of the Russian Federation had co-operated with the consulate to that end.

The Consul and his team had visited more than a dozen detention centres in different regions of the Russian Federation, including those in St Petersburg and Moscow. It was mainly Georgian nationals who had been held in all these centres, and even the prison governors had privately acknowledged that they had never had so many people of the same nationality at the same time. The cells had been overcrowded, the conditions of detention very difficult, the hygiene appalling and there had been too few beds and mattresses etc. Only detention centre no. 1 of Moscow (a model centre shown to journalists) had provided better conditions, though it was also overcrowded.

In private, Russian officials had told him that they had received instructions to expel Georgian nationals and he referred to the letters sent to schools asking for the names of Georgian children. In his view, it had clearly been an ethnic campaign directed against Georgians, irrespective of the question whether they were lawfully or unlawfully resident in the Russian Federation. The fact that their papers had been invalid had merely been a pretext. In any event, as the official administrative steps had often been difficult to carry out in practice many foreign nationals had been tricked by private agencies, many of which acted illegally and had provided them with forged visas and registration certificates. Recourse was commonly had to these private agencies, which advertised in all public places in the big cities. He also said that the Georgian consulate provided information on immigration laws in the Russian Federation to Georgian nationals.

With regard to the expulsion procedures, he had never seen them applied so rapidly. He had personally attended a hearing where there had been 7 people in the room and a single pre-printed decision had been delivered against them indicating that they had all been detained in the same centre, whereas in fact they had all been detained in different centres.

He had also gone to a number of airports where Georgian nationals, who had not been allowed to take their personal effects, had been taken away in busloads. The first flight to Georgia at the beginning of October had been in a cargo plane from a military airport; other flights had been effected by airliners from other airports.

He concluded that he and his team had done what they could to help their compatriots in this emergency situation and that they had been working practically round the clock. He had provided all the information necessary to Georgian nationals seeking to appeal against expulsion orders, but, given their terrible conditions of detention, they had wanted to go back to Georgia as quickly as possible. In any case, Russian officials had told him in private that appeals of that nature would be futile because the decision to expel all Georgians from the Russian Federation was a political one. He also said that he had sent letters of protest to the Russian authorities but also a letter of thanks to the head of the Federal Migration Service of the town of Derbent (Dagestan[2]) who had done all he could to assist expelled Georgian nationals to leave the country.

With regard to Mr Togonidze, the Consul had met him for the first time on 13 or 14 October 2006 in the St Petersburg detention centre, where the conditions had been particularly awful. Given his very poor state of health, he had requested that he be seen by a doctor and given treatment. The Russian authorities had subsequently told him that Mr Togonidze's condition had improved. He had met him for the second time on 17 October 2006 at Domodedovo Airport in Moscow after he had been travelling in a very dirty and airless bus for about 12 hours during which the passengers had complained of being given electric shocks. Mr Togonidze had told him that nothing had changed in St Petersburg, and that a guard had just given him a spray as a humane gesture. Mr Togonidze had then asked to get out of the bus so that he could breathe, and the Consul had asked the police officers to let him out. He had got out of the bus, taken a few steps and then collapsed, before dying. Subsequently the Russian authorities had replied to the Consul that the police had never administered electric shocks to Georgian nationals in buses taking them to the various airports. The autopsy report in respect of Mr Togonidze also mentioned methadone poisoning, but, according to the Consul, he had not been drugged. The Consul added that he had not been present during the autopsy (he had not been asked to attend, moreover) and that the results of that autopsy had been sent to him very late.

2. Province of the Russian Federation situated to the north of Azerbaijan and the east of Georgia.

B. Witnesses proposed by the respondent Government

254. The following nine witnesses are civil servants of the Russian Federation, whose evidence concerned in particular the conditions of arrest, detention and expulsion of Georgian nationals, statistical data and the authenticity of the instructions issued by the Main Directorate of Internal Affairs of St Petersburg and the Leningrad Region.

