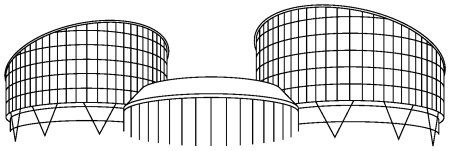

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF SHIOSHVILI AND OTHERS v. RUSSIA

(Application no. 19356/07)

JUDGMENT

STRASBOURG

20 December 2016

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

In the case of Shioshvili and Others v. Russia,

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

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

Having deliberated in private on 29 November 2016,

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

PROCEDURE

1. The case originated in an application (no. 19356/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by five Georgian nationals on 4 May 2007.

2. The applicants were represented by Mr N. Legashvili, a lawyer practising in Tbilisi. The Russian Government ("the Government") were represented by their Agent, Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights

3. The applicants alleged that the Russian authorities subjected them to inhuman and degrading treatment, in violation of Article 3 of the Convention, by unlawfully forcing them to terminate their travel to Georgia and to spend roughly two weeks in the city of Derbent, without any health care arrangements, accommodation, food, transport and logistical support. They also considered that the lack of an effective remedy against this treatment amounted to a violation of Article 13 of the Convention taken in conjunction with Article 3.

4. They furthermore alleged that on the one side they were victims of a collective expulsion, like thousands of other Georgians in the autumn of 2006, which amounted to a violation of Article 4 of Protocol No. 4 to the Convention, and on the other side their freedom to leave the Russian Federation was restricted in violation of Article 2 of Protocol No. 4 to the Convention by the Russian authorities in Derbent.

5. Lastly the applicants alleged that their expulsion and ill-treatment were discriminatory on the ground of their ethnic origin as Georgians and amounted to a violation of Article 14 of the Convention taken in

conjunction with Articles 3 and 13 of the Convention and with Articles 2 and 4 of Protocol No. 4 to the Convention.

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

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

8. The Government and the applicants each submitted observations on the admissibility and merits of the case. In addition, third-party comments were received from the Government of the Republic of Georgia (Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of Court) and from the organisation Alliance Defending Freedom (ADF) International, which had been granted leave by the President of the Court to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The first applicant, Ms Lia Shioshvili, was born in 1977 and lives in Gurjaani (Georgia). She is the mother of the second, third, fourth and fifth applicant, all Georgian nationals and born respectively in 1995, 1997, 2000 and 2004.

A. The background to the case

10. During the period from the end of September 2006 to the end of January 2007 identity checks of Georgian nationals residing in Russia were carried out in the streets, markets and other workplaces as well as at their homes. Many were subsequently arrested and taken to police stations. After a period of custody in police stations, they were grouped together and taken by bus to a court, which summarily imposed administrative penalties on them and gave decisions ordering their administrative expulsion from Russian territory. Subsequently, some were taken to detention centres for foreigners where they were detained for varying periods of time, and then taken by bus to various airports in Moscow, and expelled to Georgia by

aeroplane. Some of the Georgian nationals against whom expulsion orders were issued left the territory of the Russian Federation by their own means (for further details as to the background of the case see *Georgia v. Russia (I)*, cited above, § 45).

B. The circumstances of the present case

1. The applicants' arrival in Russia and their expulsion

11. On 29 May 1998 the first applicant, her husband and her two children arrived in the Russian Federation for the first time. At that time there was no visa requirement for Georgian citizens in place. In the subsequent years the first applicant, her husband and the children had been back and forth several times between the Russian Federation and Georgia.

12. In 2003 the first applicant and her children again entered the territory of the Russian Federation with a visa valid for one month. They settled together with their husband/father in the village of Karinskoye, in the Odintsovski district of Moscow city.

13. In September 2004 the first applicant gave birth to her fourth child, the fifth applicant. The first applicant did not apply for a birth certificate for the fifth applicant at that time, since she was unlawfully residing in Russia.

