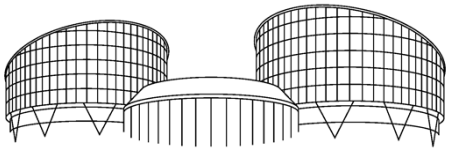

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF MUKHTARLI v. AZERBAIJAN AND GEORGIA

(Application no. 39503/17)

JUDGMENT

Art 3 and Art 5 (procedural and substantive) • Failure by Georgia to carry out an effective investigation into Azerbaijani national's plausible allegations of abduction, ill-treatment and unlawful transfer from Georgia to Azerbaijan and that they were related to his journalistic activities • In view of investigation shortcomings, impossible to establish with sufficient certainty events leading to applicant's disappearance from Georgia and reappearance in Azerbaijan • Court unable to conclude "beyond reasonable doubt" that alleged acts occurred with the involvement (active or passive) or acquiescence of the Georgia authorities
Art 5 § 1 • Deprivation of liberty • Court unable to establish unlawfulness of applicant's arrest and initial detention prior to being brought before by a judge in Azerbaijan • Art 5 § 3 • Reasonableness of pre-trial detention • Azerbaijani courts' failure to give "relevant" and "sufficient" reasons to justify need for applicant's pre-trial detention
Art 8 • Private life • Correspondence • Search of contents of applicant's mobile phone by Azerbaijani investigating authorities without judicial authorisation and no judicial review not in "accordance with the law"

Prepared by the Registry. Does not bind the Court.

STRASBOURG

5 September 2024

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

In the case of Mukhtarli v. Azerbaijan and Georgia,

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

Mattias Guyomar*, President*,
Lado Chanturia,
Carlo Ranzoni,
Lətif Hüseynov,
María Elósegui,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 39503/17) against Azerbaijan and Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Azerbaijani national, Mr Afgan Sabir oglu Mukhtarli (*Əfqan Sabir oğlu Muxtarlı* - "the applicant"), on 3 June 2017;

the decision to give notice to the Azerbaijani and the Georgian Governments ("the Governments") of the complaints under Articles 3, 5 §§ 1 (c) and 4, 8, 10, 13 and 18 of the Convention and Article 2 of Protocol No. 4, and to declare inadmissible the remainder of the application;

the observations submitted by the respondent Governments and the observations in reply submitted by the applicant;

the comments submitted by three non-governmental organisations: Freedom Now; the International Partnership for Human Rights; and the Human Rights Education and Monitoring Center, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 4 June and 2 July 2024,

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

INTRODUCTION

1. The application concerns, as regards Georgia, the applicant's alleged abduction, ill-treatment and forcible transfer to Azerbaijan, and the relevant authorities' failure to conduct an effective investigation in that regard. As regards Azerbaijan, the applicant alleged that his arrest and detention there had been unlawful and unjustified. He also asserted that his abduction from Georgia and subsequent arrest in Azerbaijan had been intended to silence him and to punish him for his journalistic activities. The applicant relied on Articles 3, 5 §§ 1 (c), 3 and 4, 8, 10, 13 and 18 of the Convention, Article 2 of Protocol No. 4 and Article 1 of Protocol No. 7.

THE FACTS

2. The applicant was born in 1974 and currently lives in Germany. He was represented by Mr N. Legashvili and Mr A. Chopikashvili, lawyers practising in Georgia, and by Mr E. Sadigov and Ms Z. Sadigova, lawyers practising in Azerbaijan.

3. The Georgian Government were represented by their Agent, Mr B. Dzamashvili of the Ministry of Justice of Georgia. The Azerbaijani Government were represented by their Agent, Mr Ç. Əsgərov.

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

I. BACKGROUNG INFORMATION

5. The applicant is an investigative freelance journalist who worked in Azerbaijan for several media outlets, including Radio Free Europe/Radio Liberty, and was known for his critical journalistic coverage of the Azerbaijani Government. In 2009 he was allegedly beaten by police during the dispersal of a demonstration in Baku (see *Haji and Others v. Azerbaijan* [Committee], no. 3503/10, §§ 26-31 and 172, 177-180, 1 October 2020). In 2011 he was convicted for participation in another demonstration in the city (see *Mukhtarli and Aslanli v. Azerbaijan* [Committee], nos. 13509/12 and 64801/12, §§ 2-5 and 15-26, 2 March 2023).

6. In January 2015, because of alleged harassment and persecution from the Azerbaijani authorities, the applicant moved with his family to Georgia and applied for asylum. During his stay in Georgia, he continued working for various media outlets, reporting on high-level corruption in the Azerbaijani Government.

II. THE APPLICANT'S ALLEGED ABDUCTION IN GEORGIA AND FORCIBLE TRANSFER TO AZERBAIJAN

A. The applicant's account

7. On 29 May 2017, at about 7.30 p.m., while the applicant was on his way home, walking towards his apartment at Niaghvari Street in Tbilisi, he was stopped by four unknown men who spoke the Georgian language and drove a silver Opel car; three of them wore uniforms allegedly belonging to the Georgian criminal police. The men forced the applicant into the car, handcuffed him and started beating him. According to the applicant, he was driven in the direction of Tbilisi International Airport; the car passed the airport and continued in the direction of Sagarejo (Kakheti Region in Eastern Georgia). Once the car had passed Tbilisi International Airport, the applicant was blindfolded. They had twice changed a vehicle. The radio in the last car was playing an Azerbaijani song and the applicant realised that he had been

handed over to the Azerbaijanis across the State border. These men reported every five-seven minutes by telephone to a person to whom they referred as "Mr General".

8. At about 10.40 p.m. on the same day, they arrived at an unknown destination and the applicant was taken to a room, where his blindfold was removed. He saw the insignia of the Azerbaijani State Border Service ("the SBS") on the walls and realised that he was detained in the military unit of the Service in the Balakan District. The servicemen told the applicant that he had illegally crossed the border and that they had found 10,000 euros (EUR) in cash in his pocket. He asserted that the money did not belong to him. They also searched him and seized his mobile telephone, Georgian bank and transport cards and a few Georgian coins. The applicant did not have his international passport on him.

B. The Georgian Government's account

9. Without providing any version of the alleged events, the Georgian Government submitted that the applicant's allegations were unsubstantiated and unsupported by evidence.

C. The Azerbaijani Government's account

10. According to the Azerbaijani Government, on 29 May 2017 at around 10.40 p.m. officers from the sixth border-guard post of military unit no. 2007 of the SBS, which was stationed in the Balakan District, while patrolling the relevant border section adjacent to the border checkpoint, spotted the applicant moving from the territory of Georgia in the direction of the territory of Azerbaijan. The officers waited for the applicant to get closer and then ordered him to stop. The applicant tried to run away, but one of the officers pursued him. When the officer reached the applicant, the latter punched the officer in the chest and, as a result, the officer fell and hit his head against a blunt object and lost consciousness. The applicant was then apprehended by another officer and brought to the border-guard post, where he was subjected to administrative arrest on suspicion of having committed an administrative offence of breaching the regulations of the border regime.

11. On the same day the applicant was transferred to Baku, where criminal proceedings were instituted against him on various charges (see paragraphs 81-95 below).

D. Georgian authorities' reaction to the applicant's allegations

12. The applicant's allegations, which were first voiced by his lawyer already on 31 May 2017 (see paragraph 22 below) prompted public reactions from several high officials in Georgia.

13. On the same day the President of Georgia said in a brief comment regarding the applicant's alleged abduction that the allegations needed to be analysed thoroughly, "since the disappearance of a person from the territory of Georgia – be it through the sea, air, or land routes, the Georgian capital or its border – is a serious challenge to our statehood and our sovereignty." On the same day, the head of the State Security Service said that "we should not hurry to make any conclusions" and that the Azerbaijani official version of the applicant being arrested while crossing the "green border" needed to be verified.

14. On 1 June 2017, the Prime Minister of Georgia called on the law-enforcement agencies "to do everything to investigate the case within the shortest time possible." He further noted that "speculations" regarding the applicant's alleged transfer by the Georgian security agencies to the Azerbaijani authorities were absolutely unacceptable and that he ruled out the involvement of Georgian State institutions in any such activity. The Minister of the Interior noted that "the probability of a person crossing [the State border] at any sector, bypassing border guards is low, although it still exists." He further stated that "I declare with full responsibility that the Georgian law-enforcement agencies have and can have nothing to do with [the applicant's] version of the case."

E. Azerbaijani authorities' reaction to the applicant's allegations

15. On an unspecified date in June 2017, a member of the Azerbaijani Parliament, E.N., stated in an interview given to a media outlet that the arrest and transfer of the applicant had been the result of cooperation between the Georgian and Azerbaijani intelligence services.

16. On 13 June 2017 the Prosecutor General's Office of Azerbaijan made a statement indicating that the allegation made by E.N. to the media about the alleged cooperation between the Azerbaijani and Georgian intelligence services in connection with the arrest of the applicant in Tbilisi and his subsequent transfer to Azerbaijan was false. The statement further noted that the Azerbaijani law-enforcement authorities had not cooperated with the Georgian law-enforcement authorities or intelligence services in connection with the applicant's arrest and had not made such a request to the Georgian part. It further stated that at 10.40 p.m. on 29 May 2017 the applicant had been arrested by the agents of the SBS while the former had been unlawfully crossing the State border between Georgia and Azerbaijan.

III. INVESTIGATION BY THE GEORGIAN AUTHORITIES INTO THE APPLICANT'S ALLEGED ABDUCTION, ILL-TREATMENT AND FORCIBLE TRANSFER TO AZERBAIJAN

A. Criminal complaint concerning the alleged disappearance of the applicant

17. On 30 May 2017 the applicant's wife, L.M., informed the police by letter of her husband's disappearance. In her letter she explained that he had spent the evening before with his Azerbaijani friend, D.A., in one of the cafés on Baratashvili Street in Tbilisi. At around 7 p.m. he had called her, using D.A.'s mobile telephone, to tell her that he was coming home. Since then, he had been missing.

18. On the same date a lawyer acting on behalf of L.M. wrote a letter to the police requesting that they establish the whereabouts of the applicant. He noted that the last time the applicant had talked to his wife had been on 29 May 2017 at about 7 p.m. He had called using his friend's mobile telephone, as his own had been running out of battery. The lawyer also provided the number of the applicant's mobile telephone, noting that the last time it had been on (according to WhatsApp) had been at 1.32 a.m. on 30 May 2017. In the same letter the lawyer alleged that in the period preceding his disappearance the applicant had been followed by unknown people and that he had even made a public post in this respect on his private Facebook account.

B. Initiation of the investigation by the Tbilisi police department

19. On 30 May 2017 criminal proceedings were initiated in respect of the circumstances of the applicant's disappearance under Article 143 § 1 of the Criminal Code (the criminal offence of unlawful deprivation of liberty) by the Old Tbilisi district police department. The applicant's wife was immediately interviewed in the presence of her lawyer and an interpreter. She confirmed that the last time she had heard from her husband had been at around 7.00 p.m. on 29 May 2017. According to her statement, he had called her using his friend's, D.A.'s mobile telephone and had told her that he was coming home. After some fifteen minutes she had tried to reach him on his own mobile telephone, but it had been switched off. The next morning, when she had realised that her husband was not at home, she had called D.A. to enquire about the applicant's whereabouts. In reply, she had been told that he had not seen the applicant since their meeting at the café the previous day.

20. During her interview L.M. also told the investigator that her husband had recently told her that he was being watched by some unknown people.

21. On the same date the investigator interviewed D.A. and R.Sh., two friends of the applicant, with whom he had spent the evening of 29 May 2017,

before his disappearance. They both said that they had met the applicant at around 4 p.m. in a café, Local Taste, on Baratashvili Street in Tbilisi. Having talked for a while, R.Sh. had left, while D.A. and the applicant had stayed until around 7 p.m. Then they had also left the café, walking away in different directions. The applicant, according to D.A.'s statement, had been planning to go home.

22. The following day L.M.'s lawyer additionally told the police that the applicant had apparently been abducted and forcibly transferred to Azerbaijan.

23. By a letter of 1 June 2017, the lawyer provided the police with further details concerning the alleged abduction of the applicant – information which, he said, he had received from Azerbaijan. As described in detail in the letter, on 29 May 2017 the applicant – having left the Local Taste café on Baratashvili Street – had taken a minibus in the direction of his home on Niaghvari Street in Tbilisi. He had got off the minibus in the area close to the Hotel Astoria and a branch of the Bank of Georgia. Having walked for a while he had turned right onto Niaghvari Street, where he had immediately been approached by two men speaking Georgian. They had forced him into an Opel-type car, tied his arms behind his back and put a bag over his head. He had been driven like this for some time, before being moved to another vehicle and eventually taken into Azerbaijan. According to the information that L.M. had received, the applicant had been beaten and subjected to other kinds of inhumane treatment during his abduction; as a result, his ribs were most likely broken.

24. In this letter the lawyer requested the relevant authorities to (i) grant him access to the investigation file, (ii) seize closed-circuit television (CCTV) footage from the cameras installed outside the Hotel Astoria and the above-mentioned branch of the Bank of Georgia, and (iii) interview the applicant's wife.

25. The main investigative actions that were subsequently undertaken by the Old Tbilisi district police department can be grouped in the following manner:

1. Questioning of witnesses

26. On 31 May 2017 the lead investigator interviewed the owner of the Local Taste café, which the applicant had visited on 29 May 2017. According to the statement, the owner of the café knew the applicant, as the latter visited his establishment quite often. On the day in question, he had come to the café with two other persons at around 2 p.m. One of them, who had been in his late twenties, had been a stranger to the owner as on that occasion he had seen him for the first time. He had left the café after about an hour. As for the second person, who had been several years older than the applicant, the owner of the café had known him, as he had visited the café on previous occasions with the applicant. According to the owner, they had both left the café

between 5 p.m. and 6 p.m. In reply to a specific question, the owner explained that there were no CCTV cameras installed either inside or outside the café. On the same date the investigator conducted an inspection of the café and its surroundings and took various photographs.

27. On 2 June 2017 the owner of the café was interviewed again. While confirming his initial statement, he added that the last time he had seen the applicant (in the company of the above-mentioned two other persons), on 29 May 2017, he had not noticed anything suspicious. All three of them had been quietly talking and drinking tea. No other person had entered the café during the period of time in question. The owner also stated that the applicant had left the place at around 7 p.m. but that he had not seen in which direction he had gone. The investigator also interviewed two employees of the café, who had confirmed that they had seen the applicant with two other persons on 29 May 2017. They noted that they had not noticed anything suspicious or unusual on that day, that the youngest of the three men had left the place earlier than the other two, and that the applicant had left at around 7 p.m.

28. On the same date twenty-eight persons – including three taxi drivers, five employees of a nearby carpark, several shopkeepers and outdoor booksellers, and several employees of grocery stores and restaurants in the neighbourhood where the applicant had last been seen – were interviewed. They all stated that they had not seen or heard anything suspicious or unusual on 29 May 2017.

29. The questioning of people from the area in question continued on 3, 6, and 7 June 2017. Twenty-five more witnesses were questioned in connection with the alleged abduction of the applicant. All of them stated that they had not witnessed any type of confrontation or anything suspicious or unusual happening on that day in the area.

30. On 3 June 2017, the investigator interviewed the applicant's wife. While referring to her telephone conversation with O.K., the applicant's defence lawyer in Azerbaijan, she reiterated her initial version of the events, furnishing the police with further details concerning the applicant's alleged abduction. Notably, according to that statement, having left the café on 29 May 2017 the applicant had taken minibus no. 4 in the direction of Chonkadze Street. He had got off the minibus on that street, at the corner of a local park, and had continued in the same direction before turning right into Niaghvari Street. There he had been stopped by four men, three of whom had been wearing the uniform of the Georgian criminal police. All four had been speaking Georgian. He had tried to resist them and had as a result been physically assaulted. He had been forced into an Opel car, the colour and number plate of which he could not recall. He had been taken via Baratashvili Bridge, passing by 300 Aragveli metro station, and via the so-called "airport road", outside Tbilisi, in the direction of the Kakheti Region (in eastern Georgia). According to the statement, after leaving Tbilisi, the applicant had had a bag put over his head. During the drive he had been able to hear the

men making mobile telephone calls and apparently reporting to someone in the Georgian language.