1. **AZAROV Nikolay Petrovich,** Head of the Department of Immigration Control, Federal Migration Service, Moscow, at the time of the witness hearing; Deputy Head of the same department at the material time

255. He said that at the material time he had been Deputy Head of the Department of Immigration Control of the City of Moscow, a department of the Federal Migration Service. The employees in his department were responsible for checking whether foreigners residing in Moscow or their employers had complied with the immigration laws of the Russian Federation, drawing up records and bringing foreigners before the courts. He confirmed that he had never received any instructions from the Federal Migration Service to specifically expel Georgian nationals, but merely to combat illegal immigration, and that concerned all foreigners in the Russian Federation.

With regard to private agencies, these often acted illegally. Whilst they were sometimes authorised to assist foreigners in their administrative dealings, they were not in any circumstances authorised to register anyone or issue official papers. He confirmed that criminal proceedings had been brought against these agencies, but did not know the details. Besides that, the Federal Migration Service had also published information in different languages on the legal procedures applicable to foreigners on its Internet site, in the media and in public places.

Generally speaking, his department had regularly informed the consulate concerned of the expulsion of foreign nationals once the courts had issued their decisions. With regard to the procedures followed before the courts, foreigners had a 10-day period in which to appeal against court decisions and some of them had made use of that possibility. That was why they were not expelled until 10 days had elapsed. Furthermore, they could contact their consulate at any time.

He was in charge of the 8 detention centres for foreigners in Moscow and had visited all of them. The conditions of detention there were the same for all foreigners: large cells of approximately 50 m^2, with beds, separate toilets, running water and hot meals served 3 times per day. The detainees were also allowed out to take exercise once a day.

He also said that, before working at the Federal Migration Service in Moscow, he had been a police officer at the airport. The description of her cell by Mrs Nato Shavshishvili[3], who stated that she had been detained in an airport police cell, was inaccurate. In fact, the cells had wooden, not concrete floors, and no one could be detained there without having been registered. Moreover, she had said that she had worked in a café in Petrovsky Park, whereas there was no café in the park.

The witness then said that he had been present at Zhukovskoe and Domodedovo Airports and had boarded two aeroplanes carrying Georgian nationals who had been expelled to Georgia: one had been carrying 450 passengers and the other 420. He had himself boarded these aeroplanes, which had been equipped with seats and benches, and safety belts, and water and dry biscuits had been served on board. He stated that the practice was not limited to Georgians; thus in 2003, 170 Tajik nationals had been expelled by plane and approximately 700 Chinese nationals.

The expulsions of Georgian nationals had already started in 2002, and in 2006, 4,000 Georgian nationals had been expelled. In the course of 2006, 6,000 Uzbek and 4,000 Tajik nationals had also been expelled.

2. KARMOLIN Aleksey Aleksandrovich, unemployed at the time of the witness hearing; Inspector of the Group for Execution of the Administrative Legislation, Directorate of Internal Affairs for the District of "Khamovniki", Moscow, at the material time

256. He stated that he was unemployed for the time being and that at the relevant time he had been a young officer in the police rapid intervention force under the authority of the Ministry of Internal Affairs.

During the autumn of 2006 he had been on patrol duty outside the Georgian embassy in Moscow for the purposes of ensuring public order and, in particular, allowing Georgian nationals to freely access the embassy. With regard to the videotape submitted by the applicant Government recording a raid carried out in the autumn of 2006 on the Tbilisi Guest House (which is part of the complex of buildings making up the Georgian embassy in Moscow), he stated that this was in fact a fabrication showing two events that had occurred on two different dates and did not in any way correspond to the allegations of the applicant Government. In the first part he could be seen as an ordinary police officer in his summer uniform taking part in an intervention carried out during demonstrations that had taken place in the summer of 2005 in front of the Tbilisi Guest House, and in the second part he could be seen in his blue winter uniform monitoring an

3. A Georgian national whose statement had been recorded on a videotape submitted by the applicant Government.

authorised demonstration that had taken place in front of the Georgian embassy in the autumn of 2006.

He confirmed that he had never received written instructions regarding the selective arrest of Georgian nationals. During the month of October 2006 he had been present every day in the area of the Georgian embassy but did not remember any anti-Georgian demonstrations and the embassy had never called on his services on the grounds that people were blocking access to the embassy.