14. At the beginning of October 2006, the applicants moved to the city of Ruza in order to avoid expulsion.

15. On 18 October 2006 a police officer visited the applicants' family home in Ruza and requested the first applicant to produce her identity papers. Owing to the absence of visa documents the officer asked all applicants to follow him to the local police station, where an administrative offence report was drawn up. The applicants left the police station after approximately 30 minutes. The police officer informed the first applicant that a court hearing concerning her case would take place soon. He further advised her to apply for a birth certificate for the fifth applicant.

16. On 25 October 2006 the Georgian Consulate in Moscow issued a temporary birth certificate for the fifth applicant, valid until 14 November 2006.

17. On 7 November 2006 a hearing before the Ruzskiy District Court of the Moscow Region took place, following which an expulsion decision was issued. The court only ordered the expulsion of the first applicant, even though mentioning in its decision that she was mother to four children. The hearing lasted about ten minutes and despite the first applicant's limited knowledge of the Russian language, she was not assisted by an interpreter.

2. The applicants' forced stay in Derbent (Dagestan)

18. On 20 November 2006, after having received the expulsion decision of 7 November 2006 all five applicants left Moscow. Due to suspended air,

rail, road, sea and postal communications between the Russian Federation and Georgia, the applicants took the train from Moscow to Baku (Azerbaijan). The first applicant was eight months pregnant at the material time and her four minor children were eleven, nine, six and two years old.

a) The applicants' version of the subsequent events

19. According to the applicants their train was stopped by Russian migration officers on 22 November 2006 at approximately 10.30 pm near the Russian/Azerbaijani border and all Georgian nationals were asked to get off the train with their belongings. The officers collected the applicants' identity and travel documents and confiscated 400 USD from the first applicant, which allegedly had not been declared. The officers informed all the Georgians including the applicants, that there were various irregularities in their documents and that they could not continue their journey, whereas all non-Georgians could resume their journey on the train.

20. The five applicants were then requested to walk with the other Georgian nationals to a bus, which went to Derbent. Two migration officers escorted the group but would not inform them of the authorities' intention nor where the group was being taken. Due to the cold weather and her advanced pregnancy the walk and the bus ride were particular difficult for the first applicant. In particular, since she had to carry a suitcase and her youngest child. Her oral complaints to the officers about these circumstances were of no avail.

21. Once the group arrived in Derbent, the migration officers asked the group to accompany them to the migration service office. The first applicant was unable to continue walking and waited outside for two hours with her children. She was worried for the health of her minor children and for the unborn child.

22. On 23 November 2006, at about 3 am, the group was taken to Derbent train station for the night. They had to pay 500 rubles to the police officers, who guarded them, to be allowed to go to the toilet. No water or food was provided.

23. At daybreak, the police officers asked the group to go to the migration service office again, where they spent the whole day waiting outside at a temperature of 5° C.

24. In the evening the first applicant's health deteriorated, her children were crying and coughing and no shelter, water or food was offered by the authorities. Finally, the group of Georgians rented an unheated, four-room basement flat in Derbent, for which the first applicant had to pay 200 rubles per day for her and the children. Three women and six children from the group of Georgians, including the applicants, settled in one room, which had four beds. The remaining three rooms were occupied by more than 20 Georgian men.

25. According to the applicants the migration officers regularly visited the flat, but the first applicant's complaints about her worsening health were to no avail.

26. On 29 November 2006 the first applicant tried to cross the Russian/Azerbaijani border with her three eldest children, the second, third and fourth applicant. The fifth applicant stayed with the other Georgians, as her birth certificate had expired on 14 November 2006. However, they were stopped by the customs officers who indicated that the court's expulsion decision only concerned the first applicant and not her children. They were subsequently sent back to Derbent.

27. The first applicant's health worsened, she suffered from a cold and had a fever, became depressed and had repeated asthma attacks.

28. On 3 and 4 December 2006, after having gone back and forth to the migration service office, and with the help of an employee from the consulate service of the Georgian Embassy in Moscow, the first applicant finally obtained transit visa for her children and all other necessary documents, so that all five applicants could leave for Georgia.