31. On various dates in June 2017 the investigators questioned twenty-two drivers who worked on the no. 4 minibus route. They all noted, with the exception of one driver who had not been working on 29 May 2017, that they did not remember the applicant getting on their minibus and that they had not noticed anything unusual or suspicious happening that day.

32. In the same period the investigation interviewed eighty-seven witnesses from the neighbourhood in which the applicant had been living with his family since 2015. With the exception of a few who had not been at home on the evening of 29 May 2017, all of them testified that they had not seen or heard anything unusual or suspicious happening in the neighbourhood on that day.

33. On 12 June 2017 the investigator interviewed eight employees of the branch of Bank of Georgia located on Chitadze Street. They noted that their standard working hours were from 10 a.m. until 5.30 p.m. and that all of them had been working on 29 May 2017, with at least four of them staying in the office as late as 7 p.m. None of them could remember seeing or hearing anything strange or suspicious happening on that day.

34. Between 11 and 18 July 2017 the investigator interviewed drivers of seven Opel cars that had been captured on various CCTV footage in the area where the applicant had been allegedly abducted in the evening hours of 29 May 2017. Four of them turned to be taxi drivers – one of them a heating engineer, and the last two a lawyer and a police officer. While some of them could not remember the exact reason they had been driving in the relevant area in the evening hours of 29 May 2017, all of them said that they did not know the applicant or have any link to his possible abduction. The police officer stated in his interview that on the evening in question he had been driving to pick his son up from kindergarten. His statement was subsequently confirmed by his wife and the director of the kindergarten in question, who were interviewed on 13 and 20 July 2017, respectively.

35. In parallel with the interviewing of potential witnesses in Tbilisi, information was requested from the head of the Border Police of Georgia (an agency under the Ministry of the Interior) regarding the border sections adjoining the Balakan District of Azerbaijan (the area where the applicant was arrested, according to the Azerbaijani authorities, see paragraph 10 above) and the border guards who had been on duty on the night of 29-30 May 2017 patrolling the relevant sections of the State border. Having received the information requested, in June-July 2017 seventy-three border guards from four different border sections, who had been patrolling the so-called "green border" (about 100 km long) between Georgia and Azerbaijan on the night concerned, were interviewed. According to their description, the stretch of green border under their responsibility had included a 5-km-wide border zone and a 500-metre-wide border line. The term "green" border indicated that

there were no border crossing points at that section of the border and that, hence, it was impossible for people to legally exit Georgia and enter Azerbaijan via that stretch of territory. The border line was accessible only to local residents who had special authorisation issued for that purpose by the Border Police. A river marked a long section of the border at that section, which meant that it was possible to cross the State border on foot by wading through the water. There was no vehicle crossing point on the "green" border zone; thus, it was not possible to cross the "green" border in a vehicle. A wire was stretched along the land part of the border.

36. All the border guards who were interviewed in connection with the applicant's alleged abduction stated that no incident had occurred on that date in the sections that they had been patrolling. They noted that no unknown vehicle other than locals' vehicles had entered the border zone while they had been on duty and that no attempt to cross the border had been detected.

2. Seizure and examination of CCTV footage

37. On 1 and 2 June 2017 the investigator in charge of the applicant's case interviewed representatives of six businesses/properties that were located on Baratashvili Street (where the café was located) and several adjacent streets and were equipped with external CCTV cameras – among them, Georgian State Electro Systems ("GSES"), a computer shop (Alta), a pharmacy, the V. Chabukiani Ballet School, and two small shops. They all agreed to provide the investigation with a copy of their footage covering the period of time in question. On 6 June 2017 the investigator, having obtained a court's authorisation, took possession of footage from three businesses. It appeared impossible to obtain CCTV footage from the two small shops and V. Chabukiani Ballet School, as for technical reasons unknown to their respective heads of security, the footage covering the relevant period of time had not been saved on their respective digital video systems.

38. Having analysed the footage obtained from GSES, on 8 June 2017 the investigator noted in the relevant examination report that he had identified a man in a white shirt, who at 7.24 p.m. had taken a yellow minibus no. 4 heading in the direction of Freedom Square. On 14 June 2017 he tried to watch the footage again in the presence of the applicant's lawyer, but, as subsequently noted in a report, they could not open the relevant DVD file for technical reasons. On 16 June 2017, the applicant's lawyer – having finally watched the very same footage – confirmed that most probably the man in the video was the applicant. On this footage the lawyer also noted a person in black suit who was allegedly watching the applicant boarding the minibus; the lawyer requested the investigator to establish his identity. On 12 July 2017 there was an attempt to examine the above-noted footage again with the participation of L.M. and the applicant's lawyer; however, the DVD file did not open. According to the relevant examination report "it proved impossible

to open the file saved on the DVD for a technical reason; namely, in the absence of required software, the file could not be examined."

39. Meanwhile, the investigator had also examined the footage obtained from the Alta computer shop and the pharmacy (see paragraph 37 above). The CCTV footage from the pharmacy did not reveal any information of interest for the investigation. As for the computer shop, in the relevant examination report of the footage, the investigator noted a man in a white shirt taking a yellow minibus at 7.22 p.m. On 12 July 2017 L.M. having watched the above footage, confirmed that most probably the man in the white shirt was her husband.

40. Subsequently CCTV footage was obtained from five more businesses located in the area where the applicant had last been seen. An examination of that footage, according to the relevant reports in the case file, did not provide any new information.

41. The investigator also sought to obtain footage from three road-traffic cameras situated on Orbeliani Square, in the immediate vicinity of Baratashvili Street (where the applicant had last been seen). On 2 June 2017 the investigator was told by the employee in charge of such matters at the Tbilisi car-patrol police that the relevant cameras had not been working on 29 May 2017. According to the interview report, in reply to a specific question the police officer simply stated that to his knowledge the cameras on Orbeliani Square had been out of order for technical reasons since 21 May 2017. On 24 June 2017 another police officer was interviewed in connection with other road-traffic cameras located along the road supposedly taken by the applicant and his abductors in Tbilisi. According to that officer's statement, around forty road-traffic cameras installed along that road either had been turned off or had not been recording during the period in question, among them four cameras on Baratashvili Bridge, three cameras on Baratashvili Slope, and eight cameras in the area adjacent to Avlabari metro station. Other traffic cameras had, according to the police officer's statement, been streaming live, but had not been recording.

42. On 14 June 2017 the investigator wrote to the director of the Joint Operations Centre at the Ministry of the Interior, requesting a copy of the footage from the surveillance cameras on the outside perimeter of the Tsodna border crossing point (the closest to Balakan District of Azerbaijan, where the applicant was allegedly arrested and the only one in the Lagodekhi Region of Georgia) for the period between 6 p.m. on 29 May 2017 and 6 a.m. on 30 May 2017. On 16 June 2017 the director of the responsible department replied that the footage could not be retrieved owing to the fact that the "recording system of the video surveillance system" was not functioning. On 20 June 2017 an identical request was sent this time to the State Security Service. The latter produced the requested footage on 2 July 2017. Subsequently, the investigative authorities interviewed the employee of the Joint Operations Centre at the Ministry of the Interior who had unsuccessfully

tried to retrieve the requested footage in June 2017 (interview dated 3 October 2017). In his statement he explained that by noting that "the recording system of the video surveillance system was not functioning", he had not implied that the recordings as such had not existed, but simply that he had failed to retrieve those recordings. He further noted that the State Security Service had a direct access to the video surveillance system of all border crossing points and that they had better equipment, which had allowed them to retrieve the recordings concerned.

43. In June and July 2017, the investigator obtained and examined footage from various CCTV cameras situated in the area surrounding the applicant's home, from where the applicant had allegedly been abducted. Accordingly, footage from the period in question had been seized, with the authorisation of a court, from the Hotel Astoria, the branch of the Bank of Georgia (mentioned in the lawyer's letter of 1 June 2017 – see paragraph 23 above), the Georgian Foundation for Strategic and International Studies, and the Ministry of Foreign Affairs of Georgia. The examination of the footage from the Hotel Astoria did not reveal any information of interest to the investigation, except for the fact that on some of the recordings Opel cars could be seen. In the relevant examination report, however, the investigator noted that it was impossible to identify the registration numbers of those vehicles. The CCTV footage obtained from the Georgian Foundation for Strategic and International Studies, located at 3a Chitadze Street, did not yield any relevant information either. As for the voluminous footage obtained from the Ministry of Foreign Affairs of Georgia, located at 4 Chitadze Street, only on one of the recordings did the investigator identify eight Opel-type vehicles, together with their respective registration numbers. The investigator also sought to obtain CCTV footage from the branch of the Bank of Georgia (see ibid.). By a letter of 13 June 2017, the director of the security department at the Bank of Georgia informed the investigation that, for technical reasons, that footage could not be provided.

44. In June-July 2017 the investigators additionally approached owners of around fifty private properties or businesses located in the area where the applicant had last been seen, in the area from where he had been allegedly abducted, and along the road via which he had been allegedly transported after his abduction, requesting access to their CCTV footage. According to the relevant interview reports, it appeared that during the relevant period of time some of the cameras had been switched off, some had been broken, while the footage from most of the rest of the cameras had already been deleted.

3. Interaction with the applicant's lawyer throughout the investigation and various complaints lodged on behalf of the applicant

45. On 5 June 2017 the applicant's lawyer requested the Chief Prosecutor of Georgia to relieve the Old Tbilisi district police department of the case owing to the alleged involvement of police officers in the applicant's

abduction and to entrust the investigation to the Chief Prosecutor's Office of Georgia. In his request the lawyer provided further details concerning the applicant's alleged abduction, including an allegation that he had been transferred to the territory of Azerbaijan via border crossing point in Lagodekhi. In the absence of a reply, on 9 June 2017 the lawyer reiterated his request to the Chief Prosecutor of Georgia for the case to be investigated by the Chief Prosecutor's Office. In support of his request he submitted a clip from a radio interview with one of the members of the Parliament of Azerbaijan, in which the latter had stated that the arrest of the applicant had been the result of joint efforts and steps undertaken by the Georgian and the Azerbaijani intelligence services (see in this connection paragraphs 15-16 above). The applicant's lawyer also requested the district prosecutor supervising the police investigation to grant the applicant and his wife victim status in the proceedings and to allow them access to the investigation file. The requests went unanswered.

46. On 9 June 2017 the lawyer complained to the Tbilisi prosecutor of the district prosecutor's failure to respond to his requests. He reiterated his requests for access to the case file and the granting of the victim status to the applicant and his wife. His letter was forwarded on 14 June 2014 to the district prosecutor's office, but no reply followed.

47. On 13 June 2017 the applicant's lawyer was given access to the investigation file. The file contained the testimony of about 200 witnesses and several CCTV recordings. Having gone through the case file, the lawyer complained to the investigator of the inadequacy of the investigation. He asserted that instead of interviewing hundreds of witnesses who had not seen or heard anything, it would have been more efficient to analyse the seized CCTV footage with a view to identifying the vehicle involved in the applicant's abduction and establishing the identity of its passengers. On the same date the applicant's lawyer lodged an application with the Tbilisi City Court. He requested that the court recognise as unlawful the tacit refusal of the district prosecutor's office to grant the applicant and his wife victim status within the scope of the ongoing investigation. The Tbilisi City Court rejected the above-noted application on 28 June 2017. The court concluded that the request was unfounded, and that in any event it had no jurisdiction to entertain it, as victim status-related issues within the scope of ongoing criminal proceedings fell within the discretion of the prosecutor. There was no possibility to appeal against the above-noted court decision.

48. On 16 June 2017 the applicant's lawyer requested a copy of the entire investigation file. He maintained that the amount of material was voluminous and that without a proper copy it was impossible to study the file within just a few hours or even a day. In addition, the lawyer alleged that he had not been afforded the possibility to watch some of the CCTV footage.

49. On the same date the lawyer was allowed to watch one item of CCTV footage on which the applicant had been identified. The latter was seen

boarding a yellow no. 4 minibus on Baratashvili Street no. 2. The time shown on the video recording at the relevant period of time was 7.24 p.m. On this footage the lawyer noted a person in black suit who was allegedly watching the applicant boarding the minibus; the lawyer requested the investigator to establish his identity. He further requested that the following investigative measures be taken:

- seizure of CCTV footage from a number of addresses along the route of the no. 4 minibus;
- seizure of CCTV footage from the area around Niaghvari Street;
- seizure of CCTV footage along the route via which the applicant was allegedly driven by his abductors, including around the 300 Aragveli metro station and along the so-called "airport route"; and
- seizure of CCTV footage from the Georgia-Azerbaijan border crossing point for the relevant period of time.

50. On 3 July 2017 the applicant's lawyer reiterated his request for access to a copy of the investigation file. On 20 July 2017 a district prosecutor of the Old Tbilisi district prosecutor's office refused the request. He ruled that given the fact that the lawyer lacked any status in the ongoing investigation, he was procedurally not entitled to have a copy of the file. In the meantime, however, on 12 July 2017, the applicant's wife and the lawyer were allowed access to the case material for several hours.

51. Throughout June-July 2017 the investigator also attempted on a number of occasions to make contact with the applicant's two Azerbaijani lawyers, however, unsuccessfully, as they were not answering their mobile telephones. Eventually, on 17 July 2017 the investigator got in touch with both of them. The first of them refused to appear before the Georgian police to undergo an interview. The second lawyer stated that he would inform them of his position after consulting the applicant. As can be seen from the case file, neither of the Azerbaijani lawyers were ever interviewed by a Georgian investigator.

4. Other steps taken in the course of the police investigation

52. On 3 June 2017 the Tbilisi City Court, acting at the request of a prosecutor, authorised the seizure of (i) records from the MagtiCom mobile telephone company of all the incoming and outgoing calls made from the mobile telephone of the applicant in the period between 10 a.m. on 25 May 2017 and midday on 1 June 2017, (ii) records of the message texts either sent or received by the applicant during that period, and (iii) the relevant international mobile equipment identity (IMEI) codes, with a list of the antennae that had transmitted the signals from the applicant's telephone. According to the information provided by MagtiCom, the last time the applicant had used his mobile telephone had been on 29 May 2017 at 4.49 p.m. in Tbilisi.

5. Cooperation with the Azerbaijani authorities

53. On 31 May 2017 the head of the Old Tbilisi police department wrote a letter to the Ministry of Foreign Affairs of Georgia ("the MFA") asking it to obtain information regarding the circumstances of the arrest of the applicant in Azerbaijan and the initiation of criminal proceedings against him. In reply to the MFA's request for information, the Azerbaijani authorities informed the Georgian authorities that the applicant had been arrested on 29 May 2017 in the Balakan Region when trying to illegally cross the Georgian-Azerbaijani State border.

54. On 8 June 2017 the Old Tbilisi district prosecutor's office – via the Chief Prosecutor's Office of Georgia – lodged a request for assistance with the relevant Azerbaijani authorities under the European Convention on Mutual Assistance in Criminal Matters (1959). They submitted a detailed list of questions and asked for the applicant to be interviewed. That request was left unanswered; so was the request, reiterated on 13 June 2017.

C. Investigation by the Chief Prosecutor's Office of Georgia

55. On 20 July 2017 the Chief Prosecutor of Georgia decided to transfer the investigation of the case from the Old Tbilisi district police department to the investigations department of the Chief Prosecutor's Office of Georgia. Several investigators from the investigations department dealing with the most serious crimes were assigned to the case.