He also indicated that his unit was responsible for conveying foreigners sentenced to expulsion from the courts to detention centres for foreigners: if one person were being driven they used a vehicle called a "Zhiguli 21-10", and if several people had to be driven they used multi-seater vehicles called "gazelles". Before arriving at the detention centres, the foreigners were given a medical examination in a public clinic. After an interview with a doctor, they were given a blood test (approximately 15 ml) with sterilised and disposable needles. He was certain of this because the doctors were often women who were afraid to stay alone with foreigners and asked the police officers to be present.

In the detention centres for foreigners, men and women were of course separated; it was only in police stations that they could, exceptionally, be placed in police custody together, but for a maximum period of 3 hours. In any event, unlawfully resident foreign nationals were not in any circumstances detained with ordinary criminals.

3. **KONDRATYEV Vladislav Yuryevich,** Head of the Division of Checkout Measures No. 2, Department of Immigration Control, Federal Migration Service, Moscow, at the time of the witness hearing; Inspector in the same department at the material time

257. He stated that at the material time he had been inspector of checkout measures and that his duties had consisted of checking the identity papers of foreigners suspected of breaking the immigration rules, on the basis of information received by his departments, drawing up administrative reports and being present at hearings before the courts. These had been conducted as follows: the defendant was brought before a judge, who informed him of his rights and obligations, asked him whether he required the presence of an interpreter and a lawyer, and, if he did, that request was taken into account. The judge then put questions to the defendant regarding the details of his situation, left the room and came back with the decision. If it was an expulsion order, the defendant received a copy of the order and was taken to the detention centre for foreigners before being expelled. He had 10 days in which to appeal, even once expelled from the Russian Federation and that period could be extended.

He himself had known of cases of foreigners who had appealed and been successful.

He also confirmed that at the time he had not received any order from his superiors to specifically expel persons of a particular nationality. He had not observed an increase in the number of Georgian nationals expelled in 2006 and there had been a higher number of Uzbeks expelled during that year.

He also said that he had been present at 2 flights on 6 and 10 October 2006 carrying Georgian nationals expelled to Georgia. He specified that the Georgian nationals had the court decisions on them and a note in their passport to say that they were being expelled pursuant to a court decision. The first flight by cargo plane (IL76) had taken off from the Military Airport of Zhukovsky with about 150 passengers on board. The plane had resembled an airliner albeit slightly less comfortable; it had been equipped with seats or benches and safety belts; water and food had been served on board and there were toilets fixed to the ground. The flight had lasted about 3 hours. The passengers had not complained about the transport conditions; on the contrary, they had thanked the members of his department who had accompanied them. Had there been a complaint, it would have been transmitted to his superiors, but the aircraft could not be changed. On the way back the same plane had transported Russian nationals wanting to leave Georgia for the Russian Federation. The Consul of Georgia had also been present at Zhukovsky Airport, but had not made any complaints about the administrative procedures followed or the conditions of transport. The airliner (IL62) which had taken off on 10 October 2006 had also had about 150 passengers on board.

He added that, to his knowledge, there had been no such flights to Georgia before or after October 2006.

He also said that his department had sent information to the Ministry of Internal Affairs about private agencies that were operating illegally, but that he did not have any precise information regarding the criminal proceedings instituted against them. In any event, all foreigners had to go to the Federal Migration Service to obtain their residence permits and there were information points everywhere about the legal procedures that had to be followed. He explained that in 2006 registration, for example, had to be done within 3 working days, the foreigner in question had to go to the relevant department in person with a passport, a visa and accompanied by the owner of his or her place of residence.

4. **KORMYSHOV Yevgeniy Ivanovich,** Deputy Head of the Division for Navigation, Federal Marine and River Transport Agency at the time of the witness hearing as well as at the material time

258. He stated that he had had the same duties at the relevant time as those he carried out today: his role was to oversee the safety of Russian

ports and inspect ships arriving there. The Russian Federation, like other States signatory to the Memorandum of Paris, which contained certain recommendations regarding ship security, regularly inspected ships flying the flag of various countries and published the results in annual bulletins. The States were entered on black, grey or white lists according to the level of safety of their ships. Georgia was one of the States on the black list.