29. Several national broadcasting television companies reported on the Georgians' situation in Derbent on a daily basis between 1 and 7 December 2006.

b) The Government's version of the subsequent events

30. According to the Government the border control services, which conducted immigration controls in the trains going to the Republic of Azerbaijan, did not bring any Georgian nationals to the migration services on 22 or 23 November 2006. However, on 23 November 2006 the name of the fifth applicant was registered by the Line Division of the Interior at Derbent station in the register of passengers put off trains. She was, however, registered as a Russian national. The other four applicants were not registered in the aforementioned register.

31. The Government further explained that according to the normal procedure persons, who are put off international trains, are invited to the Police Line Division to include their personal data in the register. These persons, however, are neither coerced to do so, nor accompanied on their route to the station, nor passed over to the migration service department.

32. Further investigations by the Russian authorities revealed, according to the Government, that the first applicant temporarily resided in a house in Derbent with the consent of the house owners. According to the testimony of the house owners the first applicant lived there free of charge, was not accompanied by children and no police officer or other official visited the first applicant in the house.

3. The applicants' return to Georgia

33. On 5 December 2006 a group of 30 Georgians, including the applicants, travelled to the Russian/Azerbaijani border in two buses that they had hired. At the border the customs officers checked the documents for several hours, while the applicants had to wait standing outside.

34. With another bus the group travelled through the city of Baku to the Azerbaijani/Georgian border. The last 5 kilometres to the border the applicants had to walk, as the bus driver had asked them to get off the bus: The first applicant and her youngest child, the fifth applicant, were able to take a taxi to the border, but the three other applicants had to continue walking; the temperature was below 3º C.

35. After having arrived in Georgia, the first applicant's health was particularly bad. She suffered from a severe cough and fever, her right leg had grown numb and her general condition was extremely weak. Owing to her financial situation and the lack of health insurance the applicant did not visit a hospital right away. On 11 December 2006 a pregnancy examination showed that the pregnancy was progressing and that the fetus was well.

36. On 12 December 2006, the first applicant's health worsened, she had an asthma attack and severe abdominal pain.

37. On 14 December 2006, the first applicant was taken to hospital where she gave birth to a stillborn child the next day.

38. According to the death certificate issued by the Ministry of Health and Social Affairs on 15 December 2006, the child died as a result of "intranatal hipoqsy" caused by a viral infection. The birth history nº 364/12, issued on the same date, stated that "the stress experienced by the pregnant mother during the expulsion could be considered a reason for the child's death".

39. During the following months, the first applicant suffered from severe depression and panic attacks. Furthermore, the fourth applicant developed a very bad cough and caught pneumonia. The fifth applicant, the first applicant's youngest child, was deeply affected psychologically by the expulsion: she was constantly crying and afraid of other people and diagnosed with "behavioral disorder".

4. The first applicant's complaint to the Prosecutor

40. On 23 July 2008, the first applicant lodged a complaint with the General Prosecutor's office of the Russian Federation. She directly mentioned violations of Articles 3 and 14 of the Convention and requested a thorough investigation and the punishment of those responsible.

41. On 9 October 2008, the first applicant's representative received an answer, informing him that the complaint had been forwarded to the Prosecutor of Derbent and that he would be notified about further procedural actions taken in this respect.

42. However, he received no further information from the Russian authorities.

II. RELEVANT DOMESTIC LAW

43. The relevant domestic law is set out in the Court's judgment *Georgia v. Russia (I)* (cited above, §§ 75, 77).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

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

45. The applicants did not comment on this issue.

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

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

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

II. ESTABLISHMENT OF FACTS

48. The Court observes that it is confronted with a dispute over the events starting from 22/23 November 2006 and reiterates that the proceedings before the Court are adversarial in nature. It is therefore for the parties to substantiate their factual arguments by providing the Court with the necessary evidence. Whereas the Court is responsible for establishing the facts, it is up to the parties to provide active assistance by supplying it with all the relevant information (see *Lisnyy and others v. Ukraine and Russia* (dec.), nos. 5355/15, 44913/15, 50853/15, § 25, 5 July 2016, with further references).