56. L.M., the applicant's wife, was interviewed by one of the newly assigned investigators on 25 July 2017. She reiterated the applicant's version of his alleged abduction, ill-treatment and forcible transfer to Azerbaijan. She provided detailed information about their life and work in Georgia, and she said that they had never been subjected to violence or pressure from the Georgian authorities. She confirmed that her husband had been followed and watched by unknown people, although he had never told that to the police, as he had not expected to see any results. With regard to the alleged abduction, L.M. noted that on the day in question the applicant had been carrying neither his national ID card nor his international passport. As she had learned from one of his Azerbaijani lawyers, during the drive following his abduction the applicant and his abductors had changed car twice – the first time somewhere close to Sagarejo. There the bag had been taken off his head and replaced with adhesive tape wrapped around his eyes. The second time that they had changed vehicles before entering the border crossing point, most probably in Lagodekhi region, the applicant had been moved to a sort of minibus. The Georgian-speaking abductors had been replaced at that point by men speaking Azerbaijani. The applicant had crossed the border in the minibus, and when the adhesive tape had been taken off his eyes, he had found himself in a building belonging to the SBS. According to L.M.'s statement, when in Azerbaijan, the applicant's abductors had called someone, telling him:

"Please tell the general that we are bringing mullah – you can come to the funeral." Then the applicant had had EUR 10,000 put into his pocket, which had been subsequently found during a so-called "personal search". Early in the morning of 30 May the applicant had been taken to the bank of the River Mazimchay (on the border between Georgia and Azerbaijan), where the photographs of his purported arrest had been taken. L.M. asserted that the photographs had been taken for the purpose of staging the applicant's purported attempt to illegally cross the Georgian-Azerbaijani green border. However, she noted in her interview that the clothes and shoes of the applicant had been strangely dry. In connection with the applicant's mobile telephone, L.M. reiterated that according to WhatsApp messenger, her husband's telephone had been on at around 1.00 a.m. on 30 June 2017.

57. Between 22 July and 2 August 2017, several investigators reviewed all the footage obtained from the CCTV cameras from the Tsodna border crossing point. Their reports said, without giving further details, that they had not seen anything of interest in respect of the case in those recordings.

58. Between 3 and 10 August 2017, the investigators reviewed footage obtained from the area surrounding the applicant's home – namely, from the Hotel Astoria, the Italian Embassy, the Georgian Foundation for Strategic and International Studies, and the Ministry of Foreign Affairs of Georgia. In the relevant reports the investigators noted that they had not seen anything of interest in respect of the case. On 20 September 2017 the investigator ordered a forensic examination of the above-mentioned footage. As noted in the relevant investigator's order, the purpose of the examination was the identification of the registration numbers of the vehicles seen on the above-mentioned footage. It is not clear from the case file what (if any) was the outcome of the forensic examination.

59. In August the investigators also reviewed the footage obtained from the neighbourhood where the applicant had last been seen on 29 May 2017. The footage obtained from GSES, located at 2 Baratashvili Street, could not be opened (see paragraph 38 above), while the analysis of the footage from the Alta computer shop showed the applicant on Baratashvili Street boarding a yellow minibus at 7.23 p.m. (see paragraph 39 above). According to the investigator who reviewed the footage, no other person was visible in the vicinity of the applicant in the video.

60. Subsequently, after a number of unsuccessful attempts to access the files obtained from the GSES, on 13 July 2018 the investigator ordered a forensic computer examination for the purpose of establishing whether the GSES footage had been damaged (and if so, how) or whether the DVD disk itself had been damaged (and if so, how). The investigator also asked for the available files to be retrieved, if possible, in a format that would allow them to be read without the involvement of a specialist. A computer forensic examination was conducted on 30 July 2018. The expert involved concluded that the DVD was not damaged; however, he could not read the files

themselves because they were damaged or because of their incompatibility with the software on his computer.

61. Between 7 August and 19 September 2017, the investigators interviewed eleven border-patrol police officers who had been on duty at the Tsodna border crossing point on the night of 29-30 May 2017. According to their statements, the Tsodna border crossing point was the closest to Balakan District of Azerbaijan and the only one in the Lagodekhi Region of Georgia; no one could cross the border without passing through passport control and having their vehicle registered. There were three so-called "gates" at the border crossing point: the first gate was designated for the checking of pedestrians, the second gate to the checking of vehicles, and the third gate to the checking of lorries. While the Tsodna border crossing point was under the responsibility of the patrol police, the lorries passing through the third gate were checked by customs officers. The latter were also responsible for checking the passports of lorry drivers. The so-called green border around the border crossing point was controlled by the border police. All of the eleven border-patrol police officers interviewed stated that no incident had taken place on the night of 29-30 May 2017 at the Tsodna border crossing point and that they had not noticed anything suspicious. In reply to a specific question, they dismissed as unrealistic the likelihood of allowing someone to cross the border without having his or her passport checked. They all confirmed that they had never received such an order.

62. At the same time the investigators interviewed eleven customs officers, who, with the exception of one, had been on duty at the Tsodna border crossing point on the night of 29-30 May 2017. As well as providing a general overview of the way the border crossing point functioned, they all confirmed that not a single person could cross the border into Azerbaijan without undergoing passport control. None of them could recall any incident happening at the border crossing point on that night.

63. The investigators also obtained information about the drivers who had crossed the border to Azerbaijan via the Tsodna border crossing point on the night of 29-30 May 2017. On 28 September 2017 one of the investigators interviewed M.U., the driver of the only minibus to have crossed the border to Azerbaijan on that night. According to his statement, he was a national of Azerbaijan, the owner of the minibus in question, and he worked as a private taxi driver, taking people from Georgia to Dagestan, in the Russian Federation. He made this trip normally twice a week. M.U. stated that it was impossible either for him or for his passengers to cross the border in either direction without having their passport checked. Late that night he had been returning to his home village in Azerbaijan via the Tsodna border crossing point. When shown the applicant's photograph, he said that he did not know the man and had never seen him before. He also stated that he had never been asked by anyone to transfer the applicant to Azerbaijan. On the same date as his interview, his minibus was searched and biological samples and

microparticles were removed from its interior. On 13 October 2017 a request for legal assistance was sent to the Azerbaijani authorities with a view to organising a forensic examination capable of showing whether the applicant had been transported in the minibus concerned. In particular, the Georgian investigative authorities asked the Azerbaijani authorities to compare the seized biological samples with the applicant's DNA, and the microparticles with the fibres removed from the applicant's clothes. According to the case file, the request of the Georgian authorities had been left unanswered.

64. On 17 October 2017 one of the investigators also interviewed M.M. (one of M.U.'s passengers) on the night of 29 May 2017. M.M. confirmed that she had taken his taxi with other passengers travelling from Dagestan to her home village in Azerbaijan. She noted that there had been no incident on the border that night and that she had crossed the border without hindrance, after having her passport checked. M.M. said that she had never heard of the applicant and had not seen him crossing the border.

65. Subsequently, having obtained judicial authorisation, the investigator also requested data concerning M.U.'s mobile telephone – namely, information about the calls he had made and received on the night of 29-30 May 2017 indicating the relevant IMEI codes together with a list of the antennae that had transmitted the signals from M.U.'s telephone. By a letter of 12 March 2018, the relevant mobile telephone company informed the investigator that for technical reasons it was impossible to retrieve the data requested.

66. Between 2 October 2017 and 16 February 2018, the investigators interviewed an additional ten people who had crossed the Georgian-Azerbaijani State border via the Tsodna border crossing point on the night of 29-30 May 2017. While providing detailed statements concerning the circumstances and the motives of their crossing the border on that night, they all stated that they had not seen the applicant; neither had they heard anything suspicious or unusual happening on the Tsodna border crossing point that night.

67. In the meantime, on 31 July and 12 December 2017 the Georgian authorities reiterated their request for legal assistance from the Azerbaijani authorities (see paragraph 54 above); however, no reply followed. On 29 January 2018 yet another request for legal assistance was sent to the Azerbaijani authorities. This time, the investigator in charge of the applicant's case asked for a copy of the first-instance court decision convicting the applicant of illegal crossing the border, resisting an official representative, and smuggling (see, in this connection, paragraph 122 below). In reply, on 31 January 2018 the requested decision was provided.

68. On 2 April 2018, in response to an allegation voiced by the applicant's lawyer that certain footage in the case file had been manipulated, the investigator ordered a forensic examination of the footage obtained from the Tsodna border crossing point. He asked the experts to establish whether the

footage recorded on a DVD-R disk had been tampered with. The investigator also requested the identification of the registration numbers of all the vehicles seen on the footage. The case material available to the Court does not contain the results of that forensic examination.

69. On 26 June 2018 the investigator examined again the information concerning the use of mobile telephones by the applicant and his wife on 29 May 2017. According to the report that he subsequently drew up, the applicant's wife had received two calls from the mobile telephone of D.A. – at 7 p.m. and at 7.01 p.m. At the moment of both calls, L.M. had been in the area of Chitadze Street (in the vicinity of their home), while D.A. had been in the area of Grigol Orbeliani Park (in the area where the applicant was last seen).

70. On 3 July 2018 the applicant's lawyer provided the investigator in charge of the applicant's case with a copy of the applicant's handwritten statement in Azerbaijani and a translation thereof into Georgian. The lawyer noted that the statement had been written by the applicant and handed over to his Azerbaijani lawyer on 14 June 2018. In his statement the applicant reiterated his version of the events, stating that three persons wearing criminal police uniforms had attacked him from behind and had started beating him. He had been forced into a vehicle, which had driven several hundred metres down the road and had then stopped close to a local kindergarten. There, he had been beaten again and his arms had been tied behind his back. The applicant provided a detailed description of the journey that he and his abductors had then made. Notably, he mentioned passing by the Parliament of Georgia on Rustaveli Avenue, then – via Freedom Square – turning in the direction of Baratashvili Bridge; they had then crossed the bridge, passing by the Avlabari and 300 Aragveli metro stations, and had taken the so-called "airport route". He stated that a bag had been put over his head after the vehicle had left Tbilisi, however, he had still been able to see the road, as the bag had been damaged. The first stop had been made after about one and a-half hour of driving, close to Sagarejo. There, the abductors had taken the bag off the applicant's head and had pulled his shirt over his head instead. After about another forty minutes he had been forced into another car. The same men had continued to escort him. After two hours' drive, he had been moved to yet another car. From there on he had been accompanied by men speaking Azerbaijani. In a short while, their vehicle had stopped again, and someone had said: "Ali – come and see." Then, after about fifteen minutes the applicant had been taken into a building, where his shirt had been pulled off his head and he had been able to see that he was at an Azerbaijani border crossing point. In his statement the applicant named two persons who had allegedly brought him to the Azerbaijani side: A.Sh. an assistant to the head of the SBS, and J.G. He also alleged that prior to his abduction he had already been expecting to be detained and abducted to the Azerbaijani side of the border, as he had been followed and watched intensively. He concluded by

saying that the Government of Georgia, the Georgian criminal police, and the head of the Lagodekhi customs and border crossing point were responsible for his abduction and that he had been taken via the Lagodekhi border crossing point into neutral territory, where he had been handed over to the Azerbaijani authorities.

71. On 27 July 2018 the investigator checked in the relevant border crossing database of the Ministry of the Interior whether the two persons identified by the applicant as A.Sh. and J.G. had crossed the border into Georgia in 2017. He found in the system three persons bearing the name of A.Sh.; however, none of them had crossed the border with Georgia in 2017. As for J.G., the investigator identified one person of the same name who had left Georgia via another border crossing point on the border between Georgia and Azerbaijan, the Vakhtangisi, on 28 May 2017 and had returned to Georgia on 7 June 2017 using the same border crossing point.

72. On the same date the investigator also checked whether anyone with the name "Ali", as mentioned in the applicant's statement, had crossed the border via the Tsodna border crossing point on 29 May 2017. He found in the relevant database that one Azerbaijani national, a certain A.I., had indeed crossed the border on that day at 10.41 p.m. According to the case file, he has not been interviewed to date.

D. Allegations of being under surveillance in Georgia, and the related investigation

73. On 7 August 2017 L.M. requested the prosecutor in charge of the investigation to also investigate the allegations that she and the applicant were being watched and followed by unknown people. She stated that the surveillance of them had started several days before the applicant's alleged abduction. In support of her request L.M. submitted several photographs depicting four different men who had allegedly been following her on 4 August 2017 on Rustaveli Avenue in Tbilisi.

74. On 14 August 2017 L.M. provided three more photographs of the men who had been allegedly watching them. In connection with one of the photographs, she stated that it had been taken by the applicant several days before his abduction.

75. On 24 August 2017 the applicant's wife was interviewed in connection with the allegations of unlawful surveillance. She provided detailed information about the four photographs she had taken on 4 August 2017 of the men on Rustaveli Avenue when they had been allegedly following her. She also recalled noticing on 3 August 2017 around seven men who she said had been watching her and her daughter in one of the central parks in Tbilisi. L.M. also noted another incident on 26 June 2017 when, while sitting in one of the cafes in Tbilisi with D.A., a handbag had been

placed on her seat. She alleged that there had been recording equipment inside that handbag.

76. On 31 August 2017, the Tbilisi City Court allowed an application lodged by the prosecutor to have CCTV footage seized from Rustaveli Avenue, where L.M. had been allegedly followed by unknown man on 4 August 2017. Footage was obtained from four private properties.

77. On 19 September 2017 L.M. held a press conference during which she showed several additional photographs of the men who had allegedly been watching her, the applicant and their Azerbaijani friends (including D.A.) in Tbilisi.

78. Having undertaken a number of investigative steps, the identity of the four men from the photographs were established. All four had Azerbaijani nationality. The first one, Sh.M., was interviewed by one of the investigators on 28 September 2017. He stated that after making a number of short business trips to Georgia, he had moved to Tbilisi on 24 April 2017 and had started a business there. He noted that he did not know either the applicant or his wife, and that he had never heard of them. He dismissed as untrue the allegations that he had been following and watching L.M. As regards his photograph, he said that it had been taken on 31 May 2017 by two Azerbaijani men and that he had even complained about this to the police. A copy of his complaint dated 31 May 2017 was subsequently added to the case file.

79. G.H., another of the persons identified in the photographs, stated that his photograph had been taken in April 2016 in one of the hotels in Tbilisi and that another person on the photograph was B.M., an uncle of his former wife. His version of the events was subsequently corroborated by both B.M. and the owner of the hotel in question, both of whom were interviewed by the investigator in September 2017 and April 2018, respectively. They dismissed having any kind of relationship with the applicant and his wife.

IV. THE APPLICANT'S ARREST IN AZERBAIJAN AND THE INSTITUTION OF CRIMINAL PROCEEDINGS AGAINST HIM

A. The applicant's arrest

80. The Government of Azerbaijan were requested to provide all the documents related to the applicant's arrest and other material concerning the criminal proceedings instituted against him. The most relevant documents provided by the Government are set out below.

81. Upon the applicant's apprehension, on 30 May 2017, Mr A.O., the investigator of military unit no. 2007 prepared the following document:

" RECORD

of administrative arrest

30 May 2017

12.30 a.m. Mazimgara village, Balakan District

In accordance with Articles 27 and 28 of the Law of the Republic of Azerbaijan on the State Border and Articles 88.1.2 and 90 of the Code of the Republic of Azerbaijan of Administrative Offences, [Mr A.O., official position and rank] carried out an administrative arrest of [the applicant] for having committed an administrative offence under Article 570 of the Code of the Republic of Azerbaijan of Administrative Offences.

- Ground for administrative arrest: Breach of the regulations of the border regime.

...

The arrested person should be subjected to administrative arrest for a period of twenty-four hours and kept in military unit."

82. The above-noted record was followed by a document attesting that the applicant had been informed of his rights as an arrested person within administrative proceedings.

83. Following his arrest, the applicant was searched, and the following items were seized: a mobile telephone, EUR 10,000, Georgian bank and transport cards and some coins. A record of the search was drawn up at 12.40 a.m. on 30 May 2017.

84. On the same date Mr A.O. prepared the following document:

" Record of administrative offence

30 May 2017

12.50 a.m. Mazimgara village, Balakan District

In accordance with Article 100 of the Code of the Republic of Azerbaijan of Administrative Offences, [Mr A.O.] prepared the present record because the actions [of the applicant] indicate the commission of the following administrative offence.

On 29 May 2017 at 10.40 p.m. [the applicant] breached the State border of the Republic of Azerbaijan [crossing from Georgia] in the 45th section of the left flank of outpost no. 6 of military unit no. 2007, stationed in the village of Mazimgara, Balakan District.

...

Having regard to the fact that the above-noted administrative offence is listed by Article 570 of the Code of the Republic of Azerbaijan of Administrative Offences, [the applicant] is held administratively liable.

