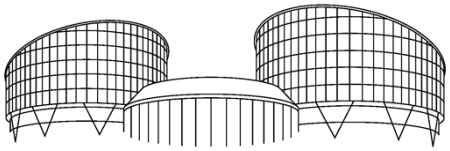

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

# CASE OF KUKHALASHVILI AND OTHERS v. GEORGIA

*(Applications nos. 8938/07 and* 41891/07*)*

JUDGMENT

Art 2 (substantive) • Indiscriminate and excessive use of lethal force during anti-riot operation in prison conducted in uncontrolled and unsystematic manner without clear chain of command • Use of lethal force justified by unlawful violence and risk of insurrection • Authorities' failure to consider less violent means or possibility of negotiations • Ill-treatment and disproportionate use of force persisting after the end of the operation • Authorities' failure to provide adequate medical assistance • Government's failure to account for each of the relevant deaths • Court's reliance on all material available, including NGO reports, when it is prevented from establishing facts for reasons attributable to State

Art 2 (procedural) • Investigation undermined by belated launch, lack of independence and impartiality, insufficient involvement of the deceased's next of kin and prohibitive delays in proceedings

STRASBOURG

2 April 2020

**In the case of Kukhalashvili and others v. Georgia,**

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

Síofra O'Leary, *President,*
Gabriele Kucsko-Stadlmayer,
Ganna Yudkivska,
André Potocki,
Mārtiņš Mits,
Lado Chanturia,
Angelika Nußberger, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 15 October 2019 and 10 March 2020,

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

# PROCEDURE

1. The case originated in two applications (nos. 8938/07 and 41891/07) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Georgian nationals, Ms Sofio Kukhalashvili, Ms Marina Gordadze and Ms Rusudan Chitashvili ("the applicants"). Ms Kukhalashvili and Ms Gordadze lodged their application on 26 January, and Ms Chitashvili lodged her application on 14 August 2007.

2. The applicants were represented by Mr M. Sturua, a lawyer practising in Tbilisi. The Georgian Government ("the Government") were successively represented by their Agents, Mr D. Tomadze and Mr L. Meskhoradze, of the Ministry of Justice.

3. Relying on Articles 2 and 13 of the Convention, the applicants complained about the deaths of their family members in prison, and of the inadequacy of the investigations subsequently carried out.

4. On 30 July and 15 October 2007 notice of the applications was given to the Government.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

### A. Background

5. Ms S. Kukhalashvili ("the first applicant"), Ms M. Gordadze ("the second applicant") and Ms R. Chitashvili ("the third applicant") were born in 1977, 1956 and 1938 respectively and live in Georgia.

6. The first and second applicants are the sister and mother, respectively, of Z.K., a detainee aged twenty-three who died during an armed operation carried out on 27 March 2006 (hereinafter "the anti-riot operation of 27 March 2006") in Tbilisi Prison no. 5 ("Prison no. 5") by a special anti-riot squad of the Ministry of Justice (hereinafter "the anti-riot squad").

7. The third applicant is the mother of A.B., a twenty-nine-year-old detainee at Prison no. 5 who died during the same operation.

8. Prior to the anti-riot operation of 27 March 2006, Z.K. and A.B. had been detained in, respectively, cells nos. 81 and 76 of Prison no. 5.

9. Human Rights Watch (HRW), an organisation which conducted a fact-finding mission in Georgia in May 2006 for the purposes of documenting abuses against prisoners, reported the following on the origins of the riot of 27 March 2006 that took place in Prison no. 5 (see paragraph 110 below):

> "Much controversy surrounds the exact nature of the disturbance in Tbilisi Prison no. 5. What is clear is that in the very early morning hours of March 27, government authorities arrived at the Republican Prison Hospital to transfer to Tbilisi Prison no. 7 six alleged crime bosses who, according to the government, were attempting to instigate riots in the prison system. People interviewed by Human Rights Watch and others state that these six individuals were beaten during this operation; the government denies that they were ill-treated. As the authorities removed these men from the prison hospital, other detainees began to make noise and burn sheets and other items. This disturbance quickly spread to the nearby Tbilisi Prison no. 1 and Prison no. 5, where many detainees made noise, set fire to linens, escaped from their cells, and barricaded the doors of the prison. Ministry of Justice and Ministry of Interior troops conducted a special operation to end the disturbance in Prison no. 5, resulting in at least seven deaths and numerous injuries."

### B. Facts known to the first and second applicants prior to notice of their application being given to the Government

10. The first applicant, represented by her lawyer (the same person who represented the applicants in the present case, see paragraph 2 above, hereinafter "the lawyer"), applied to the Prisons Department of the Ministry of Justice ("the Prisons Department") on 12 April 2006, asking for her brother's autopsy report and for information about any investigative

measure taken in relation to the killing of Z.K. during the anti-riot operation of 27 March 2006.

11. No reply was received, so the lawyer made the same application on 11 May 2006. He also asked to be informed about the late Z.K.'s status in the proceedings: whether he was a civil party or an accused.

12. On 15 May 2006 an investigator from the Prisons Department replied to the lawyer, saying that Z.K. did not yet have any status in the proceedings concerned and that the autopsy report could be consulted on the premises.

13. According to that report, dated 18 April 2006, there was a bullet wound on the right side of Z.K.'s body, behind the armpit, and a bullet wound on the left hip. The first bullet had pierced the ribs and pleura before becoming lodged in the right lung. The second bullet had pierced the left hip from bottom to top, and entered the stomach and damaged the intestines and diaphragm before becoming lodged in and shattering the thorax bone. Severe haemorrhaging that had occurred after these injuries had caused his death.

14. On 11 July 2006 the lawyer contacted the General Public Prosecutor's Office ("the GPPO"), challenging the investigator's reply of 15 May 2006. Observing that nearly four months had elapsed since Z.K.'s death, he requested access to the file and asked to be informed of progress in the investigation. Pointing out that, according to the autopsy report – the only document in his possession – Z.K.'s death had been caused by firearm injuries, the lawyer requested that Z.K. be granted victim status on account of the armed operation of 27 March 2006.

15. In his reply of 29 July 2006, D.Z., a prosecutor from the GPPO in charge of supervising investigations by the Ministry of Justice, stated that civil-party status could not be granted to a deceased person. Even if a relative of the deceased could be granted such status, this could not happen in Z.K.'s case, because the lethal force used against him had been used by representatives of the State "in a moment of extreme urgency in order to quell the rioting by the prisoners and prevent them from committing crimes". As Z.K. had therefore not been injured as a result of an unlawful act, there were no grounds under Article 68 § 1 of the Code of Criminal Procedure ("the CCP") to grant his relatives civil-party status in the case.

16. On 14 August 2006 the lawyer wrote to the GPPO again, addressing the prosecutors who were hierarchically superior to D.Z., stating that it was important for the first and second applicants to know about the exact circumstances of their family member's death. The lawyer accordingly requested access to the file and permission to inspect the document concluding that lethal force had been used against Z.K. "in a moment of extreme urgency in order to quell the rioting by the prisoners and prevent them from committing crimes".

17. On 17 August 2006 D.Z. refused the request, reiterating his reasoning of 29 July 2006 and adding that persons who were not party to the trial could not inspect material in the case file.

18. On 24 August 2006 the lawyer applied to Tbilisi City Court on behalf of the first and second applicants under Article 242 § 1 of the CCP, requesting that the reply from D.Z. of 17 August 2006 be declared unlawful, that civil-party status be granted to the first applicant, and that she be given permission to inspect the file. As he received no reply, the lawyer wrote to the Tbilisi City Court again, requesting that his application be examined immediately and in his presence, at a hearing.

19. Ruling in the absence of the parties on 10 October 2006, the Tbilisi City Court declared the application inadmissible on the grounds that, under Article 242 § 1 of the CCP, only a decision to terminate criminal proceedings or a preliminary investigation, or a refusal to order an expert report could be the subject of an appeal to the courts. That decision was final.

20. The lawyer appealed nonetheless. He pointed out that the prosecuting authorities' refusal and the court decision of 10 October 2006 amounted to a violation of Article 2 of the Convention.

21. On 19 October 2006 the Tbilisi City Court reiterated that no appeal lay against the decision of 10 October 2006.

22. On 1 November 2006, the lawyer applied personally to the General Public Prosecutor, pointing out that the first applicant was entitled to detailed information about the investigative measures implemented in the case and the evidence gathered that had led to the conclusion that the State had not violated its obligations under Article 2 of the Convention. He observed that, according to the news reported in a number of national newspapers, the force used against the inmates of Prison no. 5 had been excessive.

23. D.Z. replied on 7 November 2006, repeating the same arguments as those set out in his letter of 29 July 2006 (see paragraph 15 above).

### C. Facts known to the third applicant prior to notice of her application being given to the Government

24. According to a death certificate issued on 30 March 2006 by the relevant office of the Health Ministry, the third applicant's son died on 27 March 2006 "during the unrest in Tbilisi Prison no. 5" for "reasons unknown". According to that certificate, numerous bullet wounds had damaged his internal organs and brain.

25. On 16 February 2007 the third applicant wrote to the Tbilisi city prosecutor's office saying that, in her view, the use of lethal force against her son had been excessive and unlawful, given the many injuries found on his body. She sought leave to take part in the proceedings and also asked for

the documents pertaining to the investigation to be sent to her. The third applicant specified that the interests of her deceased son could not be properly defended without her participation.

26. As she received no reply, the third applicant reiterated her request on 20 March 2007 before the GPPO, the body which was hierarchically superior to the city prosecutor's office.

27. When she still received no reply, the third applicant applied to the Tbilisi City Court on 3 April 2007. Reiterating her arguments of 16 February and 20 March 2007, she complained of the lack of a response from the GPPO, a lack of response that she said that she was challenging under Article 242 § 1 of the CCP. Relying on Article 2 of the Convention, she sought an order that the GPPO grant her leave to take part in the proceedings and send her the documents in the investigation file.

28. In a letter of 5 April 2007, the Tbilisi City Court replied to the third applicant saying that, in accordance with Article 242 of the CCP, only an order by the public prosecutor's office to terminate criminal proceedings or a preliminary investigation, or a refusal by an investigator to order an expert report could be the subject of an appeal to the courts. It also reiterated that it did not have power to order the GPPO to grant civil-party status to anyone.

29. On 1 May 2007 the third applicant applied to the GPPO again, repeating her request of 16 February 2007.

30. On 15 May 2007 D.Z. (see paragraph 15 above) replied that the third applicant could not claim to have civil-party status in the case because none of the grounds under Article 68 § 1 of the CCP applied. Indeed, "the investigation had established" that lethal force had been used against her son "in a moment of extreme urgency" in order to quell the riot and to prevent inmates from committing crimes.

31. On 22 May 2007 the third applicant asked the GPPO if she could have access to the documents in the file for the investigation which, according to the letter of 15 May 2007, the authorities had carried out before concluding that the use of lethal force had been necessary. She repeated her request for civil-party status in the case.

32. On 19 June 2007 D.Z.'s hierarchical superior replied in identical terms to those stated in the letter of 15 May 2007.

33. On 22 May 2007 the third applicant applied to the Tbilisi City Court, challenging the decision contained in D.Z.'s letter of 15 May 2007 under Article 242 of the CCP.

34. On 28 May 2007 she received the same reply from the City Court as that of 5 April 2007.

## D. Facts and evidence adduced by the Government after notice of the applications being given to them

### *1. Criminal investigation no. 073060138 launched against the organisers of the prison riot*

#### (a) Investigation by the Ministry of Justice

35. On 25 March 2006 the Prisons Department received an "operational briefing" that riots were being prepared in various prisons in the country in an effort to reinstate the authority of criminal bosses. M.Z., P.M. and N.M. – three criminal bosses or "thieves in law" (see *Ashlarba v. Georgia*, no. 45554/08, §§ 21-24, 15 July 2014) being held in Tbilisi prison hospital – were the organisers of the riots, and they had instructed Z.V., G.A. and L.Ts. – three *makurebelis*, influential prisoners overseeing the activities of other inmates (see *Tsintsabadze v. Georgia*, no. 35403/06, § 43, 15 February 2011), who were being held in the same hospital – to incite all their fellow inmates to deliberately injure themselves so that the prison authority would lose control of the situation. Notably, as there had been a crackdown on the criminal underworld after the "Rose Revolution" (see paragraph 140 below), the three criminal bosses in question hoped that the head of the Prisons Department, B.A., would be held responsible for failing to control the situation in the prisons and dismissed from his post, whereupon the reforms which were under way would be stopped.

36. After the Prisons Department received the briefing, criminal proceedings were instituted on 25 March 2006 by the Investigations Department of the Ministry of Justice in respect of charges of attempting to disrupt order in prison. On the same day audio and video-recordings were secretly made in the prison hospital (see paragraphs 61 and 86 below). An order was given for security measures to be reinforced in relation to the six above-mentioned detainees – the three criminal bosses and the three *makurebelis* – being transferred to Tbilisi Prison no. 7 and held in solitary confinement. The transfer was to take place at night "in order to avoid complications".

37. Accordingly, during the night of 27 March 2006 B.A, the head of the Prisons Department, and his colleagues went to the prison hospital. The transfer operation began at 12.45 a.m. Once out of the hospital, the above-mentioned six detainees refused to comply, physically resisting the prison officers and succeeding in inciting the other inmates to rebel in support. The transfer was carried out nonetheless, but the prisoners who remained at the prison hospital continued to riot. They started shouting, setting fire to various objects, forcing windows open, and so on. Upon hearing the noise, the inmates in the adjoining prisons, Prisons nos. 1 and 5, began to riot in turn.

38. The rioting was particularly bad in Prison no. 5, and required intervention by the anti-riot squad in order for the situation to be brought under control. During that armed operation seven inmates died, and twenty-two inmates and two prison officers were injured.

**(b) Initial investigative measures implemented by the Ministry of Justice (inspection of the scene of the rioting in Prison no. 5)**

39. Between 6.10 and 9.05 a.m. on 27 March 2006 a group of five investigators from the Ministry of Justice carried out an inspection of the scene of the rioting in Prison no. 5. According to the relevant investigation report, the group came out onto the first floor of the prison through a metal door on which the lock had been neither damaged nor forced. They made the following findings in respect of the upper floors.

*(i) Second floor – dormitory no. 3*

40. The investigators entered the first corridor of dormitory no. 3 through a metal door that was in working order. In the corridor, they saw iron beds and pieces of wire meshing on the floor. The four cells in the corridor had no doors and they saw prisoners inside them being guarded by armed and hooded officers. The investigators seized two rubber bullet cases (38 mm calibre) found in the corridor.

41. In the second corridor of dormitory no. 3, dismantled metal beds and doors lay on the floor. Only two out of eleven cells had doors on them, and these were closed. In the cells without doors, the investigators saw prisoners being guarded by armed and hooded officers. The investigators seized six rubber bullet cases (38 mm calibre) found in this corridor. At the end of the corridor a metal door opened out onto the staircase to dormitories nos. 2 and 4. The ground was covered with bits of paper and fragments of metal objects, and four metal doors and an iron bed lay on the ground. According to the report, it was "clear that the prisoners [had] attempted to barricade access to dormitory no. 3 with those objects".

42. Of the four cells in the third corridor of dormitory no. 3, two had doors and these were closed. In the cells without doors, the investigators could see prisoners being guarded by armed and hooded officers. In this corridor, rubber bullet cases lay "scattered" on the ground. There were also metal objects on the ground and a dismantled iron bed.

*(ii) Third floor – dormitory no. 4*

43. The above-mentioned staircase (see paragraph 41 *in fine* above) led to the third floor. The metal door to dormitory no. 4 was in place, but did not fully open because of barricades that had been put up behind it. The lock was in working order and did not appear to have been forced. The four cells in the first corridor had no doors. The prisoners there were being guarded by armed and hooded officers. In the corridor, two dismantled iron beds were

visible, in addition to mattresses and duvets. The investigators found a pistol (serial number BA7812) with a magazine and four bullets lying in front of cell no. 74a. In front of cell no. 87a, they also found a Magnum pistol (serial number 77311) with a magazine and a bullet, as well as a Valtro Combat pistol with a magazine and two bullets. The investigators also seized bullet cases from automatic weapons, three bullet cases from pistols and fragments of various metal objects.