From October to December 2006, more than one hundred ships flying the Georgian flag had sailed into Russian ports (104, to be precise), of which 33 had been inspected and 6 stopped; ships flying the flag of other countries had also been inspected and stopped during that period. At the beginning of October 2006 two letters had been sent to the port managers reminding them of their obligation to monitor the entry of ships flying the flag of countries on the black list, including Georgian ships. In 2005 and 2007 there had been no letters referring to Georgian ships.

In 2006, 20% of Georgian ships had been stopped in ports of States signatory to the Memorandum of Paris, with 15% in the Russian Federation, and in 2007 the figure had been 19% for all States signatories and 12% for the Russian Federation. The Russian Federation had therefore stopped substantially fewer Georgian ships than the other States signatory to the Memorandum of Paris.

He added that if a ship was stopped, the members of the crew in charge of security had to remain on board, while the rest of the crew could go on land.

5. **KULAGINA Tatiyana Vasiliyevna,** Senior Inspector, Department for the organisation of activities of the District Police Officers and District Supervision Officers in respect of Minors, Main Division of the Interior, Samara Region, at the time of the witness hearing; Inspector in the same department at the material time

259. She stated that she had already been working in that department at the material time, but had since been promoted.

In 2006, after an article had appeared in the press, she had carried out an investigation into the conduct of Mrs Volkova, Head of the Juvenile Department of the Togliatti District, who had requested schools to provide lists of Georgian pupils. She had interviewed Mrs Volkova, who had said that she had been given information about Georgian parents unlawfully resident in the Russian Federation who had paid bribes in order to be able to enrol their children at school. Mrs Volkova had acted on her own initiative without informing her superiors, and had intended to check with the Federal Migration Service whether the persons on these lists were unlawfully resident in the Russian Federation. She had specifically requested to be given the list of Georgian pupils after receiving the information about Georgian parents, but had intended to then also ask for a list of pupils from

other countries. In the course of her investigations the witness had also heard two inspectors who were the subordinates of Mrs Volkova, but had been unsuccessful in contacting Mrs Grigoryeva, the journalist who had written the press article. She had not considered it necessary to speak to the school principals concerned or to the parents of Georgian pupils, as the lists in question had never been used and had subsequently been destroyed.

Mrs Volkova had not subsequently been reprimanded, but had been disciplined: during a meeting in Togliatti on 2 November 2006 she had been summoned to explain her actions openly in the presence of a number of responsible officers and reminded of her obligation of strict compliance with the legislation in force particularly regarding the rights and freedoms of citizens. She had apologised and said she regretted having acted in that way. Her immediate superior, Mr Shapovalov, had also been disciplined and reminded that he was personally responsible for the organisation of his subordinates' work. Subsequently, all the heads of the Juvenile Department in the region of Samara had been informed that such actions were unacceptable.

She had no knowledge of any similar requests sent to schools in other regions.

6. MANERKIN Yevgeniy Nikolayevich, Head of the Division for Supervision of the Execution of Federal Legislation, Prosecutor's Office, Moscow, at the time of the witness hearing as well as at the material time

260. He stated that he had occupied this post since 1999. His division was in charge of ensuring that federal legislation was executed while respecting the rights of persons who were the subject of administrative or criminal proceedings, be they Russian or foreign citizens.

At the material time, whilst he was carrying out a number of inspections in Moscow, his division had identified procedural irregularities in the manner in which the Federal Migration Service had been drawing up reports against foreign nationals from a number of countries. The reports were not the result of complaints by foreigners, because none was ever filed, but his division had come to these conclusions on their own initiative and that had led to the decisions against these foreign nationals being set aside. There had been 22 cases of that type in all. Foreign nationals never filed complaints, because on signing court decisions they acknowledged the facts as established in those decisions and that they had broken the laws of the Russian Federation.

He added that the General Prosecutor in charge of the Moscow Region had requested all his divisions to ensure that the rights of all foreign nationals were duly respected. There had never been any instructions

restricting the rights of Georgian nationals, as this would be against the law and even a crime under Russian law.

Furthermore, regional and district prosecutors regularly visited temporary detention centres for foreigners, often by surprise, and outside working hours. They wore uniform during their visits and gathered information from the detainees. They had never received any complaints. He did not know why six out of the eight detention centres for foreigners in Moscow had been closed.