85. On 30 May 2017 an investigator from the SBS, issued the following decision:

" DECISION

On the opening of a criminal case and the assembly of investigation team

30 May 2017 Baku

[Mr A.I., official position and rank], having considered the material received from military unit no. 2007 of the State Border Service,

HAVING ESTABLISHED THAT:

It follows from the material received from military unit no. 2007 of the State Border Service that at 10.40 p.m. on 29 May 2017 [the applicant] illegally crossed the secured State border of the Republic of Azerbaijan outside the checkpoint ... Specifically, [he] illegally passed from Georgia into the Republic of Azerbaijan through the border located in the 45th section of outpost no. 6 of military unit no. 2007, stationed in the Balakan District, and smuggled ... cash on a large scale – [namely,] 10,000 euros [equivalent to 19,062 [Azerbaijani manats (AZN)] ... Thereafter, he was apprehended by servicemen of the State Border Service.

During the search [of the applicant's person], a large amount of cash – [namely] 10,000 euros equivalent to [AZN] 19,062 – was found and seized.

Having regard to the fact that the actions of [the applicant] contain elements of crimes listed by Articles 318.1 and 206.1 of the Criminal Code of the Republic of Azerbaijan, it is necessary to open a criminal case under those Articles and to create an investigation team ... in order to investigate the criminal case in a full and impartial manner.

Having regard to the above...

HAS DECIDED:

1. To open criminal case against [the applicant] under Articles 318.1 and 206.1 of the Criminal Code of the Republic of Azerbaijan.

2. To register the case under no. 172960049 ..."

86. On 30 May 2017 the investigator in charge of the case examined the crime scene. The relevant record read:

RECORD

(upon inspection of the crime scene)

30 May 2017 Outpost no. 6 of military unit no. 2007,

Mazimgara village, Balakan District

...

Inspection started: 6.30 a.m.

Inspection ended: 7 a.m.

The inspection was carried out in daylight conditions. During the inspection the following was established: the crime scene is located at the end of the border fence, 50 metres from the forty-fifth section of the left flank of outpost no. 6 of military unit no. 2007, stationed in the village of Mazimgara, Balakan District. At a distance of 2 metres from the end of the border fence there is a gulley leading to the bed of the River Mazimchay, where dry tree branches have been placed. The depth of the riverbed is 2.5 metres. The part of the terrain leading from the riverbed towards the Republic of Azerbaijan is flat.

During the inspection of the crime scene, [the officers G.M. and D.Kh.] indicated that while [they had been] on [guard]duty from 10.15 p.m. on 29 May 2017 until 1 a.m. on 30 May 2017 in the 45th section of the left flank of the border outpost, at 10.40 p.m. on 29 May 2017 [the applicant] had crossed the State border from Georgia into the Republic of Azerbaijan near a fence post marked with the number "46-45" at the end

of the border fence in the 45th section. During the inspection of the crime scene, footprints were found in the indicated area – namely on the bank of the River Mazimchay, which leads toward the Republic of Azerbaijan.

During the inspection photographs were taken ..."

87. On an unspecified date, an officer from the SBS, Sh.Z., was questioned by the investigator. The relevant parts of his interview read:

"From 10.15 p.m. on 29 May 2017 until 1.00 a.m. on 30 May 2017, I – together with [officers A.Sh., J.G., G.M. and D.Kh.] – were on [border-patrol] duty. During our period of duty, at 10.40 p.m., we noticed one person in civilian clothes crossing the State border of the Republic of Georgia towards the Republic of Azerbaijan. That person was warned to stop. However, that person, ignoring the warning, tried to run away from the area. As a result of the measures taken subsequently, we apprehended the person who had tried to breach the State border. During the apprehension, the said person offered resistance to a member of the border patrol by throwing punches, and punched in the chest [G.M.], who fell to the ground. When [G.M.] fell to the ground he hit the back of his head on a stone and lost consciousness for a while. Because I was standing next to [G.M.], I saw exactly what happened. Afterwards, the said person was restrained ... [and] taken to the outpost in order to establish his identity. During the initial inquiry the person arrested was identified as [the applicant].

88. G.M., who was questioned by the investigator, gave the following testimony:

"... I began my military service in the State Border Service on 28 January 2015, and am continuing my service in the military unit ... stationed in the Zagatala District ...

On 29 May 2017, owing to service needs, I was posted for duty to outpost no. 6, stationed in Mazimgara village, Balakan District. During my attachment, I – together with [officers A.Sh., J.G., Sh.Z., and D.Kh.] – were on [border-patrol] duty from 10:15 p.m. on 29 May 2017 until 1 a.m. on 30 May 2017. During [our patrol], at 10:40 p.m., we noticed one person in civilian clothes crossing the State border from the Republic of Georgia towards the Republic of Azerbaijan. That person was warned to stop. However, that person, ignoring the warning, tried to run away from the area. As a result of the measures taken afterwards, we apprehended the person who had tried to breach the State border. During the apprehension, the said person offered resistance to the members of the border patrol by throwing punches; he punched me in the chest, and I fell on the ground. When I fell on the ground, I hit the back of my head on a stone. At that moment my eyes blacked out and I became unconscious. Afterwards, the said person was restrained ... [and] taken to the outpost in order to establish his identity. During the initial inquiry the person arrested was identified as [the applicant].

89. The investigator also questioned D.Kh., who gave testimony similar to that of Sh.Z. and G.M.

90. On 30 May 2017 the applicant was declared a suspect in the criminal proceedings and was informed of his right to access a lawyer and not to incriminate himself. The applicant retained a lawyer of his own choosing, Mr Elchin Sadigov. On the same date at 7.40 p.m. the investigator drew up a record of the applicant's arrest as a suspect.

91. On the same date the applicant was questioned as a suspect in the presence of his lawyer. The relevant parts of his testimony read:

"Question: You are invited to give testimony as regards the suspicion against you of committing a criminal offence. What could you state in this regard?

Response: I would like to state that in 2015 I travelled together with my family to Tbilisi, Georgia through the Shihli border checkpoint in order to reside [there] temporarily. I live there with my family in a rented apartment ... I started my career in journalism around 2000. During this period, I worked for the *Yeni Müsavat, Azadlig*, *Muhalifat*, *Bizim Yol*, and *Khural* newspapers, and I currently cooperate with the Internet television station Meydan TV. At the same time – from 2000 until 2010 – I was a member of the Müsavat Party (a political party) and was involved in political activity. I am no longer a member of this party, and at present I continue my journalistic activities in Tbilisi as an independent journalist.

At around 6 p.m. on 29 May 2017 I bought some bread in a shop located in Niaghvari Street, next to my temporary residence, and on my way back an Opel car [drove up and] blocked my way and three persons grabbed me from behind and forced me into the car ... I had the feeling that these persons were State agents. They drove the car [away] and pulled over in a nearby park ... They then tied my arms behind my back with a cable and drove in the direction of the airport. While in the car, the said persons injured me by punching me in the face and in the chest. At present I have bruise marks on my wrists left by the cable binding, injuries to my left temple, forehead, the upper part of my nose [and] my right eye, and I also have pain below the left side of my chest. After driving past the airport, the said persons put a bag on my head and changed direction towards the Sagarejo District. After a while, my heart started to cause [me] pain. ... I informed them of that, and they stopped the car and removed the bag ... At that moment I saw that the car had not stopped on the road but in a field. Because I did not feel well, they covered [only] my eyes, [binding them with] tape, and took me out of the car. After waiting for five-six minutes, another car arrived, and they put me in that car. They switched cars, but the persons who had apprehended me remained – I realised that from their voices. After two hours on the road, they took me out of the car and put me in a large crossover-type car. In this car there sat other persons and they were speaking Azerbaijani. After driving for a while, the said persons brought me to a building and opened my eyes. Afterwards, I realised that I had been brought to the border outpost. In the outpost they started to question me and told me that I had [illegally crossed] the State border. During a search of my person, they found and seized one mobile telephone, one [payment] card, one public transport card, one [Georgian] lari, two five-tetri coins and EUR 10,000. I declare that the EUR 10,000 found and seized do not belong to me. ... While my eyes and arms were tied, [this money] was put in my pocket by the persons next to me ..."

92. At 8.50 p.m. on 30 May 2017 the applicant was admitted to the temporary detention facility of the Khatai District Police Office, where he was examined by a doctor. According to extracts from the medical logs kept by the temporary detention facility, no sign of injury was found on the applicant's body, and he did not make any complaint in that regard.

93. On 30 May 2017 the investigator ordered a medical forensic examination of G.M. According to the forensic report dated 31 May 2017, G.M. sustained swelling to the back of his head, which resulted in concussion. He also had bruises on his chest and forearm. The expert concluded that the injuries caused to G.M. resulted in short-term damage to his health.

94. On 31 May 2017 the investigator conducted a face-to-face confrontation between the applicant and G.M., who maintained their initial submissions.

95. On 31 May 2017 the applicant was additionally charged under Article 315.2 of the Criminal Code (Resistance to or violence against a public official that poses a danger to his life and health), and G.M. joined the proceedings as the victim.

96. It appears from a letter dated 1 June 2017 from the head of the Baku pre-trial detention facility that at 12.10 p.m. on 1 June 2017 the applicant was transferred from the temporary detention facility of the Khatai District Police Office to the Baku pre-trial detention facility and that no sign of injury was observed on his body during the medical examination carried out upon his admission to the Baku pre-trial detention facility.

B. The applicant's detention on remand

97. On 31 May 2017 the prosecutor in charge of the case lodged an application with the Sabail District Court asking that the applicant be remanded in custody.

98. On the same date the Sabail District Court ordered the applicant's detention for a period of three months. The court justified the applicant's detention by referring to the gravity of the charges brought against him, and the likelihood that, if released, he would abscond and interfere with the investigation.

99. On 2 June 2017 the applicant appealed against that decision, claiming that his detention was unlawful and unjustified. He complained, in particular, that there was no reasonable suspicion that he had committed any criminal offence because he had not unlawfully crossed the State border between Georgia and Azerbaijan but had rather been abducted by Georgian State agents and forcibly transferred to Azerbaijan. He also alleged that the cash found on him had been planted and that the medical evidence related to G.M.'s injuries had been fabricated. Furthermore, he asked the appellate court to request and examine the video recordings of the security cameras situated at the border crossing point in Balakan District of Azerbaijan.

100. On 6 June 2017 the Baku Court of Appeal dismissed the applicant's appeal and confirmed his pre-trial detention. Referring to the applicant's arrest record of 30 May 2017, the court held that his detention was based on a reasonable suspicion that he had committed a criminal offence. As regards the applicant's complaint in respect of the alleged fabrication of the criminal case against him, it noted that the conduct of the preliminary criminal investigation and the collection of evidence fell under the responsibility of investigating authorities and that the applicant should have addressed his complaints to those authorities.

101. On 13 June 2017 the applicant lodged an application with the court asking to be released on bail or placed under house arrest. He maintained his submissions concerning his alleged abduction and covert transfer from Georgia to Azerbaijan and stated that there was no reason for his continued pre-trial detention.

102. On 20 June 2017 the Nasimi District Court dismissed the applicant's application, mainly citing the characteristics and gravity of the charges brought against him.

103. On 22 June 2017 the applicant appealed against that decision, reiterating his previous arguments.

104. On 29 June 2017 Baku Court of Appeal upheld the Nasimi District Court's decision of 20 June 2017.

105. On 17 August 2017 the Nasimi District Court extended the applicant's pre-trial detention until 29 October 2017. The court justified its decision by stating that additional time was needed in order to carry out further investigative actions and that the grounds for the applicant's pre-trial detention had not changed. It does not appear from the case file that the applicant appealed against the Nasimi District Court's decision of 17 August 2017.

106. On 13 October 2017 the Nasimi District Court, referring to the same grounds, extended the applicant's pre-trial detention until 20 December 2017. It does not appear from the case file that the applicant appealed against the Nasimi District Court's decision of 13 October 2017.

107. In the meantime, on 27 August, 4 October and 7 November 2017 the Nasimi District Court dismissed the applicant's requests asking to be released on bail or to be placed under house arrest rather than in pre-trial detention.

108. No further decisions extending the applicant's detention are contained in the case file.

C. Proceedings concerning the alleged unlawfulness of the applicant's detention from 29 to 31 May 2017

109. On 31 May 2017 the applicant lodged a complaint, as amended on 16 June 2017, with the Sabail District Court, asking the court to declare unlawful his deprivation of liberty from the moment of his actual apprehension at 10.40 p.m. on 29 May 2017 until the moment at which his detention on remand had been ordered by the Sabail District Court at 5 p.m. on 31 May 2017. In support of his claim, he mainly argued that although he had been apprehended at 10.40 p.m. on 29 May 2017, the record of his arrest as a suspect had been compiled only on 30 May 2017 – almost twenty hours after his arrest.

110. On 16 June 2017 the Sabail District Court dismissed the applicant's complaint, finding that the applicant's detention during the period in question had been lawful. In particular, the court held that an administrative arrest

record concerning the applicant's arrest for breaching the border regime had been compiled at 12.30 a.m. on 30 May 2017, following the applicant's apprehension at the State border between Azerbaijan and Georgia at 10.40 p.m. on 29 May 2017.

111. On 19 June 2017 the applicant appealed against that decision, reiterating his previous complaints.

112. On 23 June 2017 the Baku Court of Appeal upheld the first-instance court's decision.

D. Search of the contents of the applicant's mobile telephone

113. On 31 May 2017 the investigator, referring to Article 236 of the Code of Criminal Procedure ("the CCrP"), drew up a record of the inspection of the applicant's mobile telephone (*mobil telefona baxış keçirilməsi haqqında protokol*). According to the record, the inspection of the mobile telephone carried during the applicant's arrest had begun at 10.00 a.m. and ended at 11.00 a.m. The record indicated that there had been a number of exchanges of messages between the applicant and various persons via a communication platform, but that no information relevant to the criminal investigation had been found in those messages. The record also indicated that there were 604 photographs and videos in the mobile telephone's gallery and that the mobile telephone contained various social media applications.

114. On 14 June 2017 the investigator in charge of the case ordered a forensic technical and linguistic examination of the applicant's mobile telephone. In particular, the investigator asked the expert to extract all the information stored in the device, to provide the investigation with all the SMS messages available in the device (and, if possible, the information available on the social media accounts of the applicant) and to establish whether the audio, video, photograph and textual documents contained any call for the unlawful usurpation of power and a change of the constitutional order by force or calls for action against the territorial integrity of the Republic of Azerbaijan, or any call for incitement to ethnic, racial, social or religious hatred and hostility or the restriction of citizens' rights on the above-mentioned grounds.

115. On the same date the applicant lodged a request with the investigator asking for the above-mentioned decision to be quashed on the grounds that his mobile telephone contained information constituting private family information.

116. On 19 June 2017 the investigator refused the request, finding that the expert was under an obligation not to disclose any information relating to the applicant's private life and that the forensic examination had been ordered in the light of the fact that the mobile telephone might contain information relevant to the investigation.

117. It appears from the case file that on an unspecified date the applicant lodged a complaint with the Nasimi District Court under Article 449 (Procedure for the review of the lawfulness of procedural actions or decisions by the prosecuting authorities) of the CCrP, complaining that the search of the contents of his mobile telephone had been unlawful. The parties failed to provide the Court with a copy of that complaint.

118. On 6 July 2017 the Nasimi District Court refused to admit the applicant's complaint for examination, holding that the measures complained of were not covered by Article 449 § 3 of the CCrP, which provided a list of specific measures that could be challenged before the domestic courts.

119. On 10 July 2017 the applicant appealed against that decision, mainly arguing that the search of the contents of his mobile telephone had been unlawful since it had been conducted in the absence of a court decision.

120. On 14 July 2017 the Baku Court of Appeal upheld the Nasimi District Court's decision of 6 July 2017.

121. On 14 July 2017 the expert issued forensic report no. 15634 concerning the examination of the contents of the applicant's mobile telephone in accordance with the instructions of the investigator in his decision of 14 June 2017.

V. FURTHER DEVELOPMENTS IN THE CASE

A. The applicant's criminal conviction in Azerbaijan, subsequent release and asylum in Germany

122. On 12 January 2018 the applicant was convicted of illegal border crossing, smuggling, and violently resisting a law-enforcement official, and sentenced to six years' imprisonment. On 17 March 2020 his sentence of imprisonment was commuted to a fine and he was released from prison. On the same date he left for Germany, where he was granted asylum.