44. The eleven cells in the second corridor of dormitory no. 4 were missing doors. The prisoners in those cells were being guarded by armed and hooded officers. Two iron beds and various objects lay on the floor in that corridor. An Adler and a Makarov pistol with a magazine and three bullets were found in front of cell no. 71. A Valtro-2000 pistol and a magazine and three bullets were found in front of cell no. 76. The investigators seized four bullet cases (9 mm calibre), thirty-seven bullet cases from automatic weapons and fragments of various metal objects

45. Four cells in the third corridor of dormitory no. 4 were missing doors. The inmates in the cells were being guarded by armed and hooded officers. An iron bed and fragments of metal objects were lying on the floor in the corridor. The investigators seized six bullet cases from automatic weapons (9 mm calibre).

46. At the end of the second corridor of dormitory no. 4, a metal door, which was still in place, opened onto staircases leading to dormitories nos. 3 and 5. Objects of all kinds could be seen in the staircase, including two metal doors and two iron beds. The investigators seized a bullet case (9 mm calibre).

*(iii) Fourth floor – dormitory no. 5*

47. The metal door to the first corridor of dormitory no. 5 was in place. Of the four cells in the corridor, one had no door. Inmates in this cell could be seen being guarded by armed and hooded guards. The three other cells were closed. Two dismantled iron beds could be seen in the corridor.

48. In the second corridor of dormitory no. 5, two out of eleven cells were missing doors. Two dismantled metal beds and various objects could be seen on the floor in the corridor. Rubber bullet cases (38 mm calibre) lay scattered on the floor, and the investigators seized seven of these.

49. In the third corridor of dormitory no. 5, one cell had no door. The three other cells were closed.

**(c) Further investigative measures implemented by the Ministry of Justice**

50. Between 9.30 and 11.15 a.m. on 27 March 2006 two inspectors from the Ministry of Justice inspected the scene of the rioting in Prison no. 1. The damage observed in the corridors of the prison appeared to be less serious than that described above. However, the relevant report indicates that the

prison warden's office in dormitory no. 4, the watchtower of the top floor exercise yard and the upstairs loft had been burnt.

51. A forensic examination of the body of A.B., the third applicant's son, was carried out on 27 March 2006. According to the expert who carried out the examination, the body had: four injuries to the left thigh, one of which was a long thin wound and still bloody, and another of which revealed fragments of broken bone; two injuries to a toe on the right foot and a fracture in the same place; two injuries and a fracture to the left elbow; and an injury to the right side of the back. The back injury extended to the pleura and the spine, and entered the skull via the neck. The skull was fractured. A piece of yellow metal was removed from the skull and "sent to the investigating authorities". There were numerous red lesions on the lower back, the nose, the forehead, around the left eye and on the left hand, and the right nostril was torn. The internal organs were examined. It was established that various types of alcohol were present in the blood. The expert concluded that death had occurred between six and eight hours before the autopsy, and had been caused by numerous firearm injuries. The bullets had damaged the internal organs and the spine and had caused broken bones. With regard to the many red lesions observed on the body, the expert concluded that they had been sustained when A.B. had still been alive and had been caused by a blunt object or blunt objects.

52. Two prison officers were injured during the anti-riot operation of 27 March 2006 – K.M. and M.S., heads of two dormitories, who participated in the operation. According to medical reports of 30 March 2006, K.M. presented a non-perforating wound to the left forearm, caused by a firearm, whilst M.S. had a perforating wound to the thigh, also caused by a firearm. The injury sustained by M.S. was classified as a minor injury resulting in him being unfit to work for a short period of time.

53. In the course of the investigation in the case, evidence from various prison officers was heard, and the officers made the following statements.

*(i) Statements of K.M. and M.S., two injured prison officers*

54. K.M. (see paragraph 52 above) was questioned on 5 April 2006 and his version of events was as follows. He was on duty in Prison no. 5 during the night of 26-27 March 2006 and after 1 a.m. a colleague informed him that a disturbance had started at the prison hospital. He immediately informed the deputy director of the Prisons Department, who left for the hospital. K.M. himself went to Prison no. 5 to reinforce the outside security arrangements and prepare for a possible attempted breakout. Shortly afterwards the disturbance spread to Prison no. 5. Amongst the shouting and noise, the prisoners were throwing burning mattresses, sheets and clothes out of the windows. Prison officers and police officers arrived. A while later the directors of the Prisons Department also arrived. K.M. went up onto watchtower no. 1, from where one could see into Prison no. 5, and observed

that the inmates were moving freely about the building and even trying to get out. The roof of Prison no. 1 caught fire. The police drove a car equipped with a loudspeaker into the yard of Prison no. 5 to address the inmates. Each appeal for calm was greeted by louder noise from the inmates. The Prisons Department then urgently summoned all off-duty officers. Security was reinforced on every watchtower around the prison. At the same time firefighters and the anti-riot squad of the Ministry of Justice arrived. The anti-riot forces were deployed at a distance of 30-40 metres from the building, as burning objects and metal objects were falling from the windows. During that time the President of the Parliamentary Human Rights Committee spoke to the inmates through a loudspeaker, appealing for calm.

55. At one point the governor of Prison no. 5 came to tell K.M. that he was going to go into the prison to talk to the inmates. K.M. and M.S. (see paragraph 52 above) decided to go with him. They could not gain access to the dormitories through the main entrance, as the door was blocked from the inside. They therefore used a back door. When they got to the first floor the officers of the anti-riot squad were already there. It was relatively calm on the first and second floors, but loud noise could be heard coming from the third floor (dormitory no. 4), to which they had no access as the door had been barricaded from the inside. They therefore went up to the fourth floor before going back down to the third floor and using another door to get to dormitory no. 4. The prison governor, who was first in line, was followed by K.M., M.S. and several other prison officers, who were themselves followed by anti-riot officers. Unlike the anti-riot officers, the prison officers were not armed and were not carrying truncheons or wearing hoods. K.M. and the governor were wearing black uniforms, and M.S. was in civilian clothes. The group entered the corridor, with the governor appealing to the inmates for calm and explaining that the old prison building might collapse and kill thousands of people. When the group turned right in the corridor, they were confronted with barricades. The prison officers attempted to dismantle them, but the inmates started throwing pieces of brick and iron in their direction. The anti-riot officers then fired rubber bullets. In response, five or six shots rang out very close by. M.S. fell down. Other shots rang out and K.M. felt his arm go warm. He did not realise that he had been injured until he was out in the prison yard. When M.S. and K.M. were injured, the anti-riot squad passed in front of them, shouting that some of their men had been injured, and opened fire with their automatic weapons.

56. When giving evidence on 11 April 2006, M.S. said that as the appeals for calm issued in the prison yard had been unsuccessful, a decision had been taken to “take the prison by storm”. Apart from that, he related the same facts as K.M. Unlike G.P. (see the following paragraphs), M.S. stated

that he had not seen in which direction the anti-riot officers had fired their automatic weapons.

*(ii) Statements of the governor of Prison no. 5*

57. G.P., the governor of Prison no. 5, gave evidence on 7 April 2006. According to him, at approximately 2.15 a.m. on 27 March 2006 inmates at his prison started a disturbance, following the unrest in the prison hospital. Considering that the disturbance could spread throughout the prison, he telephoned B.A, the head of the Prisons Department, to tell him that he did not have the means to bring the situation under control alone and was therefore declaring a state of emergency in the prison and requesting assistance. While waiting for help, G.P. decided to allow the guards of all the dormitories to leave their post, close the doors of their dormitories and the entrances to the building, and distribute weapons to their officers. The security around the prison was reinforced to bar any escape attempt. In the meantime, the inmates had succeeded in getting out of their cells and were freely circulating in the corridors of the dormitories. Burning objects and pieces of brick and iron were falling from the windows. The anti-riot squad, B.A., firefighters and the police arrived. At about 2.45 a.m. the decision was taken to take the prison by storm. G.P. then suggested to his deputies and other colleagues that they should get ahead of the anti-riot squad in order to avoid the members of the squad having direct contact with the inmates. He hoped that once they saw familiar faces, the inmates would become more compliant. The prison officers opened the main door and entered the building, accompanied by the anti-riot officers. The lower floors of the prison were empty. The entrance to the third floor (dormitory no. 4) was barricaded. The prison officers started to take down the barricades. While doing so, G.P. appealed to the inmates on the other side of the barricades for calm. In reply, the inmates swore at them, throwing pieces of brick and iron, whereupon the anti-riot officers fired rubber bullets at them. In response, four or five shots rang out on the inmates' side and M.S. fell down. K.M. was also injured. G.P. and a member of the anti-riot squad took M.S. out of the corridor. At that moment the anti-riot squad, who were positioned in the stairway, moved into the corridor and opened fire using their automatic weapons. According to G.P., the officers aimed at the ceiling and the walls. The inmates scattered and returned to their cells.

*(iii) Statements of the dormitory guards of Prison no. 5*

58. When questioned on 8 April 2006, R.O., the guard of dormitory no. 3, gave the same description of the general situation as the other above-mentioned prison officers. He stated that he had been told by his colleagues from dormitories nos. 4 and 5 that five inmates, including A.B. (the third applicant's son), had been behaving particularly aggressively and had been seen destroying the cells.

59. When giving evidence on 8 April 2006, Z.D., the guard of dormitory no. 4, stated that on 27 March 2006 the nineteen cells of the dormitory had housed 900 inmates. He explained that guards such as himself were never armed and, moreover, did not have the keys to the dormitories where they were shut in with the inmates. The doors to the dormitories were locked from the outside after each round. That was why when the riot had broken out in dormitory no. 4, which housed the "toughest" inmates, his life had been in danger. Z.D. said that when he had gone on duty at 8 p.m. on 26 March 2006 he had checked all the locks on the cell doors. At about 1.30 a.m. he had heard noises coming from the prison hospital. The inmates had been shouting "they're duffing up the [criminal] bosses!" and urging all the prisoners to riot. A few seconds later the inmates of dormitory no. 4 had started banging on their cell doors. Z.D. had had the impression that they were using iron beds or tables to force open their cell doors which opened onto the corridor. In about five minutes the guard from dormitory no. 2 had come to open the door to let Z.D. out. They had closed the door behind him from the outside. Z.D. explained that all the cell doors were made of wood reinforced with metal sheets. The door frames were also made of wood. These old doors could only be locked with padlocks, and it was not difficult to break them down. Z.D. stated that in dormitory no. 4 two inmates from cell no. 76, A.B. (the second applicant's son) and G.Dj., and an inmate from cell no. 78, K.Q., had been the first to start rioting following the rioting that had started in the prison hospital. They had been the first to break the window bars in their cell doors before putting their heads out and urging the prisoners to riot.

**(d) Charges against the organisers of the prison riot and the transfer of the case to the prosecuting authority**

60. The investigative measures detailed above gave rise to charges being filed against M.Z., P.M. and N.M., the three criminal bosses or "thieves in law", and against Z.V., G.A. and L.Ts., the three *makurebelis* who were subordinate to the bosses (hereinafter "the six riot organisers", see paragraph 36 above). Those charges were filed on 13 April 2006.

61. According to an expert report issued on 4 May 2006, a secret video-recording of a meeting between several organisers of the riot lasted about twenty-five minutes and showed no signs of having been edited (see paragraph 36 above). According to a transcript of the intelligible parts of the conversation, the organisers agreed that they would lie by saying that during an inspection the prison officers had started beating them. They would then ring the emergency number for prisoners' rights and various NGOs and journalists, so that the following day there would be twenty-four-hour reports on a television channel renowned for its criticism of the authorities. This would, they said, allow them to "get on their feet again". It was not

possible to decipher the rest of the conversation because of substantial background noise.

62. By a decision of 19 May 2006 the GPPO decided to relieve the investigators of the Ministry of Justice of the criminal case. The decision does not state the reasons for the transfer of the case. However, the following information is mentioned. After hearing the appeals for calm by the prison officers who preceded the anti-riot squad in the corridor, the prisoners "came towards [the prison officers and the anti-riot squad]", "which obliged the anti-riot forces to fire rubber bullets". The inmates responded to those shots with "a number of" shots, injuring two prison officers. "The decision was then immediately taken to open fire in response. Following a mutual exchange of shots, seven inmates died and twenty-two were injured." After that, "the situation returned to normal and the inmates returned to their cells and stopped resisting the officers." This also had a positive effect on the inmates of Prison no. 1, who calmed down without any recourse to force being necessary.

63. According to a ballistics report of 25 May 2006, two of the six pistols seized on 27 March 2006 (see paragraphs 39-49 above) with magazines and seven bullets were Makarov pistols (9 mm calibre); one had no serial number and the other was numbered BA7812. The weapons had been used since they had last been cleaned. The seven bullets were projectiles for Makarov or Stechkin-APS pistols. Eight 9 mm cases corresponded to the Makarov and Stechkin-APS bullets; four of these had been fired by the Makarov with no serial number, two others by the Makarov BA7812, and the two last ones by an unidentified Makarov. The four other pistols seized were special defence weapons (9 mm calibre) for blank cartridges, rubber bullets, or gas or lead bullets. These weapons were in working order and had been used since they had last been cleaned, since traces of powder had been found in the barrels. Three bullets (9 mm calibre) found with one of the weapons were usable in one of the weapons; two of them were rubber bullets and the third an irritant (CS gas).

64. By a decision of 21 June 2006 an investigator from the GPPO noted that part of the case – the part relating to the six riot organisers – was ready and should be set down for trial. However, in his view, it was necessary to verify whether the order to open fire on the inmates had been lawful. He therefore decided to sever the aspects relating to a possible abuse of power by the prison and law-enforcement officers from the criminal case relating to the six organisers of the riot, and to open a new case in order to investigate that possible charge (see paragraphs 76-84 below). According to the statement of facts given in that decision, on 27 March 2006 there was a risk of a breakout by the inmates of Prison no. 5 and a danger to the prisoners' lives on account of the fire that had been started. While the prison officers forming a barrier between the anti-riot squad and the inmates were appealing for calm, the prisoners "were throwing pieces of brick and iron at

them", "which was why the anti-riot squad fired rubber bullets at the inmates". The inmates responded by firing "Makarov and gas pistols", slightly injuring two prison officers. Despite "subsequent attempts by the prison officers and the anti-riot officers to quell the violence", the prisoners continued "firing their two Makarov [pistols] and four [other] pistols", which "obliged the anti-riot forces to open fire". This meant that the situation could be brought under control.

65. By a decision of 23 October 2006 the GPPO decided to sever the case relating to the deaths of Z.K. and A.B. from the case concerning possible abuse of power by the law-enforcement officers (see paragraph 64 above and paragraphs 76-84 below), in order to determine the causes and circumstances of their death (see also paragraph 85 below). In that new case, criminal proceedings for murder were instituted (an offence prosecuted under Article 108 of the Criminal Code).

66. In the meantime, the six riot organisers had been committed for trial.

67. On 22 January 2007 B.A., the head of the Prisons Department, was questioned by the GPPO within the framework of the criminal case directed against the six riot organisers. The record of the interview states that at approximately 1 a.m. on 27 March 2006 B.A. went to the prison hospital after learning that a riot was being fomented (see paragraph 57 above). At 1 a.m. he reported to the Minister of Justice that the six riot organisers had physically resisted prison officers while being transferred, that they had urged the other inmates to rebel, and that the situation had degenerated. He described the conduct of the inmates who had started rioting, informed the minister that they had started a fire, and suggested that there was a risk of a breakout. On the basis of that information, a state of emergency "was declared" by the Ministry of Justice, in accordance with a ministerial order of 12 February 2001 ("order no. 60"), and a crisis unit composed of the Minister of Justice, two Deputy Ministers of Justice and B.A. himself was "set up". The Minister of Justice went to Prison no. 5 to examine the situation and hear B.A.'s explanation. According to B.A., when appeals for calm issued by the Ombudsman, the President of the Human Rights Parliamentary Committee, police officers and prison officers were unsuccessful, and when the fire that had been started in "Prison no. 5 took hold", the lives of 4,000 prison inmates were in danger, and the risk of a massive prison breakout became real. A decision was then taken to intervene.

68. With regard to the conduct of the inmates of Prison no. 5 and the order in which shots were heard on both sides, B.A. related the same facts as K.M. and M.S. (see paragraphs 54-56 above). According to B.A., once K.M. and M.S. were injured, the situation "spiralled out of control". In his view, the likelihood of a massive breakout and the death of inmates in the fire increased. The crisis unit then decided to order the anti-riot squad to "take all necessary measures in accordance with the law to reinstate order,

and if necessary use firearms within the statutory limits in force". Following the measures taken, and "with the use of firearms", according to B.A., "the mass disorder and insurrection by the prisoners were quelled" by about 4 a.m. The damage suffered by the Prisons Department amounted to 50,737 Georgian laris (GEL – approximately 16,500 euros (EUR)). In answer to the only question asked by the investigator, B.A. replied that in similar situations the crisis unit acted in accordance with the rules on detention and weapons, order no. 60, the joint action plan of January 2003, and the rules governing anti-riot forces (see paragraphs 96-107 below).