Lastly, foreign consuls could also contact them directly or contact the Office of the General Prosecutor of the Russian Federation in order to protect the rights of their nationals, but the Consul of Georgia had never done so.

He concluded by saying that he had heard of three cases in Moscow in which requests for information about Georgian pupils had been sent to schools, but that in those isolated cases the officials in question had been duly punished.

7. NIKISHKIN Konstantin Sergeyevich, Deputy Head of the Legal Department, Ministry of the Interior, Moscow, at the time of the witness hearing; member of another department at the material time

261. He stated that at the material time he had been working in another department and that he had held his current position since 2008. His role was to examine draft texts from a legal angle and he also directed a working group at the Ministry of Internal Affairs on co-operation with the European Court of Human Rights.

He confirmed that there had never been orders, instructions or recommendations telling the departments of the Ministry of Internal Affairs to restrict the rights of foreign nationals and Georgians in particular; that would be against the law and in any event he had never heard of any. Moreover, Georgian nationals liable to expulsion from the Russian Federation had not lodged any complaints with the Ministry of Internal Affairs, and the Consul of Georgia had not filed a request for information or assistance with the Department for International Co-operation: if such a request was made the reply was given at a very high level of the Ministry of Internal Affairs, and where allegations of violations of the rights of foreign nationals were concerned the Legal Department was necessarily informed.

He also confirmed the existence of two telegrams, nos. 0215 and 849, which were both classified "State secret", the first being an order (*приказ*) classified "secret" and the second classified "top secret". He added that these documents contained "a reference to certain criminal groups. Criminality in the Russian Federation [was] multi-ethnic, so there [was] a reference to various national criminal groups. But any selective reference to

Georgian nationals could not be found in these documents". They could not be disclosed because this was prohibited under Russian law.

With regard to the alleged instruction (*указание*) purportedly issued by the Main Directorate of Internal Affairs of St Petersburg and the Leningrad Region and appearing in the HRW report, this was also a telegram, which was unsigned, and the presentation of which did not correspond to that of a document from the Ministry of Internal Affairs. The contents were incomprehensible and it was unclear what the term "OPR GUVD" meant. Like anywhere else in the world, the courts of the Russian Federation were independent and there could be no interference. Any civil servant writing such things would be creating trouble for him or herself. It was clearly a forged document.

8. SHABAS Sergey Mikhaylovich, Deputy Head of the Department of the Interior, North-Eastern Administrative District, Moscow, at the time of the witness hearing; Deputy Head of the Civil Security Force in the same department at the material time

262. He stated that at the material time he had been working in the same department as deputy head of the civil security force, and that his role consisted in co-ordinating the actions of police units with a view to fighting crime and protecting public security. Where it was suspected that an administrative offence had been committed or the police officers witnessed such acts, it was their duty to check the papers of the persons concerned.

At the beginning of October 2006 he had carried out an official investigation into the conduct of Mrs Markova, Head of the Juvenile Department of the Department of Internal Affairs of the Butyrskiy District, who had requested school no. 230 to provide her with a list of pupils who were nationals of countries of the CIS and particularly Georgia. Having learnt of this, his department had immediately informed the school principal that such information could not be disclosed. An investigation had been commenced and he had himself had an interview with Mrs Markova, the principal of school no. 230 and with the Head of the School Superintendent Office of the Directorate of Education. When he had interviewed Mrs Markova, she had said that on 3 October 2006 she had gone to the school and left a note for the attention of the school principal. She said she had done so on her own initiative, without having received any particular instructions, her objective being to more easily identify children of illegal immigrants who were living in insalubrious conditions.

In his conclusions of 6 October 2006, following the investigation, the witness, as head of the investigative commission, had proposed that Mrs Markova and two of her superiors, who were unaware of her misconduct, be disciplined (by means of a reprimand (*выговор*) for her and Mr Muradov, Head of the Department of Internal Affairs, and a warning for

her immediate superior, Mr Matveyev). On the same day an order (*приказ*) signed by the General Trutnev provided that Mr Muradov should be punitively admonished on the ground that he had not been in his post very long and that Mrs Markova should be disciplined, but made no further mention whatsoever of Mr Matveyev.