49. The Court must therefore reach its decision on the basis of the evidence submitted by the parties. In the proceedings before it, there are no procedural barriers to the admissibility of evidence or predetermined formulae for its assessment. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof, are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII).

50. The Court notes that the applicants submitted documents regarding their medical history and confirming the death of the first applicant's unborn child. In relation to the events in question they provided copies of their passports and of the train tickets and records from the before mentioned television reports (see paragraph 29 above). In addition they submitted the complaint to the General Prosecutor's office as well as its reply.

51. The Government provided the Court with the expulsion decision of the Ruzskiy District Court of the Moscow and the correlating administrative offence report.

52. In regards to the parties' submissions and the provided documents the Court notes the following: The Government confirmed that the fifth applicant, a two year old child, was put off the train and registered by the Line Division of the Interior at Derbent station. Having particular regard to the age of the fifth applicant, this fact allows the inference that the other applicants accompanying the fifth applicant were also put off the train but not registered by the Line Division of the Interior. This inference is further corroborated by the television reports, showing the applicants in Derbent,

and the applicants' detailed submission to the Court as well as to the Russian General Prosecutor's office.

53. In sum the Court finds it established that the applicants' train travel from Moscow to Baku was interrupted by Russian authorities, that the applicants were put off the train in the night of 22/23 November 2006 and that they awaited the issuance of transit visa in Derbent until the 4 December 2006.

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

54. The applicants complained that their freedom to leave the Russian Federation was restricted without any justification in violation of Article 2 of Protocol No. 4 to the Convention, which, as far as relevant, reads as follows:

> " ...
>
> 2. Everyone shall be free to leave any country, including his own.
>
> 3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. ..."

55. The applicants argue that the Russian authorities prevented them from leaving Russian territory, by interrupting their train journey to Azerbaijan and forcing them to wait in Derbent for transit visa. They submit, in particular, that these actions were neither in accordance with the law nor necessary in a democratic society, since the Ruzskiy District Court of the Moscow Region had already ordered the expulsion of the applicants.

56. The Government contested the factual foundation of the complaint, emphasised that the Ruzskiy District Court had only ordered the expulsion of the first applicant and argued that the applicants' stay in Derbent was caused by the fact that they had not duly issued documents.

A. Admissibility

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

B. Merits

58. The Court reiterates that Article 2 of Protocol No. 4 guarantees to any person the right to leave any country for any other country of the person's choice to which he or she may be admitted. Any measure restricting that right must meet the requirements of paragraph 3 of that Article, namely being lawful, pursuing one of the legitimate aims referred to in the third paragraph, and striking a fair balance between the public interest and the individual's rights (see *Popoviciu v. Romania*, no. 52942/09, §§ 82, 83, 1 March 2016, with further references).

59. The Court established (see paragraph 54 above) that the applicants' train travel from Moscow to Baku was interrupted by Russian authorities, that the applicants were put off the train in the night of 22/23 November 2006 and that they had to wait for the issuance of transit visa in Derbent until the 4 December 2006. The Court considers, therefore, that the applicants were hindered from leaving the Russian Federation between the 23 November and 4 December 2006 and that the actions of the Russian authorities interfered with the applicants' right to leave the country.

60. Therefore, it must be established, whether or not the interference was lawful and necessary in a democratic society for the achievement of a legitimate aim. In that regard the Court notes that the Government only submitted that the applicants did not have duly issued papers, but that the Government did not explain specifically, which papers were missing or not duly issued and on the basis of which legal provision the applicants, who had lived in the Russian Federation since 2003, required a transit visa to leave the country. The Government did also not provide a legal basis for putting the applicants off the train to Azerbaijan. The Court further observes that the Ruzskiy District Court of the Moscow Region had ordered the expulsion of the first applicant and that she had not only a right to leave the country but also a legal obligation to do so.

61. Having regard to the above, the Court finds that the interference with the applicants' right to leave the country was not in accordance with the law. This finding makes it unnecessary to examine whether it was necessary in a democratic society.