**(e) Trial stage of the case brought against the six riot organisers**

69. Between February and March 2007 the Tbilisi City Court held several trial hearings in the case brought against the six riot organisers. The following witnesses were heard by the trial court.

70. B.A, the head of the Prisons Department, when giving evidence in court, said that once he had been informed by the hospital authorities that the six riot organisers had been taken away and were waiting in the corridor for their transfer to Tbilisi Prison no. 7, he had ordered them to be put in a van parked in the hospital yard for that purpose. He claimed that none of them had been taken to the hospital director's office (compare paragraphs 71-73 below). A few minutes later B.A. had been informed that the inmates in question were refusing to be transferred. At the same time, rioting could be heard. He had then summoned the anti-riot officers, who had formed a corridor along which the six inmates had passed before being transferred. With regard to the remaining events, he related the same facts as those recounted on 22 January 2007 (see paragraph 67-68 above).

71. Z.V. and G.A., two of the six riot organisers (see paragraph 35 above), claimed before the court that on the night of 27 March 2006 they had been woken by a guard who had summoned them to the hospital director's office for a meeting with B.A. In that office they had met B.A., who had been accompanied by the prison governor of Prison no. 7, a number of people wearing hoods, P.M. (another co-accused), and several prison officers, one of whom had been filming the meeting. B.A. had questioned Z.V. and G.A. "about the date [of the meeting between the organisers of the riot]". The two inmates had replied that "they could not remember". B.A. had then struck G.A., who had hit him back. The people wearing hoods had then started kicking and punching Z.V. and G.A. and beating them with their truncheons and the barrel of their guns. The two inmates had been unconscious when they had been transferred to Prison no. 7, where they had been beaten again.

72. L.Ts., another of the six riot organisers, stated that, having been woken by a guard, he had been summoned to the hospital director's office. He had seen a lot of people in the corridor and anti-riot officers, who had started beating him with their truncheons. At the same time Z.V. and G.A.

were being beaten in the hospital director's office (see the preceding paragraph). After being transferred to Prison no. 7 at the same time as the other two inmates, L.Ts. had been stripped naked and again kicked, punched and beaten with a truncheon. According to L.Ts., he and Z.V. had had marks on their body as a result of the violence, and G.A. had had such marks on his face.

73. The director of the prison hospital stated before the court that with the aid of informers among the inmates, he had learnt that a riot was being prepared. He had informed B.A. accordingly, who on 27 March 2006 at about 1 a.m. had come to the hospital and ordered the director to bring the six riot organisers to the director's office, with a view to transferring them. When the trouble had started, B.A. had summoned thirty members of the anti-riot squad to assist with the transfer. The anti-riot officers had not stayed at the hospital because the situation there had quickly returned to normal. They and B.A. had gone to Prisons nos. 1 and 5, which had also started to have problems.

74. By a judgment of 2 April 2007 the Tbilisi City Court convicted M.Z., Z.V., G.A. and L.Ts. of refusing to obey the lawful orders of prison officers, disrupting order in prison, and assaulting prison officers or creating a group for that purpose and actively participating in that group (Article 378 §§ 1 and 3 of the Criminal Code). They were sentenced to six years' imprisonment each. N.M. was sentenced to seven years' imprisonment for the same offences and for illegal possession of a mobile telephone (an offence committed in June 2006). P.M. was sentenced to twelve years' imprisonment for the same offences as those committed by the first four inmates and for being a criminal boss (Article 2231 § 1 of the Criminal Code).

75. In its statement of the facts, the Tbilisi City Court considered that the following facts had been established. As witnessed by the prison officers followed by the anti-riot squad, the inmates of dormitory no. 4 had started throwing pieces of brick and iron in their direction. For that reason, the anti-riot squad had fired rubber bullets back at them. In response, the inmates had opened fire using Makarov pistols and gas weapons. They had carried on resisting until they had been brought under control by the measures implemented by the prison officers and the anti-riot forces.

*2. Criminal proceedings brought against the prison officers for abuse of power (case no. 74068237)*

76. This case against the prison officers was instituted on 21 June 2006 (see paragraph 64 above), and the following investigative measures were carried out.

77. When questioned on 9 October 2006, the expert who had produced the autopsy report of 27 March 2006 (see paragraph 51 above) stated that the tear in A.B.'s right nostril and the many red lesions on his body had

been sustained when he had been alive, and could have been caused by rubber bullets. The expert further stated, for comparison purposes, that there had been no such lesions on the body of G.Y., an inmate who had also died, and only firearm injuries could be observed on his body.

78. On 10 October 2006 the expert who had examined the bodies of three other inmates who had died stated that, apart from firearm injuries, the inmates had sustained lesions and bruises that had left red marks on various parts of their bodies while they had still been alive, and very shortly before their death. The lesions could have been caused by rubber bullets.

79. Between 24 and 26 October 2006 four inmates of Prison no. 5 were questioned in the absence of a lawyer. According to the relevant records, three of those inmates claimed that they did not require legal assistance. None of them had been injured during the events in question. A brief summary of their statements is reproduced below.

80. G.S., an inmate in cell no. 56, stated that at about 2 a.m. on 27 March 2006 he had heard inmates screaming and swearing, and that when he had looked out of the window he had seen burning objects falling into the prison yard. Shortly afterwards the lock on his door had been broken and he and his cellmates had gone out into the corridor. On account of the smoke, they had all gone up to the second floor. Shortly afterwards the anti-riot forces had arrived, but they had been kept back by the barricades. A shot had rung out on the inmates' side. In response, the anti-riot officers had fired rubber bullets and G.S. had hidden in a cell. The anti-riot forces had dismantled the barricades and the situation had returned to normal.

81. R.Ch., an inmate in cell no. 70a, gave a similar description. He explained that the anti-riot forces had "had no means of targeting" the inmates individually, and the sound of shots ricocheting off surfaces could be heard. An inmate next to him had sustained minor injuries as a result of a stray bullet.

82. B.Sh., an inmate in cell no. 71, gave a similar description, saying that inmates from all floors had gathered together in their dormitory (no. 4). He had seen pistols in the hands of two inmates, but could not identify the persons in question. Later the anti-riot forces had arrived, but as they had had "no means of targeting inmates" they had been randomly firing rubber bullets.

83. G.T., an inmate in cell no. 104 (dormitory no. 5), gave a similar description, adding that at about 1.10 a.m. on 27 March 2006 he had heard the prison hospital inmates shouting out that the criminal bosses were being attacked and inciting other inmates to riot. After his cell door had been opened from outside, he had gone down to the third and fourth dormitories. The inmates from the fourth dormitory had been barricading the entrances with the cell doors. A group of prison officers had then arrived. A shot had rung out and someone had shouted that a prison officer had been injured.

Further shots had followed and he had no longer known who was firing at whom or from where.

84. According to the case file as it stands at hand, the investigation into the possible abuse of power by the law-enforcement officers has not been terminated to date. It does not transpire from the available materials whether, apart from the measures mentioned above (see paragraphs 77-83), any other investigative steps have been made.

*3. Criminal proceedings concerning the murder of Z.K. and A.B. (case nos. 74068394 and 74068398)*

85. There is no information in the file on the investigative measures, if any, taken to date in the criminal proceedings initiated on 23 October 2006 (see paragraph 65 above).

*4. Content of the video-recording produced by the Government*

86. The Government have submitted a video-recording. The first sequence would appear to correspond to the secret recording of the meeting between the organisers of the riot. The content of the surtitles of their conversation is the same as that set out in paragraph 61 above.

87. The second sequence shows a police car parked in a place that is not a prison yard, but could be an entrance to the perimeter of the prison area. A police officer in the car is holding a loudspeaker and saying "Stop the riot! Prisoners, stop rioting! I repeat, stop rioting!"

88. The third sequence shows a prison yard in which several dozen people are running, wearing hoods. The building has a ground floor and three upper floors. Burning objects fall from the windows and shouting and disturbances can be heard coming from the cells. Several windows on the second floor are lit up on the inside by flames.

89. The fourth sequence shows the firemen extinguishing the fire on the roof of the same building.

90. The fifth sequence shows two people in camouflage and a man in a black jacket coming down the staircase of a building wearing a hood. They say that an ambulance should be called.

91. The sixth sequence shows doctors treating the thigh of a man dressed in civilian clothes (see paragraphs 55 and 56 above) and the left forearm of a man in a black pullover.

92. The seventh sequence shows a number of people in camouflage attempting to clear a barricaded entrance.

# II. RELEVANT DOMESTIC LAW AND DOCUMENTS

## A. The Criminal Code

93. Under Article 28 § 2, self-defence is permissible irrespective of a victim's ability to escape a danger himself or call for help. The limits of self-defence are exceeded where the victim's action is manifestly incompatible with the nature and dangerousness of the attack. Under Article 30, it is not unlawful to commit an act that is illegal under criminal law in conditions of dire necessity. An act is committed by a victim in conditions of dire necessity if: it is necessary in order to avoid the danger posed to the victim or to a third party; it is not possible to avoid the danger by other means; and the benefit outweighs the damage caused.

## B. The Code of Criminal Procedure, as in force at the material time

94. Article 62 § 6 (3) read as follows:

**Article 62 § 6 (62 § 5 following the Amendment Act of 22 June 2007)**

"6. Investigators from the ... Ministry of Justice shall investigate the crimes defined in Articles 342-1 and 377-381 of the Criminal Code, and crimes committed on prison premises."

95. Other relevant provisions of the CCP read as follows:

**Article 68 §§ 1 and 2**

"1. A civil party is ... an individual who has directly suffered non-pecuniary, physical or pecuniary damage following an offence ...

2. In a case where an offence has caused a civil party's death, his or her rights shall vest in a relative ..."

**Article 234**

"Actions by an investigator, the head of an investigating authority, a prosecutor, a judge or a court may be challenged by the parties to a trial and by other natural persons or legal entities in accordance with the procedures established by this Code."

**Article 235 §§ 1 and 2**

"1. A complaint shall be lodged with the prosecuting authority or the officer who has statutory power to examine it and take a decision. ...

2. A complaint against an action or decision of the prosecutor shall be sent to a higher-ranking prosecutor. ..."

**Article 242 § 1**

"1. In accordance with the rules provided for in this Code, a court action may be brought against an act or decision of an investigator or prosecutor which, according to

the person affected [by the act or decision], is illegal or ill-founded. [Such acts or decisions] include:

(a) an order terminating criminal proceedings and/or a preliminary investigation."

## C. The Detention Act of 22 July 1999

96. The relevant provisions of the Detention Act read as follows:

**Section 95 (3), (4) and (7)**

"3. Where a prisoner assaults or otherwise endangers the life of a prison officer or any other person, the prison officer in question shall be entitled to use a firearm in accordance with the statutory rules.

4. In the event of a breakout, prison officers shall be entitled, exceptionally, to use a firearm if there are no other means of stopping the breakout.

7. After any recourse to a security measure, prison governors shall have the [relevant] prisoner medically examined ..."

**Section 96**

"In the event of mass disorder ... in a prison, the Prisons Department shall draw up a plan of additional security measures which shall be approved by the Minister of Justice in consultation with the Ministry of the Interior and the State Agency for the Protection of National Borders."

## D. The Weapons Act of 8 May 2003

97. Under section 25 of this Act, the use of a firearm is permissible, in accordance with the statutory rules, for the purpose of protecting life, health and property, for self-defence, or in cases of dire necessity. Rules governing the use of service weapons and combat weapons shall be determined by statute.

## E. Ministerial order of 12 February 2001 (no. 60) on additional security measures in prisons

98. By means of order no. 60, the Minister of Justice approved an action plan for emergency situations in prisons, including mass unrest and insubordination by prisoners. Among other things, a crisis unit would be set up at the Ministry in order to coordinate the actions of various actors. Chaired by the Minister of Justice, it would include the first Deputy Minister of Justice, the Deputy Minister of Justice for the Supervision of Prisons, and the head of the Prisons Department. A local crisis unit would be set up in the prison concerned to implement its decisions. The Minister of Justice and the first Deputy Minister would have the power to declare a state of emergency within the Ministry and to request the assistance of the

Ministry of the Interior. The head of the Prisons Department would keep the Minister of Justice informed of the extent of the unrest and the reasons for it, guarantee the presence of sufficient numbers of staff in the prison concerned, and use the forces and means of the prison depending on the requirements of the situation. In the event of an imminent risk of the situation deteriorating, the head of the Prisons Department could himself declare a state of emergency in the prison concerned and take action in coordination with the appropriate territorial police force, in accordance with the previously devised operational action plan.

### F. Ministerial order of 18 June 2001 (no. 212), incorporating the rules governing anti-riot forces, in force at the material time

99. The anti-riot squad formed part of the Prisons Department, and its mission was to take rapid action to prevent mass disorder, attacks, escapes and other transgressions in prisons. The legal basis for its activities was the Detention Act, presidential orders, orders of the Ministry of Justice, the rules governing anti-riot forces and other relevant statutes (Article 1). The management of the anti-riot squad supervised the vocational and physical training of members of the special forces (Article 2 § 4). The head of the anti-riot squad was subordinate to the Minister of Justice and the head of the Prisons Department, and was responsible for guaranteeing the squad's proper discipline, professionalism and compliance with the law (Article 6).

100. In carrying out their duties, members of the anti-riot squad were entitled, in accordance with the relevant legal procedures, to have recourse to physical force, and "to carry and use firearms and other special weapons" (Article 8 § 1). When using firearms, they had to take all measures in their power to guarantee the safety of third parties and provide medical assistance to any victims (Article 8 § 2).

101. No other indications concerning the use of firearms by members of the anti-riot squad were contained in the ministerial order in question, the Detention Act, or any other statutes.

### G. Joint action plan of January 2003 applicable in emergency situations

102. The joint action plan, which was adopted in January 2003 by the Minister of Justice, the Minister of the Interior and the General Prosecutor, put in place a number of measures to prevent emergency situations in the prison system without the need for recourse to force and to bring such situations under control where necessary. The authorities were to have recourse to force only "in cases of dire necessity" in order to control aggressive prisoners.

103. In the event of mass disorder and collective insubordination (emergency situation no. 3), accompanied by noise, shouting, attempted assaults on prison officers, the erection of barricades to block doors, the attempted destruction of doors or group violence, an operations officer was to analyse the situation and, if appropriate, raise the alarm. He should then: inform the prison governor and the operations unit of the Prisons Department and the Ministry of the Interior accordingly; summon the prison staff; take decisive measures to reinstate order; form a group of prison officers equipped with "special means", such as shields, truncheons, handcuffs, helmets, bulletproof vests, and so on; and go to where the disturbance was occurring.

104. If it was not possible to control the situation with the means available (see the preceding paragraph), the governor of the prison in question was to order the guards out of their dormitories, reinforce the perimeter around the prison, and wait for the anti-riot squad of the Prisons Department to arrive. The governor had to: take all necessary measures to counter the breakout; study the profiles of those taking part in the unrest, and the reasons for and aim of the unrest; and analyse the results obtained by the measures implemented by the operations officer. With the assistance of his or her deputy in charge of the dormitories, the governor was to prepare, on the basis of the information gathered, a text by which he or she would address the prisoners causing the disturbance, and was to draw up proposals for an intervention to quell the unrest.

105. The special group set up to quell mass disorder was to be equipped with bulletproof vests, rubber truncheons, handcuffs and gas masks. Water could also be used. The use of firearms was permitted only in the event of dire necessity, in the event of an attack genuinely endangering the lives of prison officers or other prisoners, or in the event of a real attempt to break out which was impossible to stop by any other means.

106. In the event of a fire (emergency situation no. 4), the authorities were to allow firefighters access to the building and, if necessary, evacuate the inmates, while reinforcing security around the prison but also the monitoring arrangements, in accordance with the different categories of inmate.

107. In accordance with the joint action plan, every prison governor had to draw up the same type of plan for the purposes of dealing with the emergency situations concerned.