The witness said that this could be explained by the fact that only certain types of punishment appeared in an order; regarding Mr Matveyev, it was sufficient for the punishment (warning) to appear in a separate document, called "conclusions". In any event, at an official meeting of the Department of Internal Affairs of the district, about fifty high-ranking police officials had been informed of all the penalties that had been pronounced. The General Trutnev had also pointed out that conduct of that sort was unacceptable and that there had been no further incidents of that type.

The witness added that generally speaking a reprimand entailed a delay in career advancement for one year, and that Mrs Markova had no longer been working in the police force since 2007 because she had reached the age of 45 and had not obtained the necessary certificate to continue in her post.

He ended his statement by saying that he did not know the details of incidents of this type that might have occurred in other districts of Moscow, but that during a meeting organised at the end of October 2006 by the Head of Internal Affairs of Moscow, Mr Pronin, the measures taken rapidly in his district to solve the problem had been cited by way of example.

9. SHEVCHENKO Kirill Dmitreyevich, Expert from the Russian representation with the International Organisation for Migration at the time of the witness hearing; Deputy Head of the Department of Immigration Control of the Federal Migration Service at the material time

263. He stated that at the material time he had been deputy head of the Department of Immigration Control of the Federal Migration Service. His role had been to participate in controlling immigration in co-ordination with other entities of the Federal Government, checking legal texts relating to immigration matters and making proposals for improving the relevant federal legislation.

In 2006, between 110,000 and 120,000 Georgian nationals had arrived in the Russian Federation and remained there for differing periods of time. In order to reach the Russian Federation, many Georgians had passed through third countries, and in particular Belarus because there were no border controls between the Russian Federation and Belarus and no visa requirement between Georgia and Belarus.

From 2002 to 2006 there had been a steady rise in the number of administrative expulsion orders issued against Georgian nationals, but also against nationals of other countries. The highest rise in the number of

expulsions of Georgian nationals had been between 2003 and 2004 (+ 60%), and there had then been a sharp decline in 2007. That had mainly been due to the simplification of immigration rules and particularly the procedure for obtaining a registration certificate; from that date onwards it was sufficient to specify the place of residence to comply with the immigration rules.

In 2006 there had been 4,022 administrative expulsions of Georgian nationals, some of whom had been forcibly expelled and others who had left the Russian Federation by their own means. In October and November 2006, 4 planes chartered by the Russian Federation (on 6 October 2006 a cargo plane by the Ministry of Emergency Situations (IL 76), and on 10, 11 and 17 October 2006, an airliner (IL 62 M)), and 2 planes chartered by Georgia (on 28 October 2006 and 6 December 2006) had flown Georgian nationals from Moscow to Tbilisi. Even though he had not been in the cargo plane himself, he knew the transport conditions in that type of plane which complied with international standards, even if they were less comfortable than in an airliner. In October and November 2006 about 400 Georgian nationals had been forcibly expelled by plane. As communications between the two States had been cut off, there had been an agreement between them to organise direct charter flights from Moscow to Tbilisi. In organising these joint flights the Russian authorities had been guided by the directive adopted in 2004 by the European Council of the European Union.

He had himself been present at the airport when the Georgian nationals had been expelled and said that there had been no baggage restrictions; on the contrary, they had had a lot of luggage and the media had been present, particularly at Domodedovo Airport. They might have obtained the luggage between their arrest and their expulsion. Moreover, he had been in contact with the Consul of Georgia and members of his team who had also been present at the airports for all the flights to Tbilisi. In a letter of thanks sent later by the Consul of Georgia to the Head of the Federal Migration Service of the town of Derbent (Dagestan), the Consul had congratulated the Russian authorities for their good co-operation during the expulsion procedures and had not filed any complaints.

He also confirmed that the time-limit for appealing against expulsion decisions was 10 days, but that many Georgians had signed documents indicating that they accepted these decisions and did not wish to appeal.