62. There has accordingly been a violation of Article 2 of Protocol No. 4 to the Convention.

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

63. The applicants complained that they, as Georgian nationals, were collectively expelled from the Russian Federation in violation of Article 4 of Protocol No. 4, which reads as follows:

> "Collective expulsion of aliens is prohibited."

64. The applicants argued that from the beginning of October 2006 there was a coordinated policy in place in the Russian Federation to expel Georgian nationals. In accordance with that policy the applicants were expelled, without an examination of the individual case or the particular circumstances of each applicant.

65. The Government stressed the fact that the decision of the Ruzskiy District Court of the Moscow Region had only concerned the first applicant and that no expulsion decision had been delivered in regard to the second, third, fourth and fifth applicant. Beyond that the Government referred to the findings of the Court in its judgment *Georgia v. Russia (I)* (cited above, § 178) finding a violation of *inter alia* Article 4 of Protocol No. 4.

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

A. Admissibility

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

B. Merits

1. General Principles

68. The Court reiterates its case-law according to which collective expulsion, within the meaning of Article 4 of Protocol No. 4, is to be understood as any measure compelling aliens, as a group, to leave a country, except where such a measure is taken following, and on the basis of, a reasonable and objective examination of the particular case of each individual alien of the group (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 237, 15 December 2016, with further references). The Court has subsequently specified that a reasonable and objective examination requires that each person concerned has been given the opportunity to put arguments against his or her expulsion to the competent authorities on an individual basis (see, among other authorities, *Sultani v. France*, no. 45223/05, § 81, ECHR 2007-IV (extracts), *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 184, ECHR 2012). That does not mean, however, that where there has been a reasonable and objective examination of the particular case of each individual the background to the execution of

the expulsion orders plays no further role in determining whether there has been compliance with Article 4 of Protocol No. 4 (see *Khlaifia and Others*, cited above, § 237, with further references).

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

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

2. Application in the present case

70. The Court observes that regarding the second, third, fourth and fifth applicant no official expulsion decision by a court or any other Russian authority had been issued. However, the Court also acknowledges that owing to the administrative practice in place at the relevant time Georgian nationals in the Russian Federation had to fear to be arrested, detained and expelled. The Court considers it therefore comprehensible that some Georgian nationals left the Russian Federation prior to an official expulsion order anticipating being arrested, detained and expelled. In addition the Court notes that the first applicant, the mother of the other four applicants was expelled from the Russian Federation by the decision of the Ruzskiy District Court of the Moscow Region of 7 November 2006 and that the court acknowledged that she had four minor children. Nonetheless, the Court also notices that the children's father remained in Russia and that the first applicant attempted to leave the Russian Federation without the fifth applicant on 29 November 2006.

71. As regards the first applicant the Court concludes that she was subjected to the administrative practice of expelling Georgian nationals and that her expulsion was not carried out following, and on the basis of, a reasonable and objective examination of the particular case of each individual. There has accordingly been a violation of Article 4 of Protocol No. 4 to the Convention.

72. Nonetheless, in absence of such an official expulsion order or any other specific act by the authorities the Court finds itself unable to conclude that the second, third, fourth and fifth applicant have been the subject of a

"measure compelling aliens, as a group, to leave a country". Moreover, the Court further finds that the situation of the applicants, even though compelling to a certain degree in itself, cannot be equated with an expulsion decision or other official coercive measure. There has accordingly been no violation of Article 4 of Protocol No. 4 to the Convention in regards to these four applicants.

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

73. The applicants invoked Article 3 of the Convention, which reads as follows:

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

A. The Parties' submissions

74. The applicants argued that, after they were hindered from continuing their travels to Baku, they were under the direct control of the Russian authorities and therefore in a comparable situation to persons in detention. The applicants further submitted that by not providing adequate care and protection to the applicants, as vulnerable members of society, the Russian authorities violated their positive obligations under Article 3 of the Convention, since the conditions during their stay in Derbent led to physical suffering, feelings of humiliation and subsequent negative effects on the applicants' health.