### H. Report of the first half of 2006, presented by the Public Defender of Georgia before Parliament

108. The relevant extracts of the above-mentioned report read as follows:

> "**Riot in Prison No. 5**
>
> On March 27, a riot took place in Prison No.5. [...] The materials obtained by the Public Defender's Office [suggest] that actions of the Prisons Department had provoked the riot and that the force used [against the inmates] was disproportionate ... More specifically, on 27 March [the head of the prisons department], together with special forces, entered the prison and verbally and physically assaulted several inmates. This provoked a riot [...]. These [facts are] corroborated by almost identical statements given by many inmates. [...]
>
> As to the special operation, the majority of the wounded inmates ... received injuries not in the corridors [of Prison no. 5] but in their cells ... The fact that most inmates received injuries in their cells demonstrates that the special troops were using firearms even after the riot [was] over and the inmates [had] stopped putting up resistance ... Several inmates were wounded and killed by [shots which came through] the spy-holes of the doors of the cells. [...]"

109. On 11 July 2007 the Georgian Parliament adopted an order, in accordance with which the report was "taken into account for information purposes."

## III. INTERNATIONAL DOCUMENTS

### A. Human Rights Watch

110. In September 2006 Human Rights Watch published a comprehensive report on the human rights situation in Georgian prisons entitled "Undue Punishment. Abuses against Prisoners in Georgia" (Vol. 18, No. 8 (D)). The relevant excerpts from that report, which specifically addressed the anti-riot operation of 27 March 2006, read as follows:

> "**The March 27 Disturbance in Prison No. 5**
>
> Much controversy surrounds the exact nature of the disturbance in Tbilisi Prison No. 5. What is clear is that in the very early morning hours of March 27, government authorities arrived at the Republican Prison Hospital to transfer to Tbilisi Prison No. 7 six alleged crime bosses who, according to the government, were attempting to instigate riots in the prison system. People interviewed by Human Rights Watch and others state that these six individuals were beaten during this operation; the government denies that they were ill-treated. As the authorities removed these men from the prison hospital, other detainees began to make noise and burn sheets and other items. This disturbance quickly spread to the nearby Tbilisi Prison No. 1 and Prison No. 5, where many detainees made noise, set fire to linens, escaped from their cells, and barricaded the doors of the prison. Ministry of Justice and Ministry of Interior troops conducted a special operation to end the disturbance in Prison No. 5, resulting in at least seven deaths and numerous injuries. According to the Ministry of

Justice, at least ten government agents also sustained injuries. The disturbance in Tbilisi Prison No. 1 subsided without an armed intervention.

In explaining the origins of the disturbance in Tbilisi Prison No. 5, the government maintains that one inmate, M[.]Z[.], an alleged thief in law, had plotted with others to create a disturbance in the prison system intended to stop the ongoing prison reforms, which, as noted above, were aimed at dismantling the thieves in laws' authority within the prisons. The government claims that [M.]Z[.], together with two other suspected criminal authorities, recruited three other crime figures to carry out a plan to inflict injuries on themselves and other collaborators that they would claim had been inflicted by the head of the Penitentiary Department in order to provoke disturbances in the penitentiary system. The government says that it obtained information about this plot on March 25 and set up secret audio and video recording in the Republican Prison Hospital, where all six of the alleged plotters were being detained.

On March 26, the head of the prison hospital informed authorities of the Penitentiary Department that the six plotters 'were organizing mass disturbances' and asked that Penitentiary Department officials take necessary measures. The head of the Penitentiary Department and officers from the criminal investigation department then arrived at the prison hospital to transfer the alleged plotters to other penitentiary facilities. According to the government, 'In order to prevent further complication of the situation it was decided to carry out the operation at night,' at 12:45 a.m. on March 27.

**Detention of the alleged riot plotters and disturbance in the Republican Prison Hospital**

The government claims that the six alleged plotters physically resisted the attempt by Penitentiary Department officials to relocate them and that during their transfer they called out to other detainees in the hospital to 'start mass disturbances.' As a result, other detainees in the prison hospital 'started disobedience and mass disturbance, namely making noise, swearing, shouting, setting things on fire, breaking the windows, etc.'

Victims and witnesses interviewed by Human Rights Watch described the actions of the law enforcement agents who entered the Republican Prison Hospital to detain the six alleged plotters riot differently from the government. Human Rights Watch reviewed evidence indicating that at least four of the six detainees may have been beaten severely as they were removed from the prison hospital and transferred to Prison No. 7. One detainee told Human Rights Watch:

> 'On March 27 I was asleep. I was called out of my room by the hospital administration. They took me downstairs and started beating me. This began inside and then continued outside where I lost consciousness. I was taken from the surgical wing. I don't know who beat me. It happened in the night. People were in masks. I was taken into the yard and people beat me with metal sticks and truncheons, and kicked me.'

The victim was then taken immediately to Tbilisi Prison No. 7. He suffers long-term medical repercussions as a result of the beatings. Human Rights Watch observed the severity of his condition and a doctor confirmed the urgent need for him to receive sophisticated medical treatment.

The ombudsman and a medical professional visited the three other suspected riot plotters allegedly beaten on March 27 when they were removed from the Republican Prison Hospital. The medical expert confirmed numerous injuries consistent with beatings on each detainee. One detainee stated that he was taken from his room and

‘beaten with [truncheons] in front the [hospital] Director’s Room.’ The medical expert confirmed that the prisoner had been beaten on his abdomen, back, and head, and, as a result, suffered pain in his kidneys, dizziness, and balance problems, as well as nightmares and other psychological problems. The ombudsman and the medical expert confirmed that two of the other alleged riot plotters had injuries consistent with being beaten and suffered serious physical and psychological repercussions. The ombudsman documented the injuries to one of these detainees in photographs which he showed to Human Rights Watch.

Several witnesses interviewed by Human Rights Watch provided further corroboration that several detainees from the prison hospital were beaten in the early morning hours of March 27. One detainee explained:

> ‘On March 27, it started on the second floor. The special forces troops came into the surgery wing of the hospital and took three guys right before our eyes. They beat them on our floor and then took them to the courtyard. They didn’t hide it. They beat them with gun butts and truncheons. People started to cry out. These were three people from separate rooms. One of them has epilepsy. They took them out of the hospital. There were 40, 50, or 60 members of the special forces. There was first one group, then a second. They were in masks and black uniforms.’

Another witness stated: ‘I saw the special forces troops enter the surgery department. First 20 [people] and then another 20.’ A third said: ‘It was 1 a.m. and I was sleeping. I heard an inhuman cry that woke me up. I take sleeping medicines, but even so, I woke up. I heard two cries. I saw people in masks in the courtyard. They were beating two people. They cried out. Then they brought a third person out. I have never heard such cries in my life.’

Witnesses who were in the prison hospital at the time stated that hospital detainees started to make noise and protest in reaction to the treatment they saw being inflicted on their fellow detainees. ‘People started screaming from the hospital windows. They were making a lot of noise. People feared also being beaten. One of the people they were beating has epilepsy. People were shouting ‘Don’t beat him! He has epilepsy!’’ – one detainee told Human Rights Watch. According to another detainee, ‘People started to cry out. Some of the prisoners burned sheets and pillows and put them out the window.’

**The disturbance travels to Prisons No. 5 and No. 1**

Witnesses stated that once the disturbance started in the prison hospital, detainees in Prison No. 5 and Prison No. 1, located 50 meters away, also began to react. According to one detainee in the prison hospital: ‘Prison No. 5 looks out onto our hospital. They can see everything. They started to bang dishes and to make noise. They were yelling out, crying out. They wanted to bring attention there.’ ‘From Prison No. 5, inmates started yelling, ‘What’s happening?’ and started making noise, and they became louder than people here. It’s only 50 meters away, and at night when it’s quiet, sound travels really well,’ – another detainee told Human Rights Watch.

In Prison No. 5 and Prison No. 1, detainees made noise by shouting and banging dishes and other implements. They also began to set fire to sheets and other objects and throw them out of the windows. Upon seeing the disturbance in the prison hospital spread to Prisons No. 5 and No. 1, the director of Tbilisi Prison No. 5, G[.]P[.], told Human Rights Watch that he took the decision to remove all personnel from the building for their own safety and to close the building. Ultimately, in Prison No. 1, the authorities were able to put an end to the disturbance without conducting a special operation or using force. However, what happened in Prison No. 5 after the

prison staff left the building remains unclear, and even government authorities provide conflicting information.

The authorities reported that detainees on the third, fourth, and fifth floors of Prison No. 5 broke out of their cells or exited their cells. The director of Prison No. 5 stated: 'The doors were broken by the prisoners. Absolutely all of them were broken. The doors are so old. That's why they broke. They used the beds in the rooms. All it takes is 10 people to use the bed and ram it against the door.' One detainee who had been on the fourth floor of Prison No. 5 on March 27 told Human Rights Watch that, indeed, they had managed to break down their cell door. Other detainees confirmed this.

From the available evidence, it is not clear that detainees broke their doors down *en masse*. Some detainees said they managed to exit their cells and then opened the doors of other cells. Still other detainees reported that their doors had not been broken or opened and that they did not leave their cells. The Ministry of Justice reports that 'prisoners destroyed all cell doors, and most [of the] inmates were outside the cells. Some prisoners went on the roof and set the prison building on fire.' K[.]M[.], head of the Penitentiary Department special task force, also told Human Rights Watch: 'The inmates were burning clothes, blankets, and throwing these out the windows. Some of them had climbed onto the roof. They threw things out and off of the roof. No one could come too close to the building.' However, when Human Rights Watch asked Prison Director [G.]P[.] about the inmates on the roof he said – 'What? There was no one on the roof.'

[G.]P[.] told Human Rights Watch that at about 2 a.m., he called the head of the Penitentiary Department, who came to the facility, and that 15 minutes later special forces troops arrived and surrounded the prison buildings as a show of strength. The ombudsman, S[.]S[.], who was also present during the operation, stated that there were approximately 150-300 special forces troops. According to witnesses, two armoured personnel carriers or some other type of large military vehicle were also brought into the courtyard.

Soon after the disturbance began, several detainees called E[.]T[.], chairperson of the Parliamentary Committee on Human Rights and Civil Integration, and she immediately went to the prison. She told Human Rights Watch: 'Inmates told me – 'We've taken over the prison, we're afraid they will start shooting, please come help immediately.' I had the impression that they wanted me to negotiate with them.' She stated that, upon arrival at the prison, 'I asked the minister of the interior to allow me inside [the prison] with the ombudsman to convince the prisoners to return to their cells. As soon as they opened the door [to the prison], the minister of the interior changed his mind. I was told it was too dangerous to go in, what if the prisoners took me hostage-they wouldn't be able to help me. So instead they brought me a megaphone, and I addressed [the prisoners].' [E.T.] stated that she was not afraid to enter the prison and believes that direct contact with the detainees might have diffused the situation: 'I still think if I'd gone in, they wouldn't have taken me hostage.'

**The special operation to quell the disturbance**

[E.T.], [S.S.], and other officials spoke to the inmates from the prison courtyard using a loudspeaker and asked them to calm down. The government claims that for an hour it issued warnings that 'if the orders were not followed [that] force [would be used]' and only then took a decision that members of the Penitentiary Department and special forces should enter the building. However, according to S[.]S[.]: 'Some of the detainees had called me on my mobile phone. They wanted some kind of negotiations, although they didn't have any particular demands. But they wanted negotiations. The

troops gave no warning as they entered. They made no attempts to negotiate. There was just one announcement over the radio [about the operation], which the detainees claim not to have heard given the loud noise they were making themselves.'

Many discrepancies exist about the initiation of the special operation itself. [G][P.], who led the first entry into the prison, stated that he, two colleagues from the Penitentiary Department, and a group of special forces were unable to enter through the main door of the prison because it had been barricaded from the inside. Using a side entrance, they made it to the fourth floor where they started to break down a barricaded door. He claims they heard yelling and gunfire. [G.][P.] described the events that followed to Human Rights Watch:

> 'The two department employees were shot. As soon as they were shot I took them out of the corridor to a safe place. The special forces troops started to shoot with rubber bullets into the windows and ceiling to scare the prisoners. Then the special forces troops entered the fourth floor. It was dark. The prisoners had broken the lights. We heard other gunfire and the special forces troops started to shoot [with automatic weapons]. This was happening on the fourth floor, but some distance from us.'

According to the Ministry of Justice, however, the events unfolded differently. While, as noted above, the head of Prison No. 5 states that he and his colleagues were shot at and his two colleagues were wounded as they entered the fourth floor, the ministry claims that the authorities initiated the shooting by firing rubber bullets. Only at that moment did the prisoners initiate fire in the direction of the Penitentiary Department employees. In its report to the UN Committee Against Torture, the Ministry states:

> 'Having cleaned the blocked entrance of the building, the Director of the Prison No. 5 with several Special Task Force officers entered the building and once again called on the prisoners to calm down, this resulted [in] the counter-reaction of the inmates and they began moving towards the administrators; therefore the special task force used the guns with rubber bullets; the prisoners responded with firearms shooting that resulted in injuries [to two Penitentiary Department employees]. After [the] wounding [of] the staff members of the Penitentiary Department, the decision to open the counter fire was made immediately.'

The government now claims that six firearms were found in the prison, together with dozens of knives. However, conflicting information persists about the exact number of firearms. In a press conference immediately following the incident, the minister of justice reported to the media that five weapons had been discovered. The ombudsman told Human Rights Watch that when he entered the prison immediately after the special forces concluded the operation, he saw two guns allegedly fired by prisoners during the riot. Human Rights Watch could not confirm whether prisoners had firearms and, if they did, how many, and how they were able to obtain them and keep them in the prison. When Human Rights Watch asked how the weapons allegedly used by prisoners entered the prison in the first place, Prison Director [G.]P[.] replied: 'I don't know. Not on my watch.'

**Use of force during the special operation**

The government does not provide any detail as to what happened after the special forces entered the prison, stating only that 'after the abovementioned, the situation went under control, the prisoners entered their cells and stopped resistance.' Both the government and detainees state that no non-violent means or alternative methods of riot control, such as teargas or water cannons, were utilized; the only means used was

gunfire with rubber bullets and live ammunition, resulting in the death of seven detainees and injury to at least 17 detainees. The Standard Minimum Rules require that the authorities should not 'use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Officers who have recourse to force must use no more than is strictly necessary.' [...]

Human Rights Watch interviewed numerous detainees who described the use of automatic weapon fire by special forces once they entered the prison. Human Rights Watch interviewed seven detainees who had sustained gunshot wounds from automatic weapons. Representatives of the Office of the Ombudsman also documented gunshot wounds on detainees who had been in Prison No. 5 at the time of the disturbance. These experts also found wounds consistent with being hit by rubber bullets on the hips, buttocks, head, chest, ankle, and feet of 11 different individuals. Human Rights Watch interviewed two people who had been injured by rubber bullets. One detainee told Human Rights Watch, 'I was hit twice with plastic bullets on my right thigh.'

Some detainees also reported that authorities had been shooting at the main prison building from the roofs of other buildings and that bullets entered through the windows. At some point in the operation, bullets were fired into their cells from outside the building. As a result, some prisoners felt compelled to leave their rooms for safety reasons. Others reported being injured from this fire. One detainee in a cell on the fourth floor reported: 'I was in my room and wounded in my side. They were shooting from the roof [of the administration building] opposite ours and a ricochet bullet hit me.' A detainee on the fifth floor stated: 'There was shooting in the yard. We were afraid and went out of the cell and stood in the corridor. Our door had been opened from the outside. They opened it by breaking the lock. We were watching on our television what was happening to us. There was shooting from the outside. There was shooting from the roofs at our building. We then went into our room and waited. In the cell next to us we heard shooting. There were people shot. There was one person injured and another one killed.' Another detainee, who sustained two bullet wounds and then lost consciousness stated: 'We have big windows in those cells. I think bullets may have come through the windows. I had stood up from my bed. I don't know who shot me. Everyone was terrified.' During its visit to Prison No. 5, Human Rights Watch saw holes in the window shutters of numerous cells that appeared consistent with bullet holes. However, a forensic examination is necessary to determine the exact nature of the holes.

Various witnesses confirmed that the authorities fired bullets in the courtyard of the prison during the operation, even in the direction of the prison hospital or the street where dozens of journalists, relatives, human rights activists, and others had gathered. Witnesses reported seeing 'lighted bullets,' apparently tracer bullets, which burn brightly during their flight, enabling the shooter to follow the bullets' trajectories.