B. The progress of the investigation in Georgia

123. On 23 March 2020 the applicant's lawyer requested the prosecutor's office to arrange for the applicant to be interviewed remotely. In the absence of a reply, the applicant reiterated his request on 23 July 2020.

124. On 24 July 2020 the applicant was interviewed in Germany, with the participation of a German investigator. He reiterated his allegations that he had been abducted from Georgia and identified by name five Azerbaijani individuals who had allegedly participated in his abduction and forceable transfer to Azerbaijan. He further stated that one of those individuals had told him that the Azerbaijani side had paid 3 million US dollars to the Georgian side for organising his abduction.

125. On 14 January 2021 the Georgian authorities lodged a request for legal assistance with the Azerbaijani authorities on the basis of the European Convention on Mutual Assistance in Criminal Matters (1959). They requested the questioning of the five Azerbaijani nationals named by the applicant in his statement of 24 July 2020 and the provision of information concerning their official status and whereabouts on 29 May 2017. In the same request the Georgian authorities queried whether surveillance cameras had been installed on the Azerbaijani side of the Tsodna border crossing point and if so, whether the relevant recordings could be obtained and saved. The case file contains no further information about the progress, if any, of the above-mentioned request.

126. On 20 April 2021 the offence was re-categorised from the offence of unlawful deprivation of liberty (Article 143 § 1 of the Criminal Code) to that of the offence of unlawful deprivation of liberty by a group in a premeditated manner (Article 143 § 3 (a)). The applicant was granted the procedural status of victim. The relevant prosecutorial decisions stated that there was sufficient evidence in the case file to allege that the applicant had been unlawfully deprived of his liberty and had suffered non-pecuniary damage on that account.

127. According to the case file, several additional investigative actions were conducted in 2021, such as a DNA examination of the applicant's genetic code in order to compare it with DNA samples obtained from the minivan, interviewing several Georgian police officers, and an investigative re-enactment of the applicant's abduction (with the participation of the applicant).

128. On 26 July 2022 former deputy head of the State Security Service of Georgia, I.G. – who was in pre-trial detention on various charges at the material time – published a letter alleging, *inter alia*, that the abduction and transfer of the applicant from Georgia to Azerbaijan had been carried out by Georgian security service officials and that the video footage confirming the allegations had been deleted. On 27 September 2022, in reply to several reiterated requests, the prosecutor in charge informed the applicant that the interviewing of I.G. had not been finalised and that, accordingly, the information provided by him could not yet be shared with him.

129. In the meantime, I.G. issued another public statement in which he identified by name two individuals who had allegedly, at the request of the former Prime Minister of Georgia, B.I., organised and executed the abduction and transfer of the applicant from Georgia to Azerbaijan: V.G., the Minister of the Interior of Georgia, who at the relevant time had been the head of the State Security Service; and O.K., former head of the counter-intelligence department at the State Security Service. On 28 September 2022 the applicant requested that the three above-mentioned individuals be questioned.

130. In commenting on further information provided by the applicant, on 13 September 2023 the Government of Georgia informed the Court that the

criminal investigation into the alleged abduction of the applicant was still ongoing and that the interviewing of I.G. had been completed. They further noted that four officers of the counter-intelligence department and four State Security Service officers (who had been named by I.G. in his evidence) had been interviewed and that they had all had dismissed the assertion that they had been involved in the applicant's abduction or in the tampering with the evidence as untrue.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW AND PRACTICE IN GEORGIA

131. Article 143 § 1 of the Criminal Code (1999) provides for the offence of unlawful deprivation of liberty, which is punishable by two to four years' imprisonment. Paragraph 3 (a) of the same provision provides for seven to ten years' imprisonment for the same offence committed by a group in a premeditated manner.

132. Under the Ministerial Order No. 34 issued by the Minister of Justice on 7 July 2013, as in force at the material time, although criminal investigations were usually carried out by the Ministry of the Interior, an investigation into an offence implicating, *inter alia,* police or other law-enforcement officers, was to be entrusted to the Public Prosecutor's Office.

II. RELEVANT DOMESTIC LAW AND PRACTICE IN AZERBAIJAN

133. The relevant provisions of the Code of Criminal Procedure ("the CCrP") concerning pre-trial detention are described in detail in the Court's judgments in *Farhad Aliyev v. Azerbaijan* (no. 37138/06, §§ 83-102, 9 November 2010) and *Muradverdiyev v. Azerbaijan* (no. 16966/06, §§ 35-49, 9 December 2010).

134. The relevant decisions of the Plenum of the Supreme Court concerning pre-trial detention are described in detail in the Court's judgment in *Rasul Jafarov v. Azerbaijan* (no. 69981/14, §§ 79-80, 17 March 2016).

135. The relevant provisions of the CCrP concerning inspection, search and seizure are described in detail in the Court's judgments in *Avaz Zeynalov v. Azerbaijan* (nos. 37816/12 and 25260/14, § 51, 22 April 2021) and *Azer Ahmadov v. Azerbaijan* (no. 3409/10, § 37 and §§ 43-50, 22 July 2021).

III. RELEVANT INTERNATIONAL DOCUMENTS

A. The European Convention on Mutual Assistance in Criminal Matters (1959)

136. The European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 ("the Mutual Assistance Convention") was ratified by Georgia on 13 October 1999 and entered into force in respect of Georgia on 11 January 2000. The Mutual Assistance Convention was ratified by Azerbaijan on 4 July 2003 and came into force with respect to Azerbaijan on 2 October 2003. The relevant provisions of this Convention read:

Article 1

"1. The Contracting Parties undertake to afford each other, in accordance with the provisions of this Convention, the widest measure of mutual assistance in proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Party.

..."

Article 2

"Assistance may be refused:

(a) if the request concerns an offence which the requested Party considers a political offence, an offence connected with a political offence, or a fiscal offence;

(b) if the requested Party considers that execution of the request is likely to prejudice the sovereignty, security, *ordre public* or other essential interests of its country."

Article 3

"1. The requested Party shall execute in the manner provided for by its law any letters rogatory relating to a criminal matter and addressed to it by the judicial authorities of the requesting Party for the purpose of procuring evidence or transmitting articles to be produced in evidence, records or documents.

2. If the requesting Party desires witnesses or experts to give evidence on oath, it shall expressly so request, and the requested Party shall comply with the request if the law of its country does not prohibit it.

3. The requested Party may transmit certified copies or certified photostat copies of records or documents requested, unless the requesting Party expressly requests the transmission of originals, in which case the requested Party shall make every effort to comply with the request."

Article 6

"1. The requested Party may delay the handing over of any property, records or documents requested, if it requires the said property, records or documents in connection with pending criminal proceedings.

..."

Article 15

"1. Letters rogatory referred to in Articles 3, 4 and 5 as well as the applications referred to in Article 11 shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels.

2. In case of urgency, letters rogatory may be addressed directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party. They shall be returned together with the relevant documents through the channels stipulated in paragraph 1 of this article.

...

7. The provisions of this article are without prejudice to those of bilateral agreements or arrangements in force between Contracting Parties which provide for the direct transmission of requests for assistance between their respective authorities."

Article 19

"Reasons shall be given for any refusal of mutual assistance."

B. The 1993 Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters ("the 1993 Minsk Convention")

137. The 1993 Minsk Convention, to which both Azerbaijan and Georgia are parties, was signed on 22 January 1993 in Minsk. It entered into force in respect of both countries on 11 July 1996. Section II of the Minsk Convention regulates issues concerning cooperation in criminal matters.

C. The Treaty on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters between Azerbaijan and Georgia

138. The Treaty on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters was signed on 8 March 1996 in Tbilisi between Azerbaijan and Georgia, and the instruments of ratification were exchanged between the parties on 20 January 1997. The relevant provisions of this Treaty read:

Article 5 – scope of legal assistance

"1. The parties to the treaty shall afford one another mutual legal assistance in carrying out procedural and other measures [..] notably, in the form of preparing and sending a document, conducting a search, seizure, sending items of evidence, conducting expert examinations, taking statements from parties, accused persons, convicts, witnesses, experts ..."

Article 17 – refusal to afford legal assistance

"No legal assistance shall be afforded if the requested State party consider that [execution of the request] is prejudicial to its sovereignty and security or is in breach of the essential principles of its legislation."

D. Other relevant documents

139. The relevant extracts of Resolution 2184 (2017) of the Parliamentary Assembly of the Council of Europe, "The functioning of democratic institutions in Azerbaijan", adopted on 11 October 2017, read as follows:

> "... 6. The Assembly is concerned about the reported problem of arbitrary application of criminal legislation to limit freedom of expression, as highlighted by the Committee of Ministers in the framework of its supervision of the judgments of the European Court of Human Rights. Since 2013, several journalists and bloggers have been arrested on criminal charges (drug trafficking or hooliganism). There are groups of so-called "prisoners of Facebook", young people who go to prison for criticising the policy of the authorities on Facebook ...
>
> 8. The Assembly is concerned about repressive actions against independent media and advocates of freedom of expression in Azerbaijan. These actions are detrimental to effective media freedom and freedom of expression, undermine the safety of journalists and create a climate of violence against those who express divergent views ...
>
> 16. Taking all these concerns and developments into account, the Assembly calls on the Azerbaijani authorities to:
>
> 16.1. put an end to systemic repression of human rights defenders, the media and those critical of the government, including politically motivated prosecutions ...
>
> 16.3. review the cases of the so-called "political prisoners"/"prisoners of conscience" detained on criminal charges following trials whose conformity with human rights standards has been called into question by the European Court of Human Rights, civil society and the international community, and use all possible means to release those prisoners whose detention gives rise to justified doubts and legitimate concerns, in particular but not exclusively, ... Afgan Mukhtarli ..."

140. The European Parliament in its Resolution (2017/2722(RSP)) of 15 June 2017 on the case of Azerbaijani journalist Afgan Mukhtarli, stated the following:

> "...1. Strongly condemns the abduction of Afgan Mukhtarli in Tbilisi and his subsequent arbitrary detention in Baku; considers this a serious violation of human rights and condemns this grave act of breach of law;
>
> 2. Urges the Georgian authorities to ensure a prompt, thorough, transparent and effective investigation into Afgan Mukhtarli's forced disappearance in Georgia and illegal transfer to Azerbaijan and to bring the perpetrators to justice;
>
> 3. Considers it of utmost importance that the Georgian authorities make every effort possible to clarify beyond any doubt all suspicion regarding the involvement of Georgian state agents in the forced disappearance;
>
> 4. Recalls that it is the responsibility of the Georgian authorities to provide protection to all those third-country nationals living in Georgia or requesting political asylum, who face possible severe judicial consequences in their country of origin for human rights or political activities; in this regard, recalls Article 3 of the European Convention on Human Rights, to which Georgia is a party;
>
> 5. Strongly condemns the prosecution of Afgan Mukhtarli following bogus charges and reiterates that he is trailed for his work as an independent journalist ..."

THE LAW

I. COMPLAINTS AGAINST GEORGIA

A. Alleged violation of Articles 3 and 5 of the Convention

141. The applicant complained that he had been abducted in Tbilisi on 29 May 2017, ill-treated and forcibly transferred to Azerbaijan with the involvement or tacit acquiescence of the Georgian authorities and that the investigation into these events has been ineffective. He alleged violations of Articles 3 and 5 of the Convention, which in as far as relevant read:

Article 3

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

Article 5

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

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

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

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

..."

1. Admissibility

(a) The parties' submissions

142. The Georgian Government submitted that the applicant's complaints against Georgia were manifestly ill-founded, or alternatively inadmissible for non-exhaustion of domestic remedies. According to them, there was no evidence in the case file suggesting that the Georgian authorities had either actively or passively participated in the applicant's alleged abduction and forcible transfer to Azerbaijan, or that there had been any failure on the part of the Georgian Government in discharging their positive obligation to protect the applicant. In fact, having conducted a full-scale investigation, the Government stated that it could not be established that the applicant had in actual fact been abducted from the centre of Tbilisi and forcibly transferred to Azerbaijan. In the alternative, they submitted that the criminal proceedings in respect of the alleged abduction had not yet been completed; thus, the application was premature.

143. In reply, the applicant contended that the investigation into his alleged abduction was simply aimed at creating the illusion of an investigation. In view of the passage of time and a number of important deficiencies and flaws, he submitted that it was pointless for him to wait for the completion of those proceedings.

(b) The Court's assessment

144. The Court notes that the Georgian Government's principal plea of inadmissibility relies on the premise that the allegation that the applicant was abducted from Tbilisi and forcibly transferred to Azerbaijan with the involvement or tacit acquiescence of the Georgian authorities cannot be regarded as proven. It considers that by its very nature this argument falls to be examined under the merits of the applicant's complaint under Articles 3 and 5 of the Convention.

145. As for the Government's objection of non-exhaustion of domestic remedies and the premature nature of the application on account of the ongoing criminal investigation, the Court accepts that at the time the application was lodged it may have been too early to draw conclusions as to the State's substantive and procedural obligations under Articles 3 and 5 of the Convention and notably the effectiveness of the criminal investigation. However, the Court has consistently held that when examining a complaint, it can take into account facts which have occurred after the lodging of the application but are directly related to those covered by it (see, *Shmorgunov and Others v. Ukraine,* nos. 15367/14 and 13 others, § 302, 21 January 2021). In the present case, the parties made detailed submissions referring to developments since the lodging of the application, and the Government relied on documents and information relating to the ongoing investigation, which started more than seven years ago. The Court is not therefore prevented from examining the complaints with reference to events which occurred after the lodging of the application (see *Tsaava and Others v. Georgia*, nos. 13186/20 and 4 others, § 184, 7 May 2024 [not final yet]). In view of the particular circumstances, noting also the length of the ongoing criminal proceedings at the domestic level and the nature of the applicant's grievances regarding these very proceedings, the Court dismisses the Government's objection.

146. The Court, accordingly, finds that the complaints under Articles 3 and 5 of the Convention raised against Georgia are neither manifestly ill-founded within the meaning of Article 35 § 3 of the Convention nor inadmissible on any other grounds. They are, therefore, to be declared admissible.

2. Merits

(a) The parties' submissions

147. The applicant maintained that on 29 May 2017 he had been abducted by four unknown individuals (three of whom had allegedly been wearing the uniforms of the Georgian criminal police), and that he had been transferred illegally across the Georgian-Azerbaijani border and taken to a military unit of the SBS in the Balakan District. He contested the allegation that he had left Georgia for Azerbaijan of his own and pointed out that his "disappearance" had occurred while his wife and their daughter had been staying in Georgia, and without his having his international passport or any other personal belongings on him.

148. As to the investigation, the applicant submitted that the criminal proceedings into his alleged abduction had simply created the illusion of an investigation. He maintained that: the CCTV footage seized had been incomplete and that no serious attempt had been made to seize potentially relevant CCTV footage; at least part of the footage had been manipulated; and a number of important investigative actions had not been conducted. He also criticised the failure of the investigation to identify the driver of the minibus who had taken the applicant from Baratashvili Street to Chonkadze Street, and the fact that the initial stage of the investigation had been conducted by police – notwithstanding his allegations of police involvement in his abduction. The applicant also deplored the inaccurate legal classification of the alleged offence in respect of which the investigation had been conducted for the initial several years, and the limited access to the case-file material that his lawyer had been given. In this regard, he denounced the fact that he had not promptly been granted the procedural status of victim in the ongoing proceedings.

149. The Government, for their part, maintained that there was no evidence of the applicant having been abducted and forcefully transferred from Georgia to Azerbaijan. They further submitted that the investigation into the applicant's allegations had complied, in all respects, with the procedural requirements under the Convention. It had been initiated immediately upon the lodging of the complaint by the applicant's wife – that is, the day after the applicant's purported disappearance. They insisted that the proceedings had been conducted in an impartial, thorough and effective manner and that all possible measures had been taken to elucidate the circumstances of the applicant's alleged abduction. More than 375 potential witnesses had been interviewed, and voluminous CCTV footage had been seized and examined – including from the Tsodna border crossing point. The fact that none of the above-mentioned investigative actions had yielded any clear results had not rendered, in the Government's view, the investigation ineffective. The applicant's wife and their lawyer had been regularly given access to the investigation file during the initial stage of the proceedings. The Government

particularly emphasised the fact that over the course of the proceedings, L.M. had been interviewed eight times, that the version advanced by her and the applicant's lawyer had been thoroughly addressed and that they had received reasoned replies.