He concluded by explaining that the Russian Federation had become more and more open to the flow of migrants and that the purpose of the Law of 2002 on the Legal Status of Foreigners in the Russian Federation was to regulate the conditions of residence of foreigners on its territory and that, since it had come into force, it had been constantly improved and amended.

10. VASILYEV Valeriy Anatolyevich, Adviser (Head of Department) to the Ministry of Foreign Affairs, Moscow, at the time of the witness hearing, Consul of the Russian Federation in Georgia at the material time

264. He stated that at the material time he had been Consul at the embassy of the Russian Federation in Georgia in Tbilisi.

He stated that the Russian Federation appealed to Georgian nationals as a country into which they could immigrate: accordingly, in 2004, 70,000 visas had been issued to Georgian nationals wishing to travel to the Russian Federation; in 2005, 90,000; and in the first half of 2006, 75,000. He added that Georgia had always refused to sign bilateral agreements with the Russian Federation to fight illegal immigration.

He then explained the difference between a short-term business visa (*деловая*) issued to a foreign national wanting to take part in a seminar or who had business contacts in the Russian Federation, and a work visa accompanied by a migrant worker's card which allowed the holder to work legally in the Russian Federation. All that information was available to Georgian nationals, both inside and outside the consulate and could also be obtained over the telephone. When issuing visas and other documents, the consulate examined the documents submitted by the applicant and, in the event of doubt, could carry out checks on the website of the Federal Migration Service in the Russian Federation.

He added that after the repatriation of some of the diplomatic staff of the Tbilisi embassy and consulate to the Russian Federation at the end of September 2006, both had continued operating normally, during the usual opening hours (9 a.m. – 4 p.m.), with a reduced workforce of 15 people (diplomats and administrative staff) at the embassy and 3 diplomats at the consulate[4]. Georgian nationals could thus file claims or complaints, personally or through the Ministry of Foreign Affairs of Georgia and which would have been transmitted to the appropriate authorities in the Russian Federation, but no claim or complaint had been filed. After diplomatic relations between the two countries had been broken off, from March 2009, the Russian Federation had kept an office open at the Swiss embassy in Georgia and Georgia had also kept one open at the Swiss embassy in the Russian Federation. The respective diplomats of both countries could be contacted there.

He also stated that he had been present at Tbilisi Airport on 6 October 2006 when the plane carrying Georgian nationals from Moscow had arrived. He had taken charge of the repatriation of Russian nationals to the Russian

4. In their letter of 15 April 2011 the respondent Government confirmed that following the evacuation of some of the diplomatic staff at the end of September 2006, 10 members of the diplomatic staff had continued working at the Russian embassy in Tbilisi and 3 at the consulate.

Federation, and his wife and their 2 children had also been on that return flight. The conditions of transport had been acceptable, his wife had not complained; furthermore, the flight had lasted barely 2 hours. In all 526 Russian nationals had left Georgia during September and October 2006, some of whom were employees of the consulate and their families.

C. Witnesses chosen by the Court

1. **TUGUSHI George,** Public Defender (Ombudsman) in Georgia and member of the European Committee for the Prevention of Torture (CPT) at the time of the witness hearing; Human Rights Officer with the OSCE mission to Georgia at the material time

265. At the material time he had been a human-rights civil servant with the OSCE mission in Georgia and had maintained close contacts with the Georgian Ombudsman at the time, Mr Subari, whom the Court had originally wanted to hear as a witness. He had accompanied the latter to an OSCE conference in Warsaw where the Georgian Ombudsman had conveyed his concern about the expulsion of Georgian nationals from the Russian Federation and he had assisted him in drafting a speech on this subject.

He stated that a large number of Georgian nationals who had been expelled had contacted the Georgian Ombudsman's office in October, November and December 2006 and that the relevant documents were available. In his view, it had been an entirely unusual situation as it had been the first time that so many people had contacted the Georgian Ombudsman to complain about a collective expulsion. The Georgian Ombudsman had published a report on these events during the second half of 2006 and to his knowledge, this had been the only time that expulsions had been addressed in such a report. At the time the Georgian Ombudsman had also had contacts with his Russian counterpart, Mr Lukin, Commissioner for Human Rights for the Russian Federation, who had referred to the situation of Georgian nationals expelled from the Russian Federation in his annual report of 2006.