**The issue of excessive use of force**

As described above, there are discrepancies in various accounts of the special operation to end the disturbance in Tbilisi Prison No. 5, even among different government agencies. Although it is clear that detainees put up an undetermined degree of resistance to the law enforcement agents attempting to regain control of the prison and that special forces troops used lethal force and other violent means to suppress this resistance, the exact nature and proportionality of the force used remains unclear. In these circumstances, it is difficult to conclude whether the shooting described above was excessive, and a thorough investigation by an independent body

is the only means to reaching specific conclusions. However, Human Rights Watch was able to document specific individual incidents of excessive and illegal force. These involved at least two cases of shooting of detainees during the operation and several cases of beating of detainees after the operation.

Human Rights Watch was able to document two cases in which special forces troops appear to have shot detainees, who were not posing an immediate threat or danger to the guards, without issuing any warning or using other means to subdue the detainees. According to one injured detainee, who sustained five bullet wounds:

> 'I was afraid of the gunfire. There was panic in our room. I was afraid of being killed. We all were. Some people were saying to us – 'Take it easy, don't worry, they won't kill us.' The door of our cell was closed. A guy with an automatic weapon and a mask came into the room. He started to swear at us. He was alone standing in the doorway, but there were others behind him. He said to us – 'So you want a colour television you motherfuckers?' And then he started to shoot. I was close to him and right in front of him and so I took the first bullets. This all happened really fast. He came in, said these words to us, and then started to shoot. He gave no warning that he would shoot. I lost consciousness. The thing is, we had a television in our room, and a few days before this happened, they wanted to take it away. We said no.'

Special forces apparently shot another prisoner because he could not comply fast enough with their order to lie down on the floor. The prisoner, who sustained multiple gunshot wounds, told Human Rights Watch:

'The special forces came to our corridor. I heard them shooting in the corridor. The special forces were saying, 'Lie down!' at the same moment as they shot. In my room the people who were standing lay down. But for me-some of us were on the top bunk. We couldn't climb down to lie down because the room was all full of people lying down. One special forces member came into our room and said – 'Lay down motherfucker!' I came down from my bunk and saw a place near the bed towards the corner. As I moved there, the special forces guy shot me. When prisoners heard the gunfire, prisoners from other cells came into our cell. I was really afraid. I was just watching the door waiting to see what would happen.'

Another detainee told Human Rights Watch that after being shot in the leg by a member of the special forces, he fell to the ground. 'Then the special forces guy came over and fired two more bullets into my buttocks, right into my back pockets.'

As part of the operation, apparently once the special forces troops had gained control of the prison, many members of the special forces beat detainees, apparently to punish or subdue them. One detainee told Human Rights Watch that immediately after the operation, 'They beat us with truncheons. They also kicked us. [They beat us] like dogs.' According to another detainee, after the operation had begun, 'We just sat in our room and didn't move. If people were in their rooms they weren't beaten. But if they had gotten out and had gone to another room they were beaten. I heard how people were beaten. They would scream out in pain.' A detainee from the fourth floor stated that after the operation, '[The special forces] came and took us into the hall one at a time and beat us practically to death. I lay in bed for a week unable to move.' Another told Human Rights Watch, 'We were taken from our cells and beaten to teach us a lesson.' One stated that he was even beaten while being transferred out of Prison No. 5: 'I was beaten on the head with an automatic weapon, once in the room, once in the van coming here [to Rustavi Prison No. 6].' Based on interviews with detainees in various penitentiary facilities following the operation, medical experts from the Rehabilitation Center for Victims of Torture 'Empathy' estimated

that more than 100 detainees in Prison No. 5 were beaten during the course of the operation or immediately afterward. [...]

**Treatment of the wounded**

The medical care provided to the wounded following the operation was wholly inadequate.

The detainees who were taken from the Republican Prison Hospital and transferred to Tbilisi Prison No. 7, as described above, reported that they did not receive immediate medical attention for the injuries sustained from the beatings and faced difficulties receiving adequate care. [...]

On April 7 representatives of the Office of the Ombudsman also found that, despite continuing physical and psychological complications associated with the March 27 beatings, the detainees had not received forensic medical examinations, were denied regular contact with doctors, and received no substantive medical treatment. One man reported being afraid to request a visit by the doctor out of fear of additional verbal and physical abuse by the prison authorities. The detainees were not allowed to go outdoors and could not maintain proper hygiene-they could not shave and had limited possibility to wash. There were no medical records related to the detainees in the prison.

Those wounded during the special operation in Tbilisi Prison No. 5 also reported receiving inadequate care. Although numerous ambulances had arrived at the prison, not all inmates were treated immediately by skilled medical personnel, and at the time of Human Rights Watch's visit, many detainees who were in need of surgery still had not received it. [...]

An expert acting at the request of the Office of the Ombudsman also identified numerous patients in Rustavi Prison No. 6 in need of urgent medical care some weeks after having been injured in the March 27 incident. One detainee had multiple wounds some of which had apparently become infected resulting in fever. The expert determined that other detainees had single bullet wounds that required surgery and other serious treatment. One detainee with a chest injury had not received an x-ray or consultation with a specialist. The expert noted that the prison did not have a registry to record injuries of the incoming detainees and kept no medical documentation regarding sick or injured detainees.

**Discrepancies in the number of killed and wounded**

The Ministry of Justice report states that during the operation two special forces members were wounded and 10 were injured. The report does not specify the types of wounds or injuries, nor does it clarify the difference between wounds and injuries. The report also states that two members of the Penitentiary Department suffered gunshot wounds at the beginning of the operation. It is not clear whether the injuries to the Penitentiary Department employees are counted separately or in the total number for government agents wounded and injured.

The total number of inmates killed and wounded in the operation remains unclear. According to official information provided to Human Rights Watch by the Penitentiary Department, seven inmates were killed. However, initial reports indicated that there may have been more casualties than officially recorded and that in at least one case a death attributed to other causes was in fact a result of the operation. ...

The number of wounded is in even greater dispute. The government itself provides conflicting information. In statistics provided to Human Rights Watch in May 2006, the Penitentiary Department gives the names of 17 wounded inmates. In contrast, the

Ministry of Justice states in its May 2006 report to CAT, 'After bilateral fire seven prisoners died and 22 inmates received injuries of different gravity.' Representatives of the Office of the Ombudsman, including one physician, visited detainees in Rustavi Prison No. 6 who had been transferred from Tbilisi Prison No. 5 following the March 27 operation. Initially, the staff of Rustavi Prison No. 6 told the ombudsman's representatives that eight of the prisoners transferred had been wounded during the March 27 operation. However, the representatives found 15 patients with wounds, including gunshot wounds, sustained during the March 27 operation. They stated: 'For lack of time we could not survey all the cells, so we can assume that the number of [wounded] prisoners is even higher.'

Additionally, Human Rights Watch interviewed 14 other individuals who sustained injuries during the March 27 operation. These included seven individuals who suffered gunshot wounds and two detainees wounded by rubber bullets, as well as five detainees who were injured as a result of beatings. Taken together, the information collected by Human Rights Watch and the Office of the Ombudsman suggest that the actual number of wounded may be higher than reported by the government.

**Planning the operation**

Very little information is available about what kinds of plans, required by law, were in place for addressing the kind of disturbance that erupted in Prison No. 5 and how those plans were executed. It is also unclear whether such plans addressed the requirements for the use of force set out by the European Prison Rules [...].

According to the Ministry of Justice, the special operation 'was carried out fully in accordance with the Georgian legislation and prison rules,' but does not elaborate on the operation's compatibility with international obligations or provide any evidence of the planning that went into the operation. Information collected by Human Rights Watch raises questions as to the actual plan in place for the operation. Prison Director [G.][P.] told Human Rights Watch: 'Of course there is a rule, and we know how to deal with different situations. Plus, you just decide how to act as the events unfold.' Deputy Director S[.]O[.] immediately added: 'It's like when you have to go to the toilet-you just figure out how to do it and act.' Although it is clear that special forces of the Ministry of Justice as well as special forces from the Ministry of Internal Affairs conducted the operation, most people interviewed by Human Rights Watch could not state who was in charge of the operation. Even Prison Director [G.][P.], who himself participated in the operation, stated: 'I don't know who was in charge of the operation; I don't know who controlled the special forces. The special forces all have the same uniforms and masks. I can't say from where they come.'

With respect to planning, E[.] T[.] told Human Rights Watch: 'The minister of the interior promised me they'd use only rubber bullets. They showed me the special weapon that fires these bullets. They said they would do everything to ensure there were no casualties. But the special forces started [the operation], and they were already shooting real ammunition [...] It seems to me that it would have been possible to avoid live fire and the loss of life. I think we could have escaped deaths.'

**Investigation into the March 27 incident in Tbilisi Prison No. 5**

According to information provided to Human Rights Watch by the General Prosecutor's Office, on March 25, 2006, the Investigative Department of the Ministry of Justice opened an investigation into the alleged plotting of a riot in the penitentiary system and pursued this investigation following the disturbance on March 27. After March 27 the scope of the investigation expanded to include charges of membership in a criminal society, but did not include any articles of the Criminal Code related to

the death of seven inmates or the conduct of law enforcement agents during the operation. The authorities claimed that in evaluating the March 27 events, the investigation would nevertheless examine the actions of law enforcement agents. [...]

Four days after the March 27 incident, OSCE Chairman-in-Office Karel de Gucht called upon the Georgian authorities to open an independent investigation, noting that 'a lack of clarity exists' following the March 27 incident and that 'it would be appropriate to set up an independent and public enquiry to investigate the events, including allegations of a disproportionate use of force by government troops which resulted in a large number of victims.' The government refused to do so, saying that the investigation into the causes of the riot that was already underway made an independent investigation unnecessary. Yet, at that time, even members of the ruling National Movement Party were unclear as to the exact nature of the investigation, claiming that the General Prosecutor's Office had opened the investigation into the possibility that excessive force had been used, when in fact the investigation had been opened by the Ministry of Justice and only into the facts regarding the organization of the alleged riot, as described above by the General Prosecutor's Office itself.

Publicly, the government has stated unequivocally that law enforcement agents acted lawfully. Saakashvili hailed the Justice Ministry staff and the Georgian police whom he claimed 'acted extremely professionally.' N[.]B[.], the speaker of parliament, was quoted as having praised the police saying they used 'adequate force' to prevent a jailbreak.

The deputy prosecutor general, when asked why an investigation into the death of seven detainees and whether the force used was absolutely necessary was not opened immediately, told Human Rights Watch that these facts would be examined under the investigation into the planning of the riot opened on March 25. The deputy prosecutor general further stated that evidence suggesting that detainees had damaged the prison was sufficient to explain the need for the use of firearms. She stated: 'The assumption from the beginning is that the use of force was justified because all evidence showed there was clear resistance. The whole prison was destroyed. It was more than clear because everything was destroyed, everything was burned. No single door was left.' [...]"

111. In its World Report, published in 2010, Human Rights Watch made the following conclusion regarding the anti-riot operation of 27 March 2006:

"The government has failed to conduct a thorough investigation into the March 2006 operation to quell a riot in Tbilisi Prison No. 5, which left seven prisoners dead and dozens injured."

## B. Amnesty International

112. In September 2007 Amnesty International published its Briefing to the Human Rights Committee on Georgia. The relevant excerpts from that document (on pages 7-9 and 11-13) read as follows:

"**Lethal use of firearms by police and prison officials**

"[...] Lethal force was also used when the authorities quelled a prison disturbance in March 2006. There were allegations that special forces troops involved in this operation may have used excessive force.

*Prison disturbance in March 2006: at least seven inmates killed by special forces*

According to the authorities, special forces entered investigation-isolation prison no. 5 in Tbilisi early on 27 March 2006 to suppress an armed riot and attempted break-out that ringleaders had allegedly organized in advance. The same day the Justice Minister of Georgia stated at a press briefing that the special forces had urged the inmates to stop the riot several times in vain, before launching the special operation. At a session of the National Security Council later that day President Saakashvili was reported as thanking officials of the Ministry of Justice and the police 'who acted highly professionally in order to save the citizens of the country from the misfortune that could have happened [...] Last night in Tbilisi more than 4000 dangerous criminals could have escaped [...] This would have meant hundreds of stolen cars, hundreds of raped people, hundreds of robbed houses, hundreds of murder cases and many other disasters and disorders.'

The Human Rights Protection Unit of the Prosecutor General's Office informed Amnesty International on 21 May 2007 that special forces officers called on the inmates to 'calm down'. Their request was 'followed by the counter-reaction of the inmates as they began to move towards the officers, throwing stones and pieces of metal and wood at them. In response, the special task force used the guns with rubber bullets. The prisoners responded with firearms. As a result two officers of the Department of Prisons were wounded. The decision to open fire by the Special Force was taken only after the inmates had used firearms.'

According to local human rights activists, the special forces operation was carried out to put down a spontaneous protest by detainees against physical and verbal abuse of inmates in the near-by central prison hospital by a senior official of the Ministry of Justice and special forces earlier that night. Non-governmental sources alleged that the special forces that entered the investigation-isolation prison did not use alternative non-violent means to establish control of the prison, but instead fired automatic weapons and rubber bullets, and beat detainees with truncheons. According to G[.]G[.], the Head of the Department on Investigation and Monitoring at the Office of the Ombudsman of Georgia, who was in the yard of the investigation-isolation prison at the time, the authorities gave no warning before they started shooting at the inmates. The Ombudsman alleged that special forces were likely to have 'continued to fire even when the revolt [had] actually ended and the prisoners did not resist [...] anymore'.

At least seven inmates died and many others were wounded in this special operation.

The Ombudsman of Georgia and local NGOs also raised concern at the lack of adequate medical treatment of those injured as a result of the events both in the central prison hospital as well as in investigation-isolation prison no. 5 on 27 March 2006. For example, according to a statement issued by the Ombudsman's Office on 7 April, six men who allegedly sustained injuries as a result of beatings by officials in the prison hospital were transferred to investigation-isolation prison no. 7 in Tbilisi later that night without an authorization by prison doctors and were only given access to medical personnel after the Ombudsman's intervention. According to information from the NGO Empathy received by Amnesty International on 9 April 2006, many detainees who had sustained bullet wounds on 27 March 2006 and were subsequently transferred to investigation-isolation prison no. 6 in Rustavi, were left without immediate medical treatment and the wounds of some of them started to fester. [...]

*Investigation into allegations of excessive force used by special forces in March 2006 prison disturbance*

On 27 March 2006, the day of the prison disturbance, senior government officials including President M[.]S[.] refuted allegations that excessive force had been used by the authorities and affirmed that security forces had acted appropriately. According to a report by the US-funded Radio Liberty, on 28 March members of the pro-government majority in parliament, accusing opposition politicians of 'patronizing criminals', rejected a proposal to set up a parliamentary inquiry into the 27 March events.

According to Human Rights Watch 'the government waited until three months after the violence to open an investigation into whether special forces troops exceeded their authority.'

The Human Rights Protection Unit of the Prosecutor General's Office informed Amnesty International on 21 May 2007 that in order 'to verify the lawfulness of the measures taken by the law-enforcement officers, in particular the fact of opening fire at the inmates [...] an investigation was initiated' under Article 333, paragraph 3 ('exceeding official authority') and that this investigation, among other issues, looked into the deaths of the seven inmates. In addition to that investigation, according to the Human Rights Protection Unit, on 23 October 2006, separate investigations were initiated under Article 108 of the Criminal Code ('premeditated murder'), to ascertain the cause of death of the inmates. The Unit also stated that 190 inmates had been interviewed as witnesses in the course of the investigations into the March 2006 events. Reportedly, 37 inmates of investigation-isolation prison no. 5 told prosecutors that staff of the penitentiary department had repeatedly called on the inmates to 'stop resistance' and that the officers only started shooting with rubber bullets after one inmate had fired at them with a pistol. Then 'the inmates started to move towards the officers and soon they heard [shouts] that one of the staff members was wounded. After this the officers opened fire. However, they were firing in the air and not in the direction of the inmates.' In its May 2007 letter the Human Rights Protection Unit informed Amnesty International that the investigation was still ongoing.

G[.]G[.], the Head of the Department on Investigation and Monitoring at the Office of the Ombudsman of Georgia, informed Amnesty International on 7 August 2007 that his office had not received replies from the Prosecutor General's Office regarding whether preliminary investigations had been opened against staff of the Ministry of Internal Affairs; whether or not the injured prisoners had been recognized as victims; and whether the family members of the deceased prisoners had been recognized as their legal successors.

Non-governmental sources alleged that the authorities have not granted the relatives' lawyers access to the investigation. One source alleged that 'access was denied by the authorities under the pretext that the force which was used by the authorities was lawful and that any injuries or damages caused to the inmates did not result from any criminal acts'.