150. As regards the allegations of manipulation with the video evidence, the Government explained that the initial request for the footage from the CCTV cameras at the Tsodna border crossing point had been refused because the recordings could not be retrieved for technical reasons. In respect of the malfunctioning of the CCTV cameras at the disposal of the Ministry of the Interior, the Government considered that the explanations in that regard provided by the two responsible police officers had not been out of the ordinary. In any event, according to the Government, CCTV footage had been obtained from the most strategic areas for the investigation, such as the neighbourhood from where the applicant had allegedly been abducted and the border crossing point via which he had allegedly been transferred to Azerbaijan. The analysis of the seized footage had not revealed any information of interest to the investigation.

(b) Third-party interveners

151. The third-party interveners expressed their concerns about the continued persecution of Azerbaijani journalists and human rights defenders in Georgia on account of their dissident activities; they further alleged, with reference to several other cases, that the applicant's abduction from Tbilisi fell into a larger pattern of harassment of Azerbaijani dissidents in the country that was tolerated by the Georgian authorities. They reiterated – referring, *inter alia,* to the jurisprudence of the Court and the UN Human Rights Committee – that member States had an obligation to secure to everyone within their effective control their rights and freedoms, and that that obligation extended to protection not only from abuses by their own agents but also from abuses perpetrated by third-party actors.

(c) The Court's assessment

152. The Court will first examine the applicant's complaint under the procedural limb of Articles 3 and 5 of the Convention about the lack of an effective and adequate investigation into his allegations of abduction, ill-treatment and forcible transfer to Azerbaijan (see, among many others, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 181, ECHR 2012; *Al Nashiri v. Poland*, no. 28761/11, § 462, 24 July 2014; and *Husayn (Abu Zubaydah) v. Poland*, no. 7511/13, § 459, 24 July 2014). It will then continue its examination under the substantive limb of Articles 3 and 5 of the Convention by establishing whether the applicant was abducted from Tbilisi and then forcibly transferred to Azerbaijan, and if that indeed

was the case, whether the Georgian authorities were involved in any way in the applicant's abduction and transfer.

(i) Whether the investigation into the applicant's allegations has been adequate and effective

(α) General principles

153. The Court notes that the right to liberty and security of person enshrined in Article 5 of the Convention is – together with the rights enshrined in Articles 2, 3 and 4 – in the first rank of the fundamental rights that protect the physical security of the individual; as such, its importance is paramount. Its key purpose is to prevent arbitrary or unjustified deprivations of liberty (see, for example, *Assanidze v. Georgia* [GC], no. 71503/01, § 171, ECHR 2004-II; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 461, ECHR 2004-VII; and *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 84, 5 July 2016). Moreover, in cases of alleged abduction associated with ill-treatment the Court has considered that the nature and the scope of the State's procedural obligation to investigate the alleged abduction is the same with respect to both Articles 3 and 5 of the Convention (see *El-Masri*, cited above, § 242; *Razvozzhayev v. Russia and Ukraine and Udaltsov v. Russia*, nos. 75734/12 and 2 others, § 173; and, *mutatis mutandis*, *Medova v. Russia*, no. 25385/04, § 123, 15 January 2009).

154. The general principles regarding the Contracting States' procedural obligations under Article 3 of the Convention have been summarised in *Bouyid v. Belgium* [GC], no. 23380/09, §§ 114-123, ECHR 2015). In this connection the Court reiterates that the investigation must be effective in the sense that it is capable of leading to the identification and if appropriate punishment of those responsible. At the same time, the procedural obligation under Article 3 of the Convention is not an obligation of result, but of means. It must also not be interpreted in such a way as to impose an impossible or disproportionate burden on the authorities (see *J. and Others v. Austria*, no. 58216/12, § 107, 17 January 2017). Moreover, although a requirement of promptness and reasonable expedition is implicit in this context, it must be accepted that there may be obstacles or difficulties that prevent progress in an investigation in a particular situation.

155. The requirement that a criminal investigation be effective may in some circumstances include an obligation for the investigating authorities to cooperate with the authorities of another State, implying an obligation to seek or to afford assistance. The nature and scope of these obligations will inevitably depend on the circumstances of each particular case – for instance, whether the main items of evidence are located on the territory of the Contracting State or whether the suspects have fled there (see, from the standpoint of Article 2 of the Convention, *Güzelyurtlu and Others v. Cyprus*

and Turkey [GC], no. 36925/07, §§ 222-236, 29 January 2019). This means that the States concerned must take whatever reasonable steps they can to cooperate with each other, exhausting in good faith the possibilities available to them under the applicable international instruments on mutual legal assistance and cooperation in criminal matters. Although the Court is not competent to supervise respect for international treaties or obligations other than the Convention, it normally verifies in this context whether the respondent State has used the possibilities available under these instruments (ibid., § 235, and the references cited therein; see also *Nasr and Ghali v. Italy*, no. 44883/09, §§ 270 and 272, 23 February 2016, in relation to the duty to cooperate under the procedural limb of Article 3, and *X and Others v. Bulgaria* [GC], no. 22457/16, § 191, 2 February 2021).

156. Finally, the criteria an investigation needs to satisfy for the purpose of the procedural obligations under the Convention are interrelated and each of them, taken separately, does not amount to an end in itself, as is the case in respect of the requirements for a fair trial under Article 6. They are criteria which, taken jointly, enable the degree of effectiveness of the investigation to be assessed. It is in relation to this purpose of an effective investigation that any issues must be assessed (see *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 225, 14 April 2015; *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 171, 25 June 2019; and *Tsaava and Others*, cited above, § 211;).

(β) Application of the above principles to the circumstances of the present case

157. The Court starts by noting that with his consistent and detailed statements the applicant made out a *prima facie* case for his abduction, possibly associated with ill-treatment, that merited a prompt response from the Georgian authorities in the form of an adequate investigation (see *Razvozzhayev*, cited above, §§ 173 and 175-76).

158. The Court further notes that the applicant was allegedly abducted on 29 May 2017. The criminal investigation into his alleged abduction and transfer to Azerbaijan started on 30 May 2017 and has been ongoing since then. What is, accordingly, at stake in the present case is a promptly initiated investigation that has been ongoing for slightly over seven years. Over this period, the investigators questioned hundreds of potential witnesses who may have been in the area where the applicant had last been seen, and also in the neighbourhood from which he allegedly had been abducted. They also questioned potential witnesses in the vicinity of the relevant section of the border, including all the border guards and the customs officers who may have had dealings with the applicant. The Georgian authorities also lodged several requests for legal cooperation with the Azerbaijani authorities, examined the applicant's version of the events surrounding his transfer via the Tsodna border crossing point, located all those who had crossed the border on that day, and undertaken other investigative actions, such as the seizure

and examination of numerous CCTV footage (see paragraphs 19-72 above). The case file shows that the applicant on his part – in the hope of speeding up the investigation and seeing a satisfactory outcome – maintained regular contact with the prosecution authorities, lodged various procedural requests aimed at obtaining new evidence, and requested information about the progress of the investigation.

159. Turning to the substance of the investigation, the Court notes that the Georgian investigative authorities were confronted with two alternative versions of how the applicant had disappeared from Georgia and resurfaced in Azerbaijan: first, the official version of the Azerbaijani authorities according to which he had unlawfully crossed the "green border" between Georgia and Azerbaijan; and second, the applicant's version according to which he had been abducted and forcibly transferred in a car to Azerbaijan via Tsodna border crossing point. In the absence of any other explanation of the applicant's resurfacing in Azerbaijan after having been seen in Tbilisi several hours earlier, the Court considers that the Georgian authorities were expected to thoroughly and diligently explore both versions of the events, in order to come to conclusions about their plausibility (see paragraph 13 above).

160. In this connection, the Court starts by noting that no effort was made to verify on the ground, from the Georgian side of the relevant section of the border, whether the unlawful crossing of the "green border" between Georgia and Azerbaijan had actually taken place. Hence, no measure was undertaken to check for the existence of any footprints or traces of a person or a vehicle in the relevant area or of any other physical evidence as to the crossing of the border. No in situ examination was organised for the purpose of establishing whether it was indeed physically possible for a person and/or a vehicle to cross the "green border" in that specific area. Such measures were necessary not only to verify the plausibility of the Azerbaijani version of the events, but also to check whether the applicant, by leaving Georgia on foot, or in a vehicle, had committed an offence, such as illegal border crossing, under the Georgian law. The Court considers that the prosecution's subsequent belated attempt to explore this line of inquiry by questioning border guards (all seventy-three of them had unanimously stated that no incident had occurred on that date in the sections of the "green border" that they had been patrolling (see paragraphs 35-36 above)) could not compensate for the failure of the police to obtain such important objective evidence.

161. As to the applicant's version of the events, the Court considers that one of the major deficiencies in the investigation in this respect appears to be the gathering and examination of important video evidence. To start with, on 5 June 2017 the allegation of the applicant being transferred to Azerbaijan via Tsodna border crossing point in Lagodekhi Region was made (see paragraph 45 above). However, the initial request for the footage from CCTV cameras from the above-mentioned border crossing point was made only on 14 June

2017 – that is, with a delay of nine days. Furthermore, the request was at first refused because, as stated in the relevant letter, the footage could not be retrieved owing to the fact that the recording system of the video surveillance system was not functioning (see paragraph 42 above). Eventually, after a reiterated request, the footage was provided on 2 July 2017 but by the State Security Service (allegedly implicated in the applicant's abduction) and not the Joint Operations Centre at the Ministry of the Interior, to which the initial request had been made (ibid.). The Government's explanation of the above-noted discrepancies does not appear to be convincing (see paragraphs 42 and 150 above). The applicant, in the meantime, alleged that the recordings had been manipulated without, however, providing any evidence. On 2 April 2018, a forensic examination of the footage was ordered to see if it had been tampered with; but after more than six years the investigation file contains no results of that examination (see paragraph 68 above).

162. The Court further notes that the reports on the examination of the footage from Tsodna border crossing point simply stated, without giving any details, that the people who had reviewed the footage had "not seen anything of interest in respect of the case in those recordings." (see paragraph 57 above). The exact method used to examine the footage is unclear (see in this connection *Merabishvili v. Georgia* [GC], no. 72508/13, § 345, 28 November 2017). Forensic examination of the above footage was ordered on 2 April 2018 for the purpose of identifying the registration numbers of all the vehicles seen on the footage (see paragraph 68 above); but again, the investigation file contains no results of that examination. The Court observes exactly the same issue with the footage seized from the presumed site of the applicant's abduction (see paragraph 58 above). The forensic analysis of the footage was ordered on 20 September 2017 for the purpose of identifying the registration numbers of the vehicles seen on the footage; but the investigation file contains no results of that examination either (ibid.)

163. On the same note, the only footage obtained from GSES, on which the applicant's lawyer claimed to have seen a person in black suit watching the applicant boarding a minibus, became at the early stage of the investigation inaccessible (see paragraphs 38 and 59 above) and no real effort was made to restore the access to that footage in order to identify the impugned person (see paragraph 60 above). Likewise, the Government's explanation as to why so many of the road-traffic cameras were not functioning on the day of the applicant's alleged abduction remains unverified (see paragraph 41 above). Recalling that footage of video surveillance may constitute evidence that is critical for establishing the circumstances of the relevant events (see *M.H. and Others v. Croatia*, nos. 15670/18 and 43115/18, § 271, 18 November 2021, with further references), and noting the applicant's allegation that potentially important video evidence was manipulated at the initial phase of investigation, reinforced by the statement made by I.G., the former deputy head of the State

Security Service (see paragraph 128 above), the Court considers, having regard to the above circumstances cumulatively, that at the very least, the manner in which the video footage was gathered and analysed in the present case is unsatisfactory and casts doubt on the reliability of the evidence obtained.

164. Although the above-identified shortcomings may be sufficient to find that the investigative authorities have not taken all the reasonable steps to secure evidence relating to the applicant's allegations diligently, the Court considers it appropriate to also address several other alleged shortcomings of the investigation.

165. To start with, I.G. (former deputy head of the State Security Service of Georgia) asserted that a number of officers of the State Security Service, at the request of the former Prime Minister of Georgia, B.I., had become involved in the organisation of the applicant's abduction (see paragraph 128 above). While the circumstances in which I.G. gave the above-noted evidence were not straightforward (see ibid.), the Court considers that this line of inquiry merited further exploration. The Government stated to the Court that I.G.'s evidence had not been confirmed by those that he had identified in his statements (see paragraph 130 above). They did not provide the Court with copies of the relevant case-file materials – including a copy of I.G.'s statement (ibid.); it also appears that the applicant was prevented from having access to the evidence (see paragraph 128 above). In such circumstances – noting in particular the utmost political sensitivity of the applicant's case (which has evolved around the possible role of former and/or acting highest public officials in the applicant's "disappearance" from Georgia) and given the Government's reluctance to share the results of this specific line of inquiry – the Court is unable to conclude that it has been pursued in a diligent and satisfactory manner.

166. As regards the next grievance of the applicant concerning the Georgian authorities' insufficient efforts to seek legal assistance from their Azerbaijani counterparts, the Court reiterates that the procedural obligation to cooperate will only be breached in respect of a State that is required to seek cooperation if it has failed to trigger the proper mechanisms for cooperation under the relevant international treaties (see *Güzelyurtlu and Others,* cited above, § 236). The Georgian authorities in the present case did make extensive use of the available mechanisms for cooperation, albeit unsuccessfully (see paragraphs 54, 63, 67, and 125 above). As no complaint has been made in this respect against Azerbaijan, it does not fall to the Court to consider whether the Azerbaijani authorities complied with the obligation to cooperate with their Georgian counterparts (contrast *Güzelyurtlu and Others,* cited above, § 241). However, it is evident from the case file that the ineffectiveness of the cooperation mechanism in the present case was primarily due to the Azerbaijani authorities' failure to comply with the Georgian authorities' requests for legal assistance. While it appears that on

several occasions the Georgian authorities did not make follow-up requests to the Azerbaijani authorities by letters rogatory, the Court sees no basis to conclude that, in the absence of the Azerbaijani authorities' responsiveness, the Georgian authorities should be held accountable for the failure to obtain evidence from their Azerbaijani counterparts, evidence that would have been crucial for establishing the facts of the case.

167. Lastly, the Court has emphasised on previous occasions that although there may be obstacles or difficulties that prevent progress in an investigation in a particular situation, a prompt response by the authorities in investigating serious allegations of human rights violations – including allegations such as those made in the present case – may generally be regarded as essential in maintaining public confidence in the State's adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see, among many other cases, *Gongadze v. Ukraine*, no. 34056/02, § 177, ECHR 2005-XI; see also *Mikeladze and Others v. Georgia*, no. 54217/16, § 68, 16 November 2021, with further references). Without going into the substance of each and every investigative measure undertaken by the Georgian investigating authorities – and without overlooking the role that their Azerbaijani counterparts were to play in the process of investigating the applicant's allegations – the Court notes the following: more than seven years into the investigation, the relevant Georgian authorities have not provided a plausible explanation as to the circumstances under which the applicant got from Tbilisi to Azerbaijan on 29 May 2017. There appears to have been a period of inactivity in the investigation between July 2018 and July 2020, and the Government did not provide any explanations in this regard. The Court considers that the applicant's allegations about his abduction, ill-treatment and forcible transfer to Azerbaijan and that they were related to his activities as a journalist were plausible; hence, the Georgian authorities were expected to act with particular diligence and promptness in investigating those allegations (see, *mutatis mutandis, Huseynova, v. Azerbaijan*, no. 10653/10, § 115, 13 April 2017; *Uzeyir Jafarov v. Azerbaijan*, no. 54204/08, § 52, 29 January 2015; *Mazepa and Others v. Russia*, no. 15086/07, § 73, 17 July 2018; and *Khadija Ismayilova v. Azerbaijan* (no. 3), no. 35283/14, §§ 119-20, 7 May 2020).