He said that he had seen the instructions of the beginning of October 2006 by the Main Directorate of Internal Affairs of St Petersburg and the Leningrad Region appearing in the various reports including the HRW one and the one by the Russian Ombudsman. In his view, the measures taken by the Russian authorities had been specifically directed against Georgian nationals and several hundred of them had had to leave the Russian Federation in a very short space of time: about two months. The measures had been preceded by anti-Georgian statements by the Russian authorities which had fuelled tensions. Those who had contacted the Georgian Ombudsman had said that they had not been brought before a judge and that

they had signed court decisions under threat of imprisonment, which showed that they had clearly been unable to defend their rights before the administrative or judicial bodies.

More than 2,000 Georgians had been expelled and he had had knowledge of 2 cargo flights, one of which had been carrying about 150 passengers, which led him to conclude that there had been a collective expulsion of Georgian nationals. He also considered that they had not had any real chance of appealing either through the consulate of the Russian Federation in Georgia or through the Georgian consulate in the Russian Federation, as many of them had not been in possession of papers or court decisions. Others had simply not wished to appeal because they thought it was pointless.

He then referred to the statements made to the Georgian Ombudsman at the time about the inhuman and degrading conditions of detention both in the police stations and in the detention centres for foreign nationals: the cells were overcrowded, there was neither food, nor water nor medical assistance, and the detainees could not contact their families or a lawyer. He considered that in any event both in the former Soviet Union and in the majority of the countries of the Council of Europe it would have been impossible to detain in decent conditions such a large number of people arrested overnight with a view to their expulsion.

2. EÖRSI Mátyás, rapporteur of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE) at the material time

266. He maintained the very decisive conclusions contained in the PACE report (he explained that it was in fact an information note), which refer to a "massive campaign launched as from the end of September against Georgian citizens and persons of Georgian ethnicity" that was "from its outset a selective and intentional persecution campaign based on ethnic grounds" and "well co-ordinated between the executive and legal branches of power" and to "a routine of expulsions" [which] followed a recurrent pattern all over the country" (§§ 52, 53, 55 and 59 of the PACE report).

He explained to the Court the methodology of the rapporteurs of the Monitoring Committee, who had met official and representatives of civil society in both countries, and in particular representatives of the Georgian Orthodox Church in Moscow, and members of non-governmental human rights organisations that they considered to be impartial. The members of the secretariat of the delegation had also questioned about ten Georgian nationals who had been expelled from the Russian Federation, in Tbilisi. The rapporteurs based themselves on that information and on the documents appearing in the Annex to their report (instructions from the Main

Directorate of Internal Affairs of St Petersburg and the Leningrad Region and requests for information sent to various schools).

In his view, the expulsion of such a large number of Georgian nationals within such a short space of time could not have been done without the knowledge and instructions of high-ranking persons among the Russian authorities. Furthermore, these documents were proof that the measures taken by the Russian authorities specifically targeted Georgian nationals, even if the introduction of the Law of 2002 on the Legal Status of Foreign Nationals and the lack of transitional provisions had created a structural problem of immigration for all citizens of the Community of Independent States (CIS).

He also indicated that, according to the statements of the Georgian nationals and those of the members of NGOs who had been heard, there had not been a fair trial for the Georgian nationals subject to expulsion orders before the courts of the Russian Federation: the persons concerned had waited in a court room, had not been admitted into the hearing room and had been threatened with years of imprisonment if they did not sign the decisions delivered. Neither prior to their expulsion (owing to these threats), nor afterwards (for practical reasons due to the recalling of the Russian ambassador from Tbilisi), had the Georgian nationals had an opportunity to bring proceedings in the Russian courts.

Lastly, with regard to the conditions of detention, he indicated that the Monitoring Committee had not itself visited the premises and that the description of the conditions of detention and the terms used reflected the statements of the Georgian nationals who had been heard (§ 60 of the PACE report).

He also stressed the political tensions existing between the two countries since the war of 1992 in Abkhazia, which had continued to deteriorate and had come to a head in September 2006, because the Russian Federation had felt humiliated by the expulsion in front of the television cameras of four Russian officers from Georgia.