Reportedly, appeals against this decision were unsuccessful in the courts. Subsequently, several relatives reportedly applied to the European Court of Human Rights. [...]"

# THE LAW

## I. JOINDER OF THE APPLICATIONS

113. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment, in accordance with Rule 42 of the Rules of Court.

## II. ALLEGED VIOLATIONS OF ARTICLES 2 AND 13 OF THE CONVENTION

114. The applicants complained that the killing of their family members was imputable to the State, in breach of the substantive limb of Article 2 of the Convention, and that the authorities had failed to secure an effective investigation into the relevant incident, in breach of the procedural obligations contained in that provision and in Article 13 of the Convention. The cited provisions read as follows:

**Article 2**

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

**Article 13**

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

### A. Admissibility

115. The Government argued that the applications were inadmissible under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies, because the applicants had not challenged the decisions of the investigators and prosecutors in charge of the investigations into the circumstances leading to their family members' deaths before a higher authority, under Articles 234-235 §§ 1 and 2 of the CCP. In the applicants'

situation, an appeal to a higher authority – as provided for in the domestic provisions – would have been more relevant than the judicial means of appeal that they had resorted to under Article 242 § 1 of the CCP (see paragraph 95 above). Furthermore, the Government submitted that the applications were premature, since the investigations against the prison officers and the criminal proceedings concerning the murder of Z.K. and A.B. were still ongoing (see paragraphs 84 and 85 above).

116. The applicants replied that they had resorted to every type of appeal against the inactivity of the domestic authorities in charge of the investigations into the killing of their family members. As regards the fact that certain sets of criminal proceedings were still ongoing, the applicants stated that they were not obliged to wait endlessly for the termination of those proceedings, and that the significant delay in the investigations already constituted sufficient grounds to warrant the conclusion that the investigations had been ineffective.

117. The Court emphasises that the application of the rule of exhaustion of domestic remedies must make due allowance for the fact that it is applied in the context of machinery for the protection of human rights that the Contracting States have agreed to set up. Accordingly, the Court has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether the rule has been observed, it is essential to have regard to the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned, but also of the general context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see *Akdivar and Others v. Turkey*, 16 September 1996, § 69, *Reports of Judgments and Decisions* 1996-IV, and *Aksoy v. Turkey*, 18 December 1996, § 53-54, *Reports of Judgments and Decisions* 1996-VI).

118. As regards the plea of non-exhaustion, the Court observes that Articles 234-235 §§ 1 and 2 of the CCP, the provisions cited by the Government in that connection, provide for the possibility to lodge appeals against actions by investigators or prosecutors with a higher authority (see paragraph 95 above). However, it should be restated that, in general, an appeal to a higher authority cannot be regarded as effective, because litigants are unable to participate in such proceedings (see *Hartman v. Czech Republic*, no. 53341/99, § 66, ECHR 2003‑VIII; *Horvat v. Croatia*, no. 51585/99, § 47, ECHR 2001‑VIII; and *Giorgi Nikolaishvili v. Georgia*, no. 37048/04, § 112, 13 January 2009). In any event, the Government seem to have overlooked the fact that the applicants actually availed themselves

of the opportunity to lodge repeated appeals against the decisions of D.Z. – the prosecutor in charge of the relevant investigation – with higher prosecutors. It was only after those appeals had been either dismissed or left unexamined that the applicants attempted to use the judicial avenue, but to no avail (see paragraphs 14, 16-17, 25-27 and 29-33 above). In the light of the above-mentioned circumstances, the Court is satisfied that the matters were sufficiently drawn to the attention of the relevant domestic authorities by the applicants (compare with *İlhan v. Turkey* [GC], no. 22277/93, §§ 61-63, ECHR 2000-VII). Since the competent authorities were opposed to the applicants' attempts to get involved in the relevant investigations, the applicants could justifiably have regarded making any further requests to the same authorities as a futile exercise, recourse to which could have posed an obstacle to bringing the matter before the Court (see *Giorgi Nikolaishvili*, cited above, § 114, and compare with *Guzzardi v. Italy*, 6 November 1980, § 80, Series A no. 39).

119. As regards the Government's objection that the applicants should have waited for the termination of the relevant criminal investigations before lodging their applications with the Court, this issue is closely linked with the examination of the question of whether the State can be said to have complied with its procedural obligations under Article 2 of the Convention (see, for instance, *Mojsiejew v. Poland*, no. 11818/02, §§ 37, 42 and 43, 24 March 2009).

120. In the light of the above, the Court joins the Government's plea of inadmissibility based on the premature nature of the applications to the merits of the cases, and dismisses their plea of non-exhaustion. It further notes that the applications are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and are not inadmissible on any other grounds. They must therefore be declared admissible.

## B. Merits

121. The Court considers it appropriate to start its examination of the merits of the application with the complaint concerning the allegedly ineffective domestic investigation into the death of the applicants' family members.

### *1. Alleged violations of Article 2 in its procedural aspect and Article 13 of the Convention*

#### (a) The applicants' arguments

122. The applicants submitted that the investigation conducted by the authorities had been deliberately inadequate and had aimed to conceal the real circumstances surrounding the deaths of their family members. They claimed that investigative measures should have been carried out in order

for the investigation to have been effective within the meaning of Article 2 of the Convention. In particular, the applicants complained that the investigation had failed to establish whether their relatives had individually put up armed resistance to the anti-riot forces, or what the lapse of time had been between the moment when their relatives had been wounded and the moment they had died. Thus, it was still not known whether the two detainees could have been saved if they had been provided with prompt medical assistance. The third applicant further complained that there had been no forensic examination of the piece of metal extracted from her son's skull (see paragraph 51 above). Noting that only one eyewitness, Z.D., had stated that her son had called out for the inmates to resist (see paragraph 59 above), the third applicant pointed out that neither that particular witness nor any other person had indicated that her son had been armed or that he had physically resisted the State agents.

123. The applicants further complained that they had not been given any opportunity to either get involved in the investigation or at least obtain information about its progress. The mere fact that they had first learnt about the prosecutorial decision of 23 October 2006 – which had opened a new separate case concerning the purported murders of their family members – from the Government's observations produced before the Court was telling as regards the extent of the information vacuum that they had previously been in, and as regards the fact that the GPPO had been giving them incorrect information about progress in the investigation. The applicants submitted that the Prisons Department could not have conducted the investigation independently and objectively, since the Minister of Justice and his two deputies, together with B.A., had been personally responsible for planning and conducting the anti-riot operation of 27 March 2006. That hierarchical and functional incompatibility could be an explanation for the fact that, at the outset, no investigative measures had been taken with the aim of assessing of whether the use of force against the prisoners had been proportionate.

124. As regards the part of the investigation conducted by the GPPO, the applicants complained that it could not have been impartial either, as the authority had been predisposed against the prisoners from the very beginning. In support of those allegations, the applicants referred to the comments made to Human Rights Watch by the Deputy General Public Prosecutor. Those comments, which appear in the relevant report prepared by the above-mentioned international organisation (see paragraph 110 above), read as follows: "The assumption from the beginning is that the use of force was justified because all evidence showed there was clear resistance. ..." The applicants emphasised that as the prosecuting authority had had such a partial view, it was obviously not possible to expect that the inquiry into whether the use of force by the law-enforcement authority had been excessive would be effective. Lastly, the applicants also complained

that there had been prohibitive delays in the investigation. Not only had the investigation into the law-enforcement authorities' possible abuse of power started on 21 June 2006, almost three months after the fatal incident of 27 March 2006, but important eyewitnesses to the incident had been interviewed only in October 2006. Moreover, no investigative act had been undertaken since January 2007.

**(b) The Government's arguments**

125. According to the Government, the criminal investigation into the organisation of the prison riot had also included, as of 27 March 2006, the investigation into the alleged use of excessive force resulting in the deaths and injuries of detainees. It was in the light of that investigation having a dual purpose that the investigating authority had requested, as early as 8 April 2006, that the Prisons Department produce the legal acts that had served as the basis for the armed operation in question. The investigating authority had also attempted to determine the precise moment at which the order to intervene had been given to the anti-riot squad, and the moment when the officers had opened fire on the detainees. The Government further explained that the decision of the Deputy General Public Prosecutor of 19 May 2006 to relieve the Prisons Department of the Ministry of Justice of the investigation (see paragraph 62 above) had been the result of increased public interest in the case. The decision of 21 June 2006 to separate the criminal case concerning the alleged abuse of power by the law-enforcement officers (see paragraph 64 above) from the original investigation had similarly been a result of increased public pressure and the need to elucidate the circumstances surrounding the anti-riot squad's use of force. As to the decision of 23 October 2006 to initiate a separate case concerning the deaths of Z.K. and A.B., this had been the direct result of a recommendation given to the Government by Human Rights Watch.

126. The Government submitted that the investigating authorities had undertaken multiple and comprehensive investigative measures. Thus, the following people had all been questioned during the investigation: all the prison officers who had taken part in the anti-riot operation of 27 March 2006, including the two people who had been injured by the gunfire coming from the detainees' area behind the barricades; the governors of Prison nos. 5 and 7, as well as the chief security officers for all the relevant dormitories of Prison no. 5; the head of the prison hospital; the head of the Prisons Department; and the Minister of Justice. The Government acknowledged, on the one hand, that the officers of the anti-riot squad had not yet been questioned, but stated that the competent authorities were planning to do so within the framework of the separate criminal investigation into the possible abuse of power by the law-enforcement officers. On the other hand, the Government submitted that the relevant investigating authorities "[had known] from the very beginning" that the

anti-riot forces had used only automatic rifles during the anti-riot operation of 27 March 2006. That being so, the only possible inference that could be drawn in relation to the discovery of the pistols during the inspection of Prison no. 5 was that those weapons had belonged to the detainees.

127. The Government submitted that the applicants' inability to have access to the case material and participate in the investigative measures had been due to the fact that they had not been granted victim status. They further explained that the prosecutor's refusal to grant them such status had been conditioned by the fact that, at that early stage of the investigation, there had been no evidence or circumstances capable of creating an assumption that there had been a prima facie wrongdoing, such as an excessive use of lethal force by the law-enforcement officers who had participated in the anti-riot operation of 27 March 2006. As no potential suspects had been identified at that time amongst the implicated State agents, there had been no need to grant victim status to either of the applicants. In that respect, the Government argued that the procedural obligations contained in Article 2 of the Convention could not be construed in such a manner as to require the domestic investigating authorities to grant victim status by default to those who claimed to be directly or indirectly affected by the commission of a purported criminal offence. On the contrary, the investigating authorities should be given discretion in that connection, in order to be able to act in the best interests of the investigation at hand.

128. The Government pointed out that the anti-riot squad (a unit of the Ministry of Justice) was not subordinate to the Prisons Department (another unit of the same Ministry which was responsible for investigating the riot case). In any event, as early as 19 May 2006 the riot case and the two other cases that had emerged during the proceedings had been transmitted to the GPPO, which was an independent and impartial investigating authority. As regards the length of the investigation, the Government justified this by referring to the particular complexity of the case: three custodial institutions (the prison hospital, Prison no. 5 and Prison no. 1) had been implicated in the riot, and several hundred witnesses (prisoners, prison guards and members of the anti-riot squad) had needed to be interviewed. The Government also stated that the investigation into the law-enforcement agents' abuse of force had largely depended on the factual findings established in the course of the criminal case conducted against the six riot organisers.

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

*(i) General principles*

129. The obligation to carry out an effective investigation into unlawful or suspicious deaths is well established in the Court's case-law. When

considering the requirements flowing from the obligation, it must be remembered that the essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. Even where there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities is vital in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Brecknell v. the United Kingdom*, no. 32457/04, § 65, 27 November 2007, with further references). In order to comply with the requirements of Article 2 of the Convention, the investigation must be effective in the sense that it is capable of leading to the establishment of the relevant facts and to the identification and, if appropriate, punishment of those responsible. This is an obligation which concerns the means to be employed and not the results to be achieved. The authorities must take reasonable steps available to them to secure the evidence concerning an incident, including, *inter alia*, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death. The requirements of promptness and reasonable expedition are implicit in this context (see *Šilih v. Slovenia* [GC], no. 71463/01, § 195, 9 April 2009; *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 324, ECHR 2007-II; and *Anguelova v. Bulgaria*, no. 38361/97, § 139, ECHR 2002‑IV).

130. The persons responsible for an investigation should be independent of anyone implicated or likely to be implicated in the events. This means not only a lack of hierarchical or institutional connection, but also a practical independence (see *Aliyev and Gadzhiyeva v. Russia*, no. 11059/12, § 96, 12 July 2016). Moreover, an investigation must be accessible to the victim's family to the extent necessary to safeguard their legitimate interests. There must also be a sufficient element of public scrutiny of the investigation, the degree of which may vary from case to case (see, for example, *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 109, 4 May 2001). Furthermore, the investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and, where appropriate, the identity of those responsible (see *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 175, 14 April 2015). The investigation must also be broad enough to permit the investigating authorities to take into consideration not only the actions of the State agents who directly and unlawfully used lethal force, but also all the surrounding circumstances (see *Mocanu and Others v. Romania* [GC], nos. 10865/09

and 2 others, § 321, ECHR 2014 (extracts)), in particular the legal or statutory framework in force and the preparation and supervision of current operations, should those elements prove necessary in order to determine whether the State has honoured its obligation to protect life under Article 2 (see *Aydan v. Turkey*, no. 16281/10, § 107, 12 March 2013). The authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation (see *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 183, ECHR 2012).

131. Where an investigation has led to the institution of proceedings in the national courts, the proceedings as a whole, including the trial stage, must satisfy the requirements of the positive obligation to protect lives through the law. While there is no absolute obligation for all prosecutions to result in conviction or in a particular sentence, the domestic courts should not under any circumstances be prepared to allow life-threatening offences to go unpunished. The Court's task therefore consists in reviewing whether and to what extent the courts, in reaching their conclusion, may be deemed to have submitted the case to the careful scrutiny required by Article 2 of the Convention, so that the deterrent effect of the judicial system in place and the significance of the role it is required to play in preventing violations of the right to life are not undermined (see, for instance, *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 239, 30 March 2016; *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 306, ECHR 2011 (extracts); and *Enukidze and Girgvliani v. Georgia*, no. 25091/07, § 242, 26 April 2011). Furthermore, while identification and punishment of those responsible for the death in question and the availability of compensatory remedies to the applicant are important criteria in the assessment of whether or not the State has discharged its Article 2 obligation (see, among other authorities, *Fedina v. Ukraine*, no. 17185/02, §§ 66-67, 2 September 2010), in a significant number of cases already brought before the Court, the finding of a violation was largely based on the existence of unreasonable delays and a lack of diligence on the authorities' part as regards conducting the proceedings, regardless of the final outcome of those proceedings (see, for example, *Merkulova v. Ukraine*, no. 21454/04, § 51, 3 March 2011, with further references). Whilst compliance with the procedural requirement of Article 2 is assessed on the basis of several essential parameters, including those mentioned above, these elements are inter-related and each of them, taken separately, does not amount to an end in itself. They are criteria which, when 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, including those of promptness and reasonable expediency, must be assessed (see *Mustafa Tunç and Fecire Tunç*, cited above, § 225).

*(ii) Application of the above principles to the present case*

132. As regards the promptness and efficiency of the investigation into the law-enforcement agents' use of force, the Court notes, at the outset, that it was launched belatedly. According to the information submitted by the Government, the investigation was launched as late as 21 June 2006, that is to say almost three months after the anti-riot operation had taken place. This was far too long a delay, given the nature and the scale of the incident, and created a substantial risk that important information could never be recovered. According to the Government's explanations, and as reflected in the report prepared by Human Rights Watch (see paragraph 110 above), the competent authorities initially refused to open a separate investigation into the allegations that disproportionate force had been used against the population of Prison no. 5, on the grounds that relevant investigative measures had already been implemented within the framework of the criminal case opened against the six riot organisers. However, the Court observes that all the initial investigative actions in the immediate aftermath of the anti-riot operation of 27 March 2006 were undertaken by the same unit of the Ministry of Justice – the Prisons Department, which had given the order to storm the prison and had been the authority in direct command of the anti-riot squad. In such circumstances, the investigative steps taken by the Ministry of Justice had to be assessed with reference to the requirements of independence and impartiality, and procedural deficiencies in that regard risked tainting all of the subsequent developments in the investigation (see, for instance, *Enukidze and Girgvliani*, cited above, §§ 245-249, and *Kolevi v. Bulgaria*, no. 1108/02, §§ 208 and 212, 5 November 2009).