168. In conclusion, having regard to the deficiencies of the proceedings identified above, and in particular to the compromised integrity of the investigation in view of, among others, poor handling of the CCTV evidence and the lack of genuine effort to verify the plausibility of the Azerbaijani Government's version of the events, the Court considers that the Georgian authorities have failed to comply with the requirements of an effective and thorough investigation into the circumstances surrounding the applicant's alleged abduction from Georgia, ill-treatment and forcible transfer to Azerbaijan.

169. The Court accordingly finds a violation of Article 3 and 5 of the Convention as far as the Georgian Government's positive obligations to conduct an effective investigation are concerned.

(ii) Whether the applicant was abducted and transferred to Azerbaijan with the involvement or tacit acquiescence of the Georgian authorities

(α) General principles concerning the establishment of facts

170. For a summary of the relevant general principles concerning the establishment of facts in cases where facts are disputed by the parties, see *El-Masri*, cited above, §§ 151-53, ECHR 2012).

171. The Court recalls that it is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see *Imakayeva v. Russia*, no. 7615/02, § 113, ECHR 2006-XIII (extracts); *Aslakhanova and Others v. Russia*, nos. 2944/06, 8300/07, 50184/07, 332/08 and 42509/10, § 96, 18 December 2012; see also *El-Masri*, § 154, and *Al Nashiri*, § 393, both cited above). Nonetheless, in cases where there are conflicting accounts of events, the Court's examination necessarily involves the task of establishing facts on which the parties disagree. In such situations the Court is inevitably confronted when establishing the facts with the same difficulties as those faced by any first-instance court (see *Al Nashiri v. Romania*, no. 33234/12, § 490, 31 May 2018, with further references).

172. In assessing evidence, the Court adopts the standard of proof "beyond reasonable doubt". However, it has never been its purpose to borrow the approach of the national legal systems that use that standard. Its role is not to rule on criminal guilt or 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 Contracting States of their engagement 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 pre-determined 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 ibid. § 491, with further references).

173. The Court has also recognised that Convention proceedings do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation). In certain circumstances, where the events at issue lie wholly, or in large part, within the exclusive knowledge of the authorities, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see, among others, *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). 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 (see *Abu Zubaydah v. Lithuania*, no. 46454/11, § 482, 31 May 2018).

(β) Application of the above principles to the circumstances of the present case

174. The Court notes at the outset that the applicant's account of his alleged abduction, ill-treatment and transfer to Azerbaijan was detailed and specific, and remained consistent throughout the investigation and also in the proceedings before the Court. Despite some discrepancies, he maintained from the very outset that he had been abducted by four men, three of whom had worn uniforms of the Georgian criminal police and spoke Georgian; that he had been abducted from Niaghvari Street, in the immediate vicinity of his apartment in Tbilisi; and that he had been taken in the direction of Sagarejo and then Lagodekhi and had twice changed a vehicle before crossing the State border between Georgia and Azerbaijan (see paragraphs 7-8, 23, 56, and 124 above). The Court finds plausible the position of the applicant according to which he would not have travelled to Azerbaijan voluntarily. That position is supported, among others, by the fact that the applicant and his wife had submitted a request for asylum in Georgia which was pending at the material time (see paragraph 6 above).

175. The Court further observes that it is not disputed by the parties that the last time the applicant was seen at around 7.25 p.m. on 29 May 2017, when taking a mini-bus no. 4 on Baratashvili Street. After that point the trace of the applicant was lost until his reappearance in Azerbaijan. With the exception of indirect elements discussed in the paragraph below, not a single piece of conclusive evidence has been identified up today that would confirm the fact of the applicant's abduction and subsequent forcible transfer to Azerbaijan with the involvement of Georgian State agents.

176. One indirect element that tends to corroborate his assertion is the statement of a member of the Azerbaijani Parliament who indicated that the arrest of the applicant had been the result of joint efforts undertaken by the Georgian and the Azerbaijani intelligence services, a statement declared false on 13 June 2017 by the Prosecutor General's office (see paragraphs 15 and

16 above). The other evidence in support of the applicant's account is the statement of I.G., a former deputy head of the State Security Service of Georgia (see paragraph 128 above). While of particular interest, the Court is unable to place reliance on this evidence. I.G.'s credibility is weakened by the fact that his revelation came only after his arrest by the Georgian authorities on a number of charges involving abuse of office (ibid.). It further takes note of the Government's argument that the accuracy of I.G.'s evidence could not be confirmed by the statements of the individuals he had identified as being involved in the applicant's abduction or indeed by any other objective element.

177. The Court further notes that the present case differs from a group of cases considered by the Court in which it found that the "abducted" applicants who had been forcibly transferred to third countries on plane, could not have undergone passport and customs checks in an airport and boarded a flight without the knowledge and either passive or active involvement of the relevant authorities (see among many others *Iskandarov v. Russia*, no. 17185/05, §§ 113-15, 23 September 2010; *Abdulkhakov v. Russia,* no. 14743/11, § 125 October 2012; *Savriddin Dzhurayev v. Russia*, no. 71386/10, §§ 201-02, ECHR 2013 (extracts); *Kasymakhunov v. Russia*, no. 29604/12, §§ 109-110, 14 November 2013; *Belozorov v. Russia and Ukraine*, no. 43611/02, § 107, 15 October 2015, and *Khamidkariyev v. Russia*, no. 42332/14, § 123, 26 January 2017). In the case at hand, it is submitted by the Government of Azerbaijan that the applicant unlawfully crossed the State border via the so-called "green border" (see paragraph 10 above).

178. The Court also observes that there is no evidence in the case file indicating that in the period preceding the applicant's alleged abduction, the Georgian authorities showed any sign of interest in the applicant's personality or his professional activities (contrast *Gongadze*, cited above, §§ 167 and 170; also compare *Huseynova*, cited above, §§ 100-101, and *Tagiyeva v. Azerbaijan*, no. 72611/14, § 65, 7 July 2022). At no point was the applicant seen in the hands of the Georgian authorities or otherwise under their authority (contrast *Belozorov*, cited above, §§ 104-110; see also *Rantsev v. Cyprus and Russia*, no. 25965/04, § 320, ECHR 2010 (extracts); see also, *mutatis mutandis, Gaysanova v. Russia*, no. 62235/09, §§ 113-14, 12 May 2016).

179. The Court also considers that the fact that several days before his alleged abduction the applicant posted publicly on his social media account an assertion that he was being followed (see paragraph 18 above) cannot serve as sufficient evidence to support his version of the events.

180. In such circumstances, having reviewed the available case material, the Court finds it impossible to establish with sufficient certainty the actual events that led to the applicant's disappearance from Tbilisi and reappearance in Azerbaijan. This difficulty stems, in particular, from the failure of the

relevant Georgian authorities to conduct an effective and diligent investigation (see paragraphs 157-169 above). In the light of the foregoing, the Court cannot reach a conclusion "beyond reasonable doubt" that the applicant was abducted, ill-treated and forcibly transferred to Azerbaijan with the involvement (either active or passive) or acquiescence of the Georgian authorities.

181. It, accordingly, finds no substantive violation of Articles 3 and 5 of the Convention in respect of the Georgian authorities.

B. Other alleged violations of the Convention by Georgia

182. The applicant also alleged a breach of Articles 8, 10 and 13 of the Convention, Article 2 of Protocol No. 4 and Article 1 of Protocol No. 7 by Georgia on account of his alleged abduction and forcible transfer to Azerbaijan. He also alleged a breach of Article 10 of the Convention and Article 18 in conjunction with his Article 5 complaint. Having regard to its findings under Articles 3 and 5 of the Convention (see paragraphs 157-169 and 174-181 above) and to the parties' submissions, the Court does not find it necessary to separately examine the admissibility and merits of these complaints (compare *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

II. COMPLAINTS AGAINST AZERBAIJAN

A. Alleged violation of Article 5 § 1 of the Convention

183. The applicant complained that his arrest and detention had not been based on reasonable suspicion that he had committed a criminal offence and that his deprivation of liberty from 29 to 31 May 2017 had been unlawful. The relevant part of Article 5 § 1 of the Convention reads:

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

1. Admissibility

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

2. Merits

(a) Reasonable suspicion

185. The applicant maintained that there had been no reasonable suspicion that he had committed a criminal offence and that the criminal case against him had been fabricated.

186. The Azerbaijani Government submitted that the applicant had been arrested and detained on a reasonable suspicion that he had committed a criminal offence. That suspicion had been based on the fact that the applicant had been apprehended by agents of the SBS while breaching the State border regime, various statements given in the course of the criminal proceedings and other evidence.

187. The Court refers to the general principles established in its case-law and set out in *Selahattin Demirtaş v. Turkey (no. 2)* ([GC], no. 14305/17, §§ 311-321, 22 December 2020), which are equally pertinent to the present case.

188. The Court also deems it necessary to reiterate that in order for an arrest on reasonable suspicion to be justified under Article 5 § 1 (c) it is not necessary for the police to have obtained sufficient evidence to bring charges, either at the point of arrest or while the applicant is in custody (see *Brogan and Others v. the United Kingdom*, 29 November 1988, § 53, Series A no. 145-B, and *Erdagöz v. Turkey*, 22 October 1997, § 51, *Reports of Judgments and Decisions* 1997-VI). Nor is it necessary that the person detained should ultimately have been charged or taken before a court. The object of detention for questioning is to further a criminal investigation by confirming or dispelling the suspicions which provide the grounds for the detention. Thus, facts which raise a suspicion need not be of the same level as those necessary to justify a conviction or even the bringing of a charge, which comes at the next stage of the process of criminal investigation (see *Murray v. the United Kingdom*, 28 October 1994, § 55, Series A no. 300-A, and *Merabishvili*, cited above, § 184). However, the requirement that the suspicion must be based on reasonable grounds forms an essential part of the safeguard against arbitrary arrest and detention. The fact that a suspicion is held in good faith is insufficient. The words "reasonable suspicion" mean the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence (see *Fox, Campbell and Hartley v. the United Kingdom*, 30 August 1990, § 32, Series A no. 182, and *Cebotari v. Moldova*, no. 35615/06, § 48, 13 November 2007).

189. The Court observes that this complaint is intrinsically linked to the applicant's complaint against Georgia concerning his alleged abduction, ill-treatment and forcible transfer to Azerbaijan. In that connection, whereas the Court has found that the Georgian authorities failed to comply with the requirements of an effective and thorough investigation into the

circumstances surrounding the applicant's alleged abduction from Georgia, ill-treatment and forcible transfer to Azerbaijan (see paragraph 169 above), the Court has also considered, having regard to the evidence in the case file, that it was not in a position to establish with sufficient certainty the actual events that had led to the applicant's disappearance from Tbilisi and reappearance in Azerbaijan (see paragraph 180 above).

190. The Court further observes that in Azerbaijan the applicant was suspected of the criminal offences of illegally crossing the country's border and smuggling and resistance to or violence against a public official. The initial suspicion against him was based on the records of his arrest and personal search, the statements of the agents of the SBS who had arrested him, a record of the face-to-face confrontation held between the applicant and G.M., and the forensic report of 31 May 2017, which established the existence of various injuries on G.M.'s body. The Court considers that the above-mentioned evidence could have been sufficient to create at the very first stage of the investigation a "reasonable suspicion" against him (see general principles cited in paragraphs 187-188 above).

191. In the light of the above considerations, and noting, in particular, its factual findings under the substantive limb of Articles 3 and 5 of the Convention with respect to Georgia, the Court considers that, in the light of the evidence adduced, it cannot completely exclude that there could have been reasonable suspicion that the applicant had committed a criminal offence, as required by Article 5 § 1 of the Convention. In such circumstances, the Court cannot but find that there has been no violation of Article 5 § 1 of the Convention in that regard.

(b) The lawfulness of the applicant's initial detention prior to his being brought before a judge

192. The applicant maintained his complaint, arguing, in a general way, that his detention from 29 to 31 May 2017 had been unlawful.

193. The Azerbaijani Government submitted that the applicant's initial detention had been lawful and conducted in accordance with the domestic law. The applicant had been apprehended at 10.40 p.m. on 29 May 2017 by the agents of the SBS and had been taken to the border-guard post, where a record of his administrative arrest had been drawn up. He had then been transported to Baku, where at 7.40 p.m. on 30 May 2017 he had been arrested as a suspect and a record of his arrest had been drawn up by the investigator.

194. The Court refers to the general principles established in its case-law set out in the judgment *Nagiyev v. Azerbaijan* (no. 16499/09, §§ 54-57, 23 April 2015), which are equally pertinent to the present case.

195. The Court notes that the applicant complained before the domestic courts, mainly arguing that his being deprived of his liberty from the moment of his actual apprehension at 10.40 p.m. on 29 May 2017 until the moment of his detention on remand ordered by the Sabail District Court at 5 p.m. on

31 May 2017 had been unlawful on the grounds that, although he had been apprehended at 10.40 p.m. on 29 May 2017, the record of his arrest as a suspect had been compiled only at 7.40 p.m. on 30 May 2017 (see paragraph 90 above).

196. However, it appears from the documents in the case file that following the applicant's apprehension at 10.40 p.m. on 29 May 2017 by the agents of the SBS, he was taken to the border-guard post, where a record of the applicant's administrative arrest was drawn up at 12.30 a.m. on 30 May 2017 (see paragraph 81 above). The record clearly indicated that the applicant was subjected to administrative arrest for a period of twenty-four hours on the grounds of his having breached the regulations of the border regime under Article 570 of the Code of Administrative Offences (see ibid.). On the same date at 12.50 a.m. a record of his administrative offence was also drawn up (see paragraph 84 above). Following the institution of criminal proceedings against the applicant, at 7.40 p.m. on 30 May 2017 the investigator in charge of the criminal case drew up a record of the applicant's arrest as a suspect, and at 5 p.m. on 31 May 2017 the Sabail District Court ordered the applicant's pre-trial detention.

197. In those circumstances, the Court cannot accept the applicant's assertions that his being deprived of his liberty from 29 to 31 May 2017 had been unlawful, given the fact that his deprivation of liberty from the moment of his apprehension at 10.40 p.m. on 29 May 2017 until the moment that his detention on remand was ordered by the Sabail District Court at 5 p.m. on 31 May 2017 was properly documented and carried out in accordance with the relevant domestic law.

198. In view of the foregoing, the Court finds no breach of Article 5 § 1 of the Convention in relation to the applicant's complaint that his detention from 29 to 31 May 2017 had been unlawful.

B. Alleged violation of Article 5 § 3 of the Convention

199. The applicant complained under Article 5 § 3 of the Convention that the domestic courts had failed to justify the need for his pre-trial detention and to provide reasons for his continued detention. Article 5 § 3 of the Convention reads:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

1. Admissibility

200. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. Merits

(a) The parties' submissions

201. The applicant maintained his complaint.

202. The Azerbaijani Government submitted that the domestic courts had given sufficient and relevant reasons for the applicant's pre-trial detention. In particular, they submitted that there had been sufficient reasons to believe that, if released, the applicant might abscond from the investigation by trying to leave the country or by other means.

(b) The Court's assessment

203. The Court refers to the general principles established in its case-law and set out in the Court's judgment in the case of *Buzadji* (cited above, §§ 84-91), which are equally pertinent to the present case.

204. As regards the period to be taken into consideration for the purposes of Article 5 § 3, the Court notes that this period commenced on 29 May 2017 (when the applicant was arrested) and ended on 12 January 2018 (when the first-instance court convicted him). Thus, the applicant was held in pre-trial detention for a total of seven months and fourteen days.

205. The Court observes that the domestic courts, in their respective decisions regarding the applicant's detention, used a standard template and limited themselves to repeating a number of grounds for detention in an abstract and stereotypical way, without giving any reasons for their considering those grounds to be relevant to the applicant's case. They also failed to mention any case-specific facts relevant to those grounds and to substantiate them with relevant and sufficient reasons. The Court has repeatedly found violations of Article 5 § 3 in previous cases against Azerbaijan where similar shortcomings were noted and analysed in detail (see *Farhad Aliyev*, cited above, §§ 191-94; *Muradverdiyev*, cited above, §§ 87-91; *Zayidov v. Azerbaijan*, no. 11948/08, §§ 64-69, 20 February 2014; and *Mammadov and Others v. Azerbaijan*, no. 35432/07, §§ 97-100, 21 February 2019).