75. The Russian Government contested the factual foundation of the complaint but did, in view of the Court's judgment *Georgia v. Russia (I)* (cited above), not submit any observations on the merits of the complaint. In essence the Government stated that the reason for the applicants' stay in Derbent was the fact that they had not duly issued documents.

76. The Georgian Government referred to the Court's judgment in the case of *M.S.S. v. Belgium and Greece* [GC] (no. 30696/09, §§ 263, 264, ECHR 2011) and argued that the circumstances of the applicants' two weeks stay in Derbent also amounted to treatment in violation of Article 3 of the Convention. They particularly emphasised that the first applicant's pregnancy and the young age of the other applicants as well as the disregard for these factors shown by the Russian authorities should be taken into account as aggravating factors.

77. The third party intervener ADF also submitted that the Court should, when assessing the severity of the alleged ill-treatment, take particular account of the first applicant's pregnancy.

B. The Court's assessment

1. Admissibility

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

2. Merits

79. At the outset the Court observes that the applicants were not in detention awaiting their expulsion or detained for any other reason. The present case does concern the question whether the State had a positive obligation under Article 3 of the Convention to provide the applicants with health care, accommodation, food, transport and logistical support, while they awaited the issuance of transit visa after they were hindered from leaving the Russian Federation.

(a) General Principles

80. The Court reiterates that Article 3 cannot be interpreted as obliging the High Contracting Parties to provide everyone within their jurisdiction with a home (see *Chapman v. the United Kingdom* [GC], no. 27238/95, § 99, ECHR 2001-I) and that Article 3 does not entail any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living either (see *Müslim v. Turkey*, no. 53566/99, § 85, 26 April 2005).

81. The Court also emphasises that it has not excluded the possibility that State responsibility could arise for 'treatment' where an applicant, in circumstances wholly dependent on State support, found him or herself faced with official indifference when in a situation of serious deprivation or want incompatible with human dignity (see *Budina v. Russia* (dec.), no. 45603/05, 18 June 2009).

82. In the case of *M.S.S.* (cited above, §§ 263, 264) the Court held that the inaction of Greek authorities in regards to the living conditions of an asylum seeker had violated Article 3. The Court attached "considerable importance to the applicant's status as an asylum-seeker and, as such, a member of a particularly underprivileged and vulnerable population group in need of special protection" (*M.S.S.*, cited above, § 251).

(b) Application in the present case

83. Turning to the circumstances of the present case the Court notes that at the relevant time the first applicant was eight months pregnant and the second, third, fourth and fifth applicant, who accompanied their mother were eleven, nine, six and two years old respectively. Moreover, the Court

notes that the applicants had only limited resources to their disposal and were, after having stayed at the train station for one night, only able to find accommodation in a basement flat, which they had to share with several other persons. The Court also observes that the first applicant had been expelled from the territory of the Russian Federation and that the Russian authorities interrupted her travel, which forced the applicants to stay in an unfamiliar city during winter and which temperatures below 5° C. In view of all the above the Court concludes that the applicants were in a very vulnerable situation.

84. The Court further observes that the applicants' stay in Derbent was based on the conduct of the Russian authorities, which constituted a violation of Article 2 of Protocol No. 4 (see paragraphs 54-62 above). It also notes that the applicants were not provided with a reason for the interruption of their travels and that the duration of the stay was not foreseeable for them, but wholly dependent on the conduct of the Russian authorities. The Court also acknowledges that the contradictory conduct of expelling the first applicant and subsequently preventing the applicants, including the first applicant, from leaving the territory of the Russian Federation would have created a feeling of extreme despair, anxiety and debasement for the applicants.

85. The Court further notes that the applicants did not have access to health care, that their very limited financial means only sufficed to afford basic food, and that the authorities, who had caused the applicants' stay in Derbent, did accommodate neither the particular needs of the highly pregnant first applicant nor of her young children.