133. Apart from the above-mentioned risk of a lack of the requisite independence and impartiality, it is a fact that the investigation did not examine the planning of the anti-riot operation or the use of lethal or physical force resulting in deaths and injuries amongst the detainees of Prison no. 5 (compare, *mutatis mutandis*, *Kılıç v. Turkey*, no. 22492/93, §§ 80-82, ECHR 2000-III). Furthermore, the Court notes that there were clear signs that the State authorities were predisposed to discount any wrongdoing on the part of the law-enforcement agents. Thus, leaving aside the statements made by the President of Georgia in the immediate aftermath of the incident (see paragraph 110 above), the Court notes that a senior official from the GPPO, the authority that subsequently (on 21 June 2006) took charge of the investigation into the proportionality of the anti-riot forces' use of force, expressed as early as 23 May 2006 that "the assumption from the beginning" had been that the use of force against the prisoners behind the barricades "was justified (see paragraphs 110 and 124 above). It was on the basis of that assumption that D.Z., the prosecutor from GPPO who was supposed to supervise the investigation carried out by the Ministry of Justice into the events surrounding the anti-riot operation of 27 March

2006, was, in actual, clearly predisposed, as confirmed by his letters of 29 July and 17 August 2006 and 15 May 2007, to find a justification for the use of lethal force against the inmates of Prison no. 5 from very first stages of the investigative process (see paragraphs 15-17 and 30 above). In the circumstances and, based on the available evidence, the Court does not consider that the investigation would have been independent, impartial and effective (see *Tanış and Others v. Turkey*, no. 65899/01, §§ 209-10 and 215, ECHR 2005–VIII for the impact of preconceived ideas on the part of the investigating authorities in the context of a criminal investigation launched into a disappearance case, and also, *mutatis mutandis*, *Giuliani and Gaggio*, cited above, § 323).

134. The Court further notes that even after the separate criminal inquiry into the disproportionate use of force by the law-enforcement agents had been opened on 21 June 2006, the applicants were not involved in the proceedings as victims, and thus could not have the benefit of a number of major procedural rights pertaining to that status (compare, for instance, *Mindadze and Nemsitsveridze v. Georgia*, no. 21571/05, § 108, 1 June 2017, and *Trufin v. Romania*, no. 3990/04, § 52, 20 October 2009; and contrast with *Mustafa Tunç and Fecire Tunç*, cited above, §§ 213-215). Thus, it can be concluded that the involvement of the deceased's next of kin – the family members of Z.K. and A.B. – and public scrutiny into the relevant investigation has been virtually non-existent (compare also *Hugh Jordan*, cited above, §§ 106-109). Lastly, according to the case file, to date, the investigation into the disproportionate use of force by the law-enforcement agents – opened on 21 June 2006 – has not produced any conclusive findings. Such a prohibitive delay is in itself incompatible with the State's obligation under Article 2 of the Convention to carry out an effective investigation into suspicious deaths (see, amongst many others, *Merkulova*, cited above, § 51; *Şandru and Others v. Romania*, no. 22465/03, §§ 73 and 77-80, 8 December 2009; and *Mojsiejew*, cited above, §§ 57-58).

135. Thus, having regard to the belated launch of the investigation, its lack of independence and impartiality, the insufficient involvement of the deceased's next of kin as well as the prohibitive delays in the proceedings, the Court considers that the criminal investigation into the use of force by the law-enforcement officers, when assessed against the above-mentioned elements taken jointly (for the relevant methodology, see paragraph 131 *in fine* above), appears to have been ineffective. The Government's objection regarding the premature nature of the applications (see paragraph 120 above) should therefore be dismissed, and the Court concludes that there has been a violation of the procedural limb of Article 2 of the Convention.

136. Regard being had to this finding, the Court considers that no separate issue arises under Article 13 of the Convention (see, for instance, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 123,

ECHR 2005-VII; *Trapeznikova and Others v. Russia*, no. 45115/09, § 43, 1 December 2016; and *Jelić v. Croatia*, no. 57856/11, § 109, 12 June 2014).

*2. Alleged violation of Article 2 of the Convention in its substantive aspect*

**(a) The applicants' arguments**

137. The applicants claimed that they had done everything in their power to obtain evidence of the disproportionate use of lethal power by State agents during the anti-riot operation of 27 March 2006 (they made reference to *Akkum and Others v. Turkey*, no. 21894/93, § 208, ECHR 2005-II (extracts)). At the same time, they submitted that it was not possible to rely on the factual findings made during the criminal proceedings against the six riot organisers, since the underlying criminal investigation had been, in their view, manifestly deficient (for more arguments in the regard, see paragraphs 122-124 above). Contrary to what was claimed by the Government (see paragraph 142 below), the applicants argued, on the basis of the findings of the Georgian Public Defender and Human Rights Watch, that the anti-riot squad had fired shots not only in dormitory no. 4 of Prison no. 5. The record of the crime scene inspection confirmed this fact (see paragraphs 40-42 and 47-49 above).

138. The applicants claimed that, according to the information available, their family members had become victims of the "shoot-to-kill" policy declared by President Saakashvili elected in January 2004 following the Rose Revolution. Notably, in his public address of 12 January 2006, the President had declared that a "riot was being prepared in a prison to support the criminal authorities", but the Government were going to "shoot down the rioters ... without sparing bullets". Subsequently, on 11 March 2006, when the President had attended the funeral of three policemen killed during an unrelated police operation, he had said that he was publicly "ordering policemen to shoot down criminals" (a copy of the President's public statements was submitted to the Court).

139. The applicants furthermore submitted that the manner of transferring the criminal bosses from the prison hospital to Prison no. 7 had been intentionally provocative and degrading, that orally issuing the order to take Prison no. 5 by force had not been in conformity with Article 2 of the Convention, and that the armed intervention had not been properly prepared and managed. They also pointed out that the Government themselves did not know the exact number of anti-riot squad officers who had participated in the assault, and that the content and degree of clarity of the instructions given to those officers, assuming that such instructions had ever existed, remained unknown. As regards the legal framework governing the use of lethal force by the anti-riot squad, the applicants stated that it was

insufficient and imprecise, which would have allowed firearms to be used in a chaotic manner.

**(b) The Government's arguments**

140. The Government invited the Court to take note of the social phenomenon of the "thieves' underworld" run by titular mafia bosses, also known as "thieves in law", in Georgia. They emphasised that the informal authority of such criminal bosses extended well beyond the criminal underworld, and also contaminated numerous facets of ordinary public life. This undue influence resulted in, among other things, the total control of prisons by "thieves in law". Through threats, coercion, and co-opting, criminal bosses exerted tremendous influence over other prisoners and the prison authorities. The Government submitted that for many years there had been no real fight against the rule of "thieves in law" and their criminal syndicates, due to the absence of genuine political will. Only from November 2003 onwards had the State started to take legislative and other measures aimed at challenging the power of the criminal bosses (for more details about the phenomenon of the "thieves' underworld" and the specific measures that the respondent State has introduced since 2003, see *Ashlarba v. Georgia*, §§ 21-24 and 28-31). The riot that had started on 27 March 2006 in the prison hospital and extended to Prison no. 5 and other prisons in the country was a perfect example of how mob bosses attempted to challenge State power in the prison sector. That being so, the relevant State authorities had had no other option but to retaliate in a decisive manner.

141. As regards the issues raised by the two applications at hand, the Government submitted that although the investigations into the possible abuse of power by the prison officers were ongoing, all the relevant facts surrounding the anti-riot operation of 27 March 2006 had been established within the framework of the already terminated criminal case against the six organisers of the riot. Thus, they invited the Court to take into consideration the facts mentioned in paragraphs 60-75 above, and additionally provided the following clarifications. Specifically, the Government submitted that at 2.30 a.m. on the above-mentioned day the whole of Prison no. 5 had been surrounded by the anti-riot squad to prevent a possible prison escape. An order to bring the situation under control had been given to the anti-riot forces, as the initial calls for calm had not produced any results, and the prisoners had started removing cell doors and setting fire to the premises, whilst in the neighbouring prison – Prison no. 1 – a number of prisoners had even reached the roof of the building.

142. The Government explained that as the relevant order had been given verbally, they were not in a position to produce a copy of it before the Court. It was on the basis of that order that approximately fifty officers from the anti-riot squad, accompanied by prison officers and the governor of Prison no. 5, had entered dormitory no. 4 of the building between 2.40 a.m.

and 2.45 a.m. The order to open fire had been given to the officers of the anti-riot squad in the light of the real and imminent danger posed to the prison officers by the gunshots coming from the prisoners behind the barricades. The officers had started firing automatic rifles, and the detainees had dispersed quickly to return to their cells. The anti-riot forces had moved from dormitory no. 4 (which had thus been cleared) to dormitory no. 5, where there had been no further need to open fire, as the inmates of the latter dormitory had not put up any armed resistance.

143. With regard to the available legal framework on the use of lethal force, the Government referred the Court to the relevant provisions of the Criminal Code, the Weapons Act and ministerial orders nos. 60 and 212 (see paragraphs 93 and 96-101 above). They argued that it was on the basis of those particular legal texts that the anti-riot squad was entitled to deal with critical situations such as the prison riot of 27 March 2006. The Government further claimed that members of the anti-riot squad were trained to use firearms only in self-defence and in situations of absolute necessity, within the meaning of Article 28 § 2 of the Criminal Code. The Government pointed out that there had been no preconceived plan to execute detainees, and that the anti-riot squad had received no order or encouragement from superiors to shoot prisoners without justification. On the contrary, there had been a clear and pre-approved plan of action, whose implementation by the anti-riot officers had been managed by a chain of command, so that the scope for arbitrary action would be minimal and the officers' conduct could be adapted to the evolution of the situation on the ground. The Government concluded by stating that the lethal force used had not been disproportionate to what was honestly considered to have been absolutely necessary to quell the detainees' riot, prevent the mass escape of some 4,000 prisoners, and protect the lives and health of prison officers and members of the anti-riot forces (in this connection, they made reference to *Huohvanainen v. Finland*, no. 57389/00, §§ 97 and 98, 13 March 2007).

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

*(i) General principles*

144. As indicated by the wording of Article 2, the use of lethal force by security forces may be justified under certain circumstances. However, Article 2 does not grant them carte blanche. The use of the words "absolutely necessary" indicates that the force used must, in particular, be strictly proportionate to the aims mentioned in Article 2 § 2 (a), (b) and (c) (see, among other authorities, *Finogenov and Others v. Russia*, nos. 18299/03 and 27311/03, § 210, ECHR 2011 (extracts), and *Gül v. Turkey*, no. 22676/93, §§ 77 and 78, 14 December 2000). Unregulated and arbitrary action by State agents is incompatible with effective respect for human rights. This means that, as well as being authorised under

national law, policing operations must be sufficiently regulated by it, within the framework of a system of adequate and effective safeguards against arbitrariness and abuse of force, and even against avoidable accident (see, among other authorities, *Nachova and Others*, cited above, §§ 96 and 97). Members of the security forces should not be left in a vacuum when performing their duties, whether in the context of a prepared operation or a spontaneous chase of a person perceived to be dangerous: a legal and administrative framework should define the limited circumstances in which law-enforcement officials may use force and firearms, in the light of the international standards which have been developed in this respect (see *Makaratzis v. Greece* [GC], no. 50385/99, §§ 58 and 59, ECHR 2004‑XI, and *Anık and Others v. Turkey*, no. 63758/00, § 54 *in fine*, 5 June 2007). In particular, law-enforcement agents must be trained to assess whether or not there is an absolute necessity to use firearms, not only on the basis of the letter of the relevant regulations, but also with due regard to the pre-eminence of respect for human life as a fundamental value (see *Nachova and Others*, cited above, § 97; see also, in *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 211 to 214, Series A no. 324, the Court's criticism of "shoot-to-kill" military training).

145. When lethal force is used by the authorities within such an operation, it is often difficult to separate the State's negative obligations under the Convention from its positive obligations under Article 2 (see *Finogenov and Others*, cited above, § 208). When considering a case of that kind, the Court must, in making its assessment, subject deprivations of life to the most careful scrutiny, particularly where deliberate lethal force is used, and take into consideration not only the actions of the agents of the State who actually administered the force, but also all the surrounding circumstances, including such matters as the relevant legal or regulatory framework in place and the planning and control of the actions under examination (see *Musayev and Others v. Russia*, nos. 57941/00, 58699/00 and 60403/00, § 142, 26 July 2007, and *Avşar v. Turkey*, no. 25657/94, § 391, ECHR 2001-VII (extracts)). That applies even where domestic proceedings and investigations have already taken place (see *Bektaş and Özalp v. Turkey*, no. 10036/03, § 59, 20 April 2010). The Court will examine whether the police operation was planned and controlled by the authorities so as to minimise, to the greatest extent possible, recourse to lethal force and human losses, and whether all feasible precautions in the choice of means and methods of a security operation were taken (see *Finogenov and Others*, cited above, § 208; *Hugh Jordan*, cited above, §§ 102-104; and *Ergi v. Turkey*, 28 July 1998, § 79, *Reports of Judgments and Decisions* 1998-IV).

146. However, in that regard, it should not be forgotten that the positive obligations under Article 2 of the Convention are not unqualified: not every presumed threat to life obliges the authorities to take specific measures to

avoid the risk. A duty to take specific measures arises only if the authorities knew or ought to have known at the time of the existence of a real and immediate risk to life, and if the authorities retained a certain degree of control over the situation. Since a respondent State is only required to take such measures which are "feasible" in the circumstances, the positive obligation in question must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct, and the operational choices which must be made in terms of priorities and resources (see *Finogenov and Others*, cited above, § 209, with the references therein). In that context, it should also be remembered that the use of force by State agents in pursuit of one of the aims set out in Article 2 § 2 may be justified under that provision where it is based on an honest and genuine belief that the use of force was necessary. In addressing this question, the Court will have to consider whether the belief was subjectively reasonable, having full regard to the circumstances that pertained at the relevant time. If the belief was not subjectively reasonable, it is likely that the Court would have difficulty accepting that it was honestly and genuinely held (see *Armani Da Silva*, cited above, § 248; *Chebab v. France*, no. 542/13, §§ 76 and 83, 23 May 2019; and also *McCann and Others*, cited above, § 200).

*(ii) Application of the above principles to the present case*

(α) Methodology of the Court's scrutiny

147. The Court restates that, when called upon to examine whether the use of lethal force was legitimate in a case in which individuals were, as in the instant case, injured or killed in an area exclusively controlled by the State authorities, it has a limited capacity for establishing the facts. As a result, and in line with the principle of subsidiarity, the Court prefers to rely, where possible, on the findings of competent domestic authorities, such as courts or a parliamentary body established for fact-finding purposes (see, for instance, *Perişan and Others v. Turkey*, no. 12336/03, § 75, 20 May 2010, and *Ceyhan Demir and Others v. Turkey*, no. 34491/97, § 95, 13 January 2005), without completely renouncing its supervising power, on the understanding that it may entertain a fresh assessment of the evidence (see *Kavaklıoğlu and Others v. Turkey*, no. 15397/02, § 168, 6 October 2015). The Court's reliance on evidence obtained as a result of the domestic investigation and on the facts established within the domestic proceedings will largely depend on the quality of the domestic investigative process, its thoroughness and consistency (see *Finogenov and Others*, cited above, § 238, with further references).

148. However, in the instant case, the domestic courts have not been given a chance to establish the relevant facts, owing to the fact that the

proceedings regarding the alleged abuse of power by State agents during the anti-riot operation of 27 March 2006 are still ongoing. Nor has there been any parliamentary probe into the matter, and in that regard the Court regrets that the Parliament did not deem it necessary to set up a special body of inquiry, after such a massive incident had shaken the country and attracted significant international attention (see the briefing prepared by Amnesty International, cited in paragraph 112 above). In such circumstances, when the Court is prevented from having knowledge of the exact circumstances surrounding the anti-riot operation of 27 March 2006 for the reasons objectively attributable to the State authorities, it is for the respondent Government to explain, in a satisfactory and convincing manner, the sequence of events and to exhibit solid evidence that can refute the applicants' allegations, and if the Government fail to do so, the Court may then draw strong inferences (see *Mansuroğlu v. Turkey*, no. 43443/98, § 80, 26 February 2008, with further references). Since it is ultimately for the Court to make its own findings and reach its own conclusions on the applicants' allegations (see, for instance, *El-Masri*, cited above, § 167), it will draw on all the material available, including the factual findings of the relevant domestic and international human rights observers and the results of the investigation launched against the six riot organisers. The following principles, developed in relation to its task of establishing the facts of events on which the parties disagree, will further guide the Court: the factual findings reached should be based on the standard of proof "beyond reasonable doubt"; such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact; and the conduct of the parties when evidence is being obtained may be taken into account. In this connection, 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 (see, for instance, *Tagayeva and Others v. Russia*, nos. 26562/07 and 6 others, § 586, 13 April 2017).