206. In view of the foregoing considerations, the Court finds that it has already (in other cases) examined and ruled on the legal issue raised in the present case under Article 5 § 3 of the Convention, and it does not see any fact or argument capable of persuading it to reach a different conclusion (see *Avaz Zeynalov v. Azerbaijan*, nos. 37816/12 and 25260/14, §§ 61-62, 22 April 2021). Therefore, the Court considers that the authorities failed to give "relevant" and "sufficient" reasons to justify the need for the applicant's pre-trial detention.

207. Accordingly, there has been a violation of Article 5 § 3 of the Convention.

C. Alleged violation of Article 8 of the Convention

208. The applicant complained that the search of the contents of his mobile telephone by the investigating authorities had amounted to a breach of rights protected under Article 8 of the Convention, which reads:

> "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."

1. Admissibility

209. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. Merits

(a) The parties' submissions

210. The applicant submitted that the search of the contents of his mobile telephone had constituted an interference with his right to respect for his private life and had not been in accordance with the law or necessary in terms of Article 8 § 2 of the Convention. He contested the Azerbaijani Government's submissions, pointing out that the examination of the contents of his mobile telephone had not been limited to the list of calls and contacts, but had also covered the photographs, videos and documents contained in his mobile telephone, as well as social-network material and correspondence with other people.

211. The Azerbaijani Government submitted that the examination of the contents of the applicant's mobile telephone had been conducted in accordance with Article 92 of the CAO and Articles 207.4 and 246.2 of the CCrP, had pursued the legitimate aim of preventing disorder or crime, and had been strictly necessary in a democratic society. They argued that as the applicant had been apprehended at the moment of his committing the criminal offences of smuggling and illegal border crossing, it had been necessary to carry out those actions in order to establish whether the applicant had been acting alone or had had accomplices. Moreover, attention should be paid to the fact that the authorities had searched the applicant's call log and contacts but had not determined whether he had sent any messages from his mobile telephone via any social-messaging networks.

(b) The Court's assessment

(i) Whether there was any interference

212. The Court reiterates that any measure – if it is no different from a search in its manner of execution and its practical effects – amounts (regardless of its characterisation under domestic law) to interference with an applicant's rights under Article 8 of the Convention (see *Avanesyan v. Russia*, no. 41152/06, § 39, 18 September 2014, and *Kruglov and Others v. Russia*, nos. 11264/04 and 15 others, § 123, 4 February 2020). The Court observes that in the present case, on 31 May 2017 the investigating authorities performed an "inspection" of the contents of the applicant's mobile telephone, which was subsequently subjected to a "forensic examination" on 14 June 2017. Although the Azerbaijani Government submitted that the authorities had searched the applicant's call log and contacts but that they had not determined whether he had sent any messages from his mobile telephone via any social-messaging networks, it is clear from the documents in the case file that the investigating authorities searched the entire digital contents of the applicant's mobile telephone – including SMS messages sent and received by the applicant and exchanges of messages between the applicant and various persons through social messaging networks (see paragraphs 113-114 above). Accordingly, the Court finds that the search of the contents of the applicant's mobile telephone by the investigating authorities constituted an interference with the exercise of the applicant's right to respect for his private life and correspondence within the meaning of Article 8 § 1 of the Convention (compare *Trabajo Rueda v. Spain*, no. 32600/12, § 32, 30 May 2017, and *Saber v. Norway*, no. 459/18, § 48, 17 December 2020).

(ii) Whether the interference was justified

213. Such an interference will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of Article 8 as being "in accordance with the law", pursuing one or more of the legitimate aims listed therein, and being "necessary in a democratic society" in order to achieve the aim or aims concerned.

214. The Court notes that although the Azerbaijani Government in their submissions before the Court referred to Article 92 of the CAO and Articles 207.4 and 246.2 of the CCrP as being the legal basis for the search of the contents of the applicant's mobile telephone (see paragraph 135 above), the investigating authorities did not rely on the above-mentioned provisions of the domestic law. In particular, the record of the inspection of the applicant's mobile telephone cited Article 236 of the CCrP as the legal basis for the carrying out of the search of the contents of the mobile telephone (see paragraph 113 above).

215. The Court reiterates that, according to its well-established case-law, the wording "in accordance with the law" requires the impugned measure to

have some basis in domestic law and – as expressly noted in the Preamble to the Convention, and as is inherent in the object and purpose of Article 8 – to be compatible with the rule of law. The law must thus meet quality requirements: it must be accessible to the person concerned and foreseeable as to its effects (see *Azer Ahmadov v. Azerbaijan*, no. 3409/10, § 63, 22 July 2021).

216. Within the context of searches and seizures, the domestic law must provide some protection to the individual against arbitrary interference with Article 8 rights. Thus, the domestic law must be sufficiently clear in its terms in order to give citizens an adequate indication as to the circumstances and conditions under which public authorities are empowered to resort to any such measures (see *Särgava v. Estonia*, no. 698/19, § 87, 16 November 2021). Moreover, the measure of search and seizure constitutes a serious interference with private life, home and correspondence and must accordingly be based on a "law" that is particularly precise. It is essential to have clear, detailed rules on the subject (see *Saber*, cited above, § 50).

217. In that connection, the existence of sufficient procedural safeguards may be particularly pertinent, having regard to – to some extent at least, and among other factors – the nature and extent of the interference in question. Within various contexts involving Article 8 of the Convention, the Court has emphasised that measures affecting human rights must be subject to some form of adversarial proceedings before an independent body competent to review in a timely fashion the reasons for the decision and the relevant evidence (see *Ivashchenko v. Russia*, no. 61064/10, § 74, 13 February 2018). Notwithstanding the margin of appreciation that the Court recognises the Contracting States have in this sphere, it must be particularly vigilant where the authorities are empowered under national law to order and effect searches without a judicial warrant. If individuals are to be protected from arbitrary interference by the authorities with the rights guaranteed under Article 8, a legal framework and very strict limits on such powers are called for (see *Brazzi v. Italy*, no. 57278/11, § 41, 27 September 2018).

218. Turning to the circumstances of the present case, the Court observes that although the domestic law does not contain express provisions concerning a search of the digital contents of a mobile telephone, the general provisions of the domestic law concerning search and seizure provide that any search or seizure must, as a rule, have first been authorised by a court decision (Article 243.1 of the CCrP). Moreover, Article 177.3.5 of the CCrP also provides that the seizure of data transmitted by telephone and other means of communication must, as a rule, be carried out on the basis of a court decision (see paragraph 135 above).

219. However, as noted above, in the present case the search of the contents of the applicant's mobile telephone was conducted as an "inspection" on the basis of Article 236 of the CCrP which, unlike the general provisions of the domestic law concerning search and seizure (which stipulate

the prior granting of a prior judicial warrant), allows an investigator to inspect, *inter alia*, documents and items relevant to a case without a judicial warrant. The Court considers it necessary to reiterate that a search of the contents of a mobile telephone – which constitutes a measure seriously interfering with a person's private life and correspondence – cannot be in compliance with Article 8 of the Convention if it is left to an investigator's unfettered discretion; Article 8 requires the issuance of a warrant by an independent body when interference with the privacy of a person is at stake (see *Dumitru Popescu v. Romania (no. 2)*, no. 71525/01, § 71, 26 April 2007, and *Trabajo Rueda*, cited above, § 35).

220. In that connection, while accepting that some circumstances may justify the taking of urgent actions by the investigating authorities in the absence of a court decision, the Court observes that in the instant case the Government have not put forward any convincing argument to prove the existence of such circumstances (compare *Cacuci and S.C. Virra & Cont Pad S.R.L. v. Romania*, no. 27153/07, § 78, 17 January 2017). In any event, the Court does not see how such circumstances could have existed in the present case, given that the search of the contents of the applicant's mobile telephone was conducted two days after his arrest, which left the investigating authorities sufficient time in which to obtain prior judicial authorisation.

221. The Court further notes that it has already held that the absence of a prior judicial warrant may be counterbalanced by the availability of an *ex post factum* judicial review of both the lawfulness and necessity of the measure in question. In particular, a review by domestic courts of a measure violating Article 8 shall provide an appropriate remedy for the person concerned, provided that the judge effectively reviews the lawfulness of and justification for the contested measure and, where appropriate, excludes from the criminal proceedings the evidence collected (see *Brazzi*, cited above, §§ 44-45).

222. However, in the present case there was no review of the investigating authorities' actions by the domestic courts, which refused to examine the applicant's complaint concerning the lawfulness and necessity of the search of the contents of his mobile telephone (see paragraph 118 above). The Government also failed to provide any explanation as to why the domestic courts had refused to conduct such a review.

223. Consequently, the Court cannot but conclude that the interference with the applicant's right to respect for his private life and correspondence on account of the search of the contents of his mobile telephone was not "in accordance with the law" within the meaning of paragraph 2 of Article 8. It is therefore not necessary to examine whether the interference pursued a legitimate aim and was proportionate.

224. There has accordingly been a violation of Article 8 of the Convention.

D. Other alleged violations of the Convention by Azerbaijan

225. Relying on Articles 5 § 4, 10 and 18 of the Convention, the applicant complained of a violation of his Convention rights.

226. Having regard to the conclusions reached above under Articles 5 § 3 and 8 of the Convention (see paragraphs 207 and 224 above), to the parties' submissions and, in addition, to its finding above that, on the evidence before it, it is unable to conclude that there were sufficient elements establishing beyond reasonable doubt that the applicant was abducted and brought to Azerbaijan (see paragraph 196 above), the Court considers that there is no need to give a separate ruling on the admissibility and merits of these complaints in the present case (compare *Centre for Legal Resources on behalf of Valentin Câmpeanu,* cited above, § 156; see also *Khadija Ismayilova,* cited above, § 87; and *Farzaliyev v. Azerbaijan*, no. 29620/07, § 73, 28 May 2020).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

227. Article 41 of the Convention provides:

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

A. Damage

1. In respect of Georgia

228. The applicant claimed 83,000 euros (EUR) in respect of non-pecuniary damage.

229. The Government submitted that that amount was exorbitant.

230. The Court considers that as a result of the violation of his right to an effective investigation under Articles 3 and 5 of the Convention the applicant has suffered non-pecuniary damage that cannot be compensated for solely by the finding of violations, and that compensation should thus be awarded. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

2. In respect of Azerbaijan

231. The applicant claimed EUR 83,000 in respect of non-pecuniary damage.

232. The Government contested the amount claimed as unsubstantiated and excessive.

233. The Court considers that as a result of the violation of his rights under Articles 5 § 3 and 8 of the Convention the applicant has suffered

non-pecuniary damage that cannot be compensated for solely by the finding of violations, and that compensation should thus be awarded. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 6,000 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

234. The applicant claimed the following amount from the Government of Georgia: EUR 10,650 in costs and expenses incurred before the Court, which comprised of EUR 5,650 for the legal fees incurred by Mr N. Legashvili and EUR 5,000 by Mr A. Chopikashvili respectively. He also claimed, from the Government of Azerbaijan, the following amounts: EUR 42,900 for the legal services of Mr E. Sadigov; EUR 13,650 for the legal services of Ms Z. Sadigova; EUR 16,950 for the legal fees of Mr N. Kerimli; and EUR 6,650 for the legal services of Mr N. Legashvili.

235. The Government of Azerbaijan submitted that the applicant had failed to show that the costs and expenses had been actually and necessarily incurred and were reasonable as to the quantum. They noted that, in view of the evidence submitted by the applicant, the maximum legal fees they would accept per lawyer were as follows: E. Sadigov – EUR 1,050; Z. Sadigova – EUR 500; N. Legashvili – EUR 200; and N. Kerimli – EUR 450. The Georgian Government, for their part, submitted, as far as the legal costs of the two Georgian lawyers claimed from Georgia were concerned, that the sum was excessive and unreasonable.

236. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. The Court notes that EUR 16,950 of the legal fees claimed related to Mr N. Kerimli whose written authority form was not in the case file (see paragraph 2 above). This part of the claim should accordingly be rejected. As to the remaining claim for costs and expenses, in view of the nature of the present case, the Court accepts the need for representation by the Georgian and Azerbaijani lawyers. Nonetheless, it considers that the total amount claimed is excessive. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award EUR 2,000 for Mr N. Legashvili's services, and EUR 1,000 for those of Mr A. Chopikashvili, Mr Mr E. Sadigov, and Ms Z. Sadigova each (EUR 5,000 in total). Having regard to the responsibility for the different violations of the Convention found by the Court, Georgia and Azerbaijan will each pay half of that sum.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the applicant's complaint under Articles 3 and 5 of the Convention concerning his alleged abduction, ill-treatment and unlawful transfer to Azerbaijan with respect to Georgia admissible;

2. *Holds* that there has been a violation of Articles 3 and 5 of the Convention, by Georgia, on account of the failure to carry out an effective investigation into the applicant's allegations of abduction, ill-treatment and unlawful transfer to Azerbaijan;

3. *Holds* that there has been no substantive violation by Georgia of Articles 3 and 5 of the Convention;

4. *Holds* that there is no need to examine separately the admissibility and merits of the remaining complaints of the applicant with respect to Georgia;

5. *Declares* the complaints under Articles 5 §§ 1 and 3 and 8 of the Convention with respect to Azerbaijan admissible;

6. *Holds* that there has been no violation of Article 5 § 1 of the Convention by Azerbaijan;

7. *Holds* that there has been a violation of Article 5 § 3 of the Convention by Azerbaijan;

8. *Holds* that there has been a violation of Article 8 of the Convention by Azerbaijan;

9. *Holds* that there is no need to examine separately the admissibility and merits of the remaining complaints of the applicant with respect to Azerbaijan;

10. *Holds*
    (a) that the respondent States are to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts:
        (i) the Georgian Government are to pay the applicant EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
        (ii) the Azerbaijani Government are to pay the applicant EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) the Georgia Government are to pay the applicant EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(iv) the Azerbaijani Government are to pay the applicant EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses.

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

11. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 September 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik	Mattias Guyomar
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Šimáčková, joined by Judge Elósegui, is annexed to this judgment.

JOINT CONCURRING OPINION OF JUDGES ŠIMÁČKOVÁ AND ELÓSEGUI

1. We fully agree with the Chamber's decision to find a violation of the applicant's rights. As the evidence in the case currently stands, we must also agree with the conclusion that there has been no substantive violation of Articles 3 and 5 of the Convention on the part of Georgia and that there has been no violation of Article 5 § 1 of the Convention on the part of Azerbaijan.

2. We regret, however, that the Chamber did not give sufficient consideration to an important aspect of the investigation in Georgia, namely its lack of independence resulting from the prompt public reactions of several high-level officials in Georgia (see, in particular, paragraphs 12-14 of the judgment). The aspect of the lack of credibility and persuasiveness of the accusations against the applicant concerning acts allegedly committed by him on the territory of Azerbaijan has also been overlooked.

3. In general, the Court places great emphasis on ensuring that political statements by the highest State officials do not influence judicial proceedings, whether in terms of the presumption of innocence (see *Bavčar v. Slovenia*, no. 17053/20, 7 September 2023, and the cases cited therein) or the overall fairness of the proceedings (see *Kinsky v. Czech Republic*, no. 42856/06, 9 February 2012). In such cases, however, judges and the judicial system as a whole have various other guarantees of independence, such as the impossibility of removing judges from office or guarantees of the rule of law.

4. Police officers and their careers are much less protected against the influence of politicians than judges. Where police officers are given at the beginning of an investigation a clear indication by the highest political officials that they must prove that no police officer was involved in the crime, in our opinion, the investigation cannot be found to have been independent. This is all the more so as there are some indications and suspicions that some police officers or State agents (Georgian or Azerbaijani) may have been involved in the whole affair. It is these statements by politicians, combined with some other aspects of the investigation, which may arouse suspicion about the investigation's lack of conclusion. Also, the suspicions entertained by the Azerbaijani authorities against the applicant, which led to his detention, may not appear very credible in this light.