149. Having regard to the relevant general principles underpinning the use of lethal force by the State (see paragraphs 144-146 above), the Court will firstly inquire whether the anti-riot operation of 27 March 2006 was compatible with any of the grounds listed in Article 2 § 2 of the Convention. If so, assuming that the use of force was justifiable, the Court will then, as a second step, orient its scrutiny towards the question of whether the force used in the present case was "absolutely necessary" within the meaning of the same provision (as an example of the use of the same methodology, see *Kavaklıoğlu and Others*, cited above, §§ 170-175 and 205-206, and *Finogenov and Others*, cited above, §§ 226, 227 and 237).

(β) Whether the use of lethal force was legitimate

150. The Court reiterates that the use of lethal force may only be justified on one of the grounds listed in Article 2 § 2 of the Convention, namely (a) in defence of any person from unlawful violence; (b) to effect a lawful arrest or prevent escape; or (c) to quell a riot or insurrection. That being so, the first question that needs to be addressed is whether the anti-riot operation of 27 March 2006 pursued any of the three above-mentioned legitimate goals.

151. In this connection, and having regard to the Government's relevant arguments concerning the alleged clash between the criminal underworld and the prison authorities, the Court first notes the Government's own statement that at least one of the underlying aims of the use of force on 27 March 2006 was the relevant authorities' wish "to retaliate in a decisive manner" against the mobsters who had attempted to challenge State authority (see paragraph 140 above). The Court observes that various international and domestic human rights watchdogs also reported that the anti-riot operation of 27 March 2006 had been, amongst other things, an intentional demonstration of force directed against a prison population. Without underestimating the scope of the social blight represented by the criminal institution of the "thieves' underworld" in Georgia and the difficulties encountered by the respondent State in its attempt to fight effectively against that deleterious social phenomenon (see *Tsintsabadze v. Georgia*, no. 35403/06, §§ 61, 66-69 and 87-92 and *Ashlarba*, also cited above, §§ 21-24 and 36), the Court considers that the use of lethal force for purely punitive, retaliatory purposes, even if those purposes target alleged members of the criminal underworld, cannot be justified under any of the grounds contained in Article 2 § 2 of the Convention. To hold otherwise would be tantamount to undermining the spirit of Article 2 of the Convention, which is all about putting stringent constraints on the State's power to resort to lethal force (compare, for instance, with *Finogenov and Others*, cited above, § 207).

152. As regards the Government's second argument justifying the relevant law-enforcement authorities' use of force against the population of Prison no. 5, namely that there existed an imminent and real danger to the lives of prison guards as a result of the gunshots coming from some of the most aggressive prisoners behind the barricades, the Court finds it sufficiently convincing. Having regard to the factual findings, it accepts that the law-enforcement officers, confronted with gunshots fired from the prisoners' side, and with two officers wounded, could indeed have subjective good reasons to believe that the use of force was necessary. In this connection, it should be noted that the Court, detached from the events in issue, cannot substitute its own assessment of the situation for that of a law-enforcement officer who was required to react in the heat of the moment to avert an honestly perceived danger to his life or the lives of

others (compare with *Huohvanainen*, cited above, § 97). Furthermore, the Court is well aware of the potential for violence in prison and the risk of violent acts quickly breaking down into active resistance against law enforcement or even insurrection (see *Leyla Alp and Others v. Turkey*, no. 29675/02, § 84, 10 December 2013, and *İsmail Altun v. Turkey*, no. 22932/02, § 73, 21 September 2010). Based on the evidence available, the conduct of the inmates who barricaded themselves into Prison no. 5 showed certain signs of being an attempted uprising (compare with, *mutatis mutandis*, *Kavaklıoğlu and Others*, cited above, §§ 173-174). In the light of the foregoing, the Court concludes that the respondent State, confronted with the unlawful violence and the risk of an insurrection, could resort to measures involving potentially lethal force, and that this could be reconcilable with the aims set out in Article 2 § 2 (a) and (c) of the Convention. It remains to be seen whether the recourse to lethal force was "absolutely necessary", especially in the light of the number of people left dead or injured.

(γ) Whether the use of lethal force was proportionate

153. The Court has already held that it may occasionally depart from the rigorous standard of "absolute necessity" if the application of that standard is simply impossible, especially where certain aspects of a situation lie far beyond the Court's expertise and the authorities in question had to act under tremendous time pressure and their control of the situation was minimal (see *Finogenov and Others*, cited above, § 211). However, in the instant case, the Court considers that it must stick to the above-mentioned rigorous standard of very strict scrutiny, because, as the Government themselves have acknowledged, the authorities were aware of the criminal bosses' plans to instigate disobedience in prisons well before the incident of 27 March 2006. The Court is concerned that, despite the above-mentioned predictability of the hazard, the officers of the anti-riot squad did not receive specific instructions and orders from their superiors regarding the requisite form and intensity of any use of lethal force in order to keep the likelihood of casualties to a minimum (see *İsmail Altun*, cited above, § 75, and *Ceyhan Demir and Others*, cited above, § 98). Having recourse to automatic weapons within the close confines of the prison walls would necessarily have meant that the risk of causing fatalities was inordinately high, owing to such weapons being used in close proximity to the prison population. The Government have failed to produce any evidence to show that the anti-riot squad acted in a controlled and systematic manner, under a clear chain of command. According to the evidence collected on the ground by Human Rights Watch (see paragraph 110 above), which findings were never disputed by the Government, the competent authorities did not even know exactly who was in charge of the anti-riot operation:

> "Information collected by Human Rights Watch raises questions as to the actual plan in place for the operation. Prison Director [G.]P[.] told Human Rights Watch, 'Of course there is a rule, and we know how to deal with different situations. Plus, you just decide how to act as the events unfold.' Deputy Director S[.]O[.] immediately added, 'It's like when you have to go to the toilet – you just figure out how to do it and act.' Although it is clear that special forces of the Ministry of Justice as well as special forces from the Ministry of Internal Affairs conducted the operation, most people interviewed by Human Rights Watch could not state who was in charge of the operation. Even Prison Director [G.]P[.]who himself participated in the operation, stated, 'I don't know who was in charge of the operation; I don't know who controlled the special forces. The special forces all have the same uniforms and masks. I can't say from where they come.'"

154. The Court considers that the competent authorities not even giving a thought to using alternative, less violent means of suppressing the incident in Prison no. 5, such as teargas or water cannons, was apparently a consequence of the above-mentioned lack of any strategic planning as to how the anti-riot operation on 27 March 2006 would be carried out. Moreover, as reported by Amnesty International (see paragraph 112 above) and Human Rights Watch (see paragraph 110 above), which findings were then left undisputed by the respondent Government, the gunshots in the inmates' direction came not just from the anti-riot squad inside the building, but also from shooters situated outside on the roofs of neighbouring buildings, with stray bullets entering prison cells through the windows. These facts show that the use of lethal force by the anti-riot squad was indiscriminate and excessive. Furthermore, although the Court is obviously not in a position to indicate to member States the best policy in relation to dealing with a crisis of this kind, or to lay down rigid rules in this sphere, the Court attaches significance to the fact that, as reported by Human Rights Watch, no serious attempts were made to conduct negotiations with the prisoners behind the barricades. Whilst the prisoners clearly showed that they were ready to enter into such negotiations (see the statements of the Chairperson of the Parliamentary Committee on Human Rights and Civil Integration, E.T., and of the ombudsman, S.S., as reported by Human Rights Watch, cited in paragraph 110 above), the law-enforcement authorities did not consider the possibility of solving the crisis by negotiations and resorted to lethal force (compare with *Kavaklıoğlu and Others*, cited above, §§ 202-204; *İsmail Altun*, cited above, § 73 *in fine*; and also *Andronicou and Constantinou v. Cyprus*, 9 October 1997, § 184, Reports of Judgments and Decisions 1997-VI). In this respect, the Court, whilst confirming that it is far beyond its competence to speculate on the issue of whether, as a matter of principle, it is always necessary to negotiate with extremists (see *Finogenov and Others*, cited above, §§ 223), considers it appropriate to restate that a prison population is by its nature a vulnerable group, in need of the protection by the State (see, for instance, *Avşar*, cited above, § 391).

155. The Court further observes that the Government did not provide any explanation as to what happened when the anti-riot forces succeeded in

dismantling the barricades and suppressing the prisoners' resistance. According to the information available in the case file, including the reports of various international organisations, the authorities failed to provide adequate medical assistance to the population of Prison no. 5 after the termination of the anti-riot operation (compare with *Finogenov and Others*, cited above, §§ 237). Human Rights Watch documented in detail the manifestly insufficient nature of the medical assistance provided to the wounded (see paragraph 110 above). The Court reiterates in this connection that since the anti-riot operation was not launched in a spontaneous manner, the authorities should have made the relevant arrangements for the provision of medical assistance to the wounded well in advance of the storming of the prison. Since the hazard was predictable, the relevant authorities' obligation to come up with a proper medical evacuation plan was even greater (see *Finogenov and Others*, cited above, § 243). The Court further notes with concern that not only did the relevant authorities fail to provide requisite medical assistance after the anti-riot operation had ended, but there were credible reports, documented both by the domestic and international observers, that numerous detainees were ill-treated by special forces agents and even shot in their cells, despite the fact that they were no longer putting up resistance (see paragraphs 108, 110 and 112 above). The respondent Government left those credible reports undisputed, and the Court finds it appropriate to draw inferences by accepting that the ill-treatment and disproportionate use of force against the detainees persisted even after the termination of the anti-riot operation.

156. Lastly, neither the competent domestic authorities nor the respondent Government provided information regarding the individual fates of the applicants' family members, Z.K. and A.B., who had been killed during that operation. Having regard to the treatment to which the State agents subjected the detainees after the termination of the anti-riot operation, which includes the absence of medical assistance for those affected, the Court considers that the Government's failure to account for each of the relevant deaths appears to be a particularly grave shortcoming and was further proof of the seriously defective domestic investigation (compare, for instance, *İsmail Altun*, cited above, §§ 77 and 78).

(δ) Conclusion

157. The Court acknowledges that in a situation of the kind addressed in the present case, some counter-measures may be unavoidable. It also recognises the need to keep certain aspects of security operations secret (see *Finogenov and Others*, cited above, § 266). However, in the particular circumstances of the present case, the Court cannot but conclude that the applicants' family members, Z.K. and A.B., died as a result of lethal force which, although pursuing legitimate aims under Article 2 § 2 (a) and (c) of the Convention, could not be said to have been "absolutely necessary"

within the meaning of that provision. That conclusion is based on the fact that the anti-riot operation of 27 March 2006 was not conducted in a controlled and systematic manner, without law-enforcement agents receiving clear orders and instructions aimed at minimising the risk of casualties. The authorities did not consider less violent means of dealing with the security incident, including the possibility of solving the crisis by negotiations. The use of lethal force during the anti-riot operation was indiscriminate and excessive and the relevant authorities failed to provide adequate medical assistance to those affected. They also failed to account for the individual circumstances of the deaths of Z.K. and A.B. Having regard to all those factors, the Court concludes that the anti-riot operation of 27 March 2006 resulted in a violation of Article 2 of the Convention in its substantive aspect.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

158. 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

159. In respect of pecuniary damage, the first and second applicants jointly claimed 102,000 Georgian laris (GEL – approximately 42,500 euros (EUR)), whilst the third applicant claimed GEL 13,000 (approximately EUR 5,416). The claims were based on the contention that their deceased family members, Z.K. and A.B., had been the sole breadwinners in their families, and that the amounts claimed reflected what they could have earned in the event that they had lived beyond 27 March 2006. As neither of their deceased family members had been gainfully employed prior to the institution of the criminal proceedings and their imprisonment, apart from having odd jobs, the applicants based their claims on the official minimum subsistence income (GEL 1038 – approximately EUR 432) for 2008, multiplied by the number of years that each of the applicants would live before reaching the average life expectancy for women in Georgia (seventy-eight and a half years).

160. Each of the three applicants also claimed GEL 75,000 (approximately EUR 32,000) in respect of non-pecuniary damage.

161. The Government submitted that the claims were either unsubstantiated or excessive.

162. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the

Convention, and that this may, in the appropriate case, include compensation in respect of loss of earnings (see, among other authorities, *Imakayeva v. Russia*, no. 7615/02, § 213, ECHR 2006‑XIII (extracts), and *Çakıcı v. Turkey* [GC], no. 23657/94, § 127, ECHR 1999-IV). However, having regard to the information submitted in the present case, the Court is unable to establish a clear causal link between the applicants' alleged pecuniary loss and the death of their family members. Thus, first of all, it should be noted that neither Z.K. nor A.B. was employed prior to being imprisoned (contrast with *Çakıcı*, cited above, § 127). Secondly, from the few documents submitted by the applicants, it cannot be established with certainty that they were exclusively financially dependent upon their deceased family members (compare, for instance, *Gakiyev and Gakiyeva v. Russia*, no. 3179/05, §§ 171-73, 23 April 2009; *Albekov and Others v. Russia*, no. 68216/01, §§ 125-127, 9 October 2008; and *İkincisoy v. Turkey*, no. 26144/95, § 137, 27 July 2004).

163. On the other hand, the Court accepts that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. It finds it appropriate to award the first and second applicants EUR 40,000 jointly, and the third applicant EUR 32,000.

### B. Costs and expenses

164. The first and second applicants claimed GEL 18,960 (approximately EUR 7,900) and the third applicant claimed GEL 13,329 (approximately EUR 5,553) for the costs and expenses incurred before the Court. In support of those claims, they produced copies of legal services agreements (dated 12 April and 20 November 2007, and 1 May and 9 August 2007), in accordance with which, upon the proceedings before the Court being completed, the first and second applicants were bound to pay to their representative GEL 12,940 (approximately EUR 5,400) jointly, and the third applicant was bound to pay him GEL 8,300 (approximately EUR 3,400). The agreements were further accompanied by invoices breaking down the two amounts claimed into the number of hours spent on the case, the lawyer's hourly rate, the exact types of legal services rendered, and the dates on which those services had been rendered.

165. Referring to the amounts claimed not being consistent with those stipulated in the legal services agreements, the Government stated that the claims were unsubstantiated and should be rejected.

166. The Court notes that a representative's fees are actually incurred if an applicant has paid them or is liable to pay them. Accordingly, the fees of a representative who has acted free of charge are not actually incurred. The opposite is the case with respect to the fees of a representative who, without waiving them, has simply taken no steps to pursue their payment or has deferred it. The fees payable to a representative under a conditional-fee

agreement are actually incurred only if that agreement is enforceable in the respective jurisdiction (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 371, 28 November 2017). Furthermore, the Court is not bound by domestic scales and practices for legal fees, and is therefore free to not endorse domestic lawyers' hourly rates which appear to be excessive (see *Assanidze v. Georgia* [GC], no. 71503/01, § 206, ECHR 2004-II).

167. In the present case, regard being had to the above criteria and the financial documents in its possession, specifically the relevant legal services agreements (see paragraph 165 above), the Court finds it reasonable to award the applicants the sums stipulated in these agreements. Thus, the first and second applicants should be awarded EUR 5,400 jointly, and the third applicant should be awarded EUR 3,400 in respect of their legal representation before the Court.

### C. Default interest

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

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Joins* to the merits the Government's objection regarding the premature nature of the applications and *declares* the applications admissible;

3. *Holds* that the Government's above-mentioned objection should be dismissed and that there has been a violation of Article 2 of the Convention in both procedural and substantive aspects;

4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

5. *Holds*

   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

      (i) EUR 40,000 (forty thousand euros) to the first and second applicants jointly, and EUR 32,000 (thirty-two thousand euros) to

the third applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 5,400 (five thousand four hundred euros) to the first and second applicants jointly, and EUR 3,400 (three thousand four hundred euros) to the third applicant, plus any tax that may be chargeable to them, 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;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 2 April 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Síofra O'Leary
President