86. The Court concludes that the applicants were in a very vulnerable position. It further finds that their situation was caused by the conduct of the Russian authorities and that the applicants were depending on the Russian authorities to end their forced stay in Derbent. Finally, the Court considers that the Russian authorities showed indifference towards the applicant's extremely difficult situation. Having regard to all of the above, the Court concludes that the very special circumstances of the present case are sufficient to accept a positive obligation under Article 3 of the Convention. Since the Russian authorities did not provide the applicants' with any form of support, but delayed their stay in Derbent for about two weeks, the Court finds that there has been a violation of Article 3.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 3

87. The applicants complained that they had no effective remedy, which could have provided redress for the alleged ill-treatment during their stay in Derbent. They relied on Article 13 of the Convention, which reads as follows:

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

88. The Court reiterates that the effect of Article 13 is to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief (see *Chahal v. the United Kingdom*, 15 November 1996, § 145, Reports 1996-V). The remedy required by Article 13 must be "effective", both in practice and in law.

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

> "[*H*]having regard to all the material in its possession, the Court considers that during the period in question there were real obstacles for the Georgian nationals in using those remedies, both during the proceedings before the Russian courts in the Russian Federation and once they had been expelled to Georgia.
>
> It considers that in the Russian Federation those obstacles arose as a result of the procedures carried out before the Russian courts as described by the Georgian witnesses, namely, that they had been brought before the courts in groups. Whilst some referred to an interview with a judge lasting an average of five minutes and with no proper examination of the facts of the case, others said that they had not been allowed into the courtroom and had waited in the corridors, or even in the buses that had delivered them to the court, with other Georgian nationals. They said that they had subsequently been ordered to sign the court decisions without having been able to read the contents or obtain a copy of the decision. They had had neither an interpreter nor a lawyer. As a general rule, both the judges and the police officers had discouraged them from appealing, telling them that there had been an order to expel Georgian nationals.
>
> Furthermore, the climate of precipitation and intimidation in which these measures were taken also explains the reluctance of the Georgian nationals to use those remedies.
>
> In Georgia, over and above the psychological factor, it considers that there were practical obstacles in using these remedies because of the closure of transport links between the two countries. Furthermore, it was very difficult to contact the consulate of the Russian Federation in Georgia, which was very short staffed with only three diplomats at the material time."

90. The Court finds no reason to depart from its earlier findings in the present case. In particular the practical obstacles for expelled Georgian nationals also existed for the present applicants after their return to Georgia. Moreover, the Court notes that the first applicant's oral complaints to the authorities in Derbent were to no avail and that her written complaint with the General Prosecutor's office of the Russian Federation did not lead to an official investigation or other outcome.

91. Accordingly the Court finds that there has been a violation of Article 13 in conjunction with Article 3 of the Convention.

VII. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLES 3 AND 13 OF THE CONVENTION AND ARTICLES 2 AND 4 OF PROTOCOL No. 4

92. The applicants further complained that their expulsion and ill-treatment were discriminatory on the ground of their ethnic origin. They relied on Article 14 of the Convention, which reads as follows:

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

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

94. The Court considers that, in the particular circumstances of the case, the complaints lodged by the applicants under Article 14 of the Convention taken in conjunction with Articles 2 and 4 of Protocol No. 4 are the same – even though submitted under a different angle – as those complaints brought under the substantive provisions (see *Georgia v. Russia (I)*, cited above, § 220). The Court reiterates that it already found a violation of Article 2 of Protocol No. 4 regarding the applicants' stay in Derbent. The Court further found a violation of Article 4 of Protocol No. 4 regarding the expulsion of the first applicant and concluded that the other four applicants were not expelled. Accordingly, it considers that it is unnecessary to determine whether there has in the instant case been a violation of Article 14 taken in conjunction with those provisions on account of discriminatory treatment against Georgian nationals.

95. As regards the applicants complaint under Article 14 in conjunction with Articles 3 and 13 of the Convention the Court notes that the applicants have not shown that other persons – non-Georgian nationals – had been treated differently in a situation comparable to the applicants' stay in Derbent. In particular they failed to establish that not providing the applicants with support in Derbent was based on their nationality and not a general practice of the Russian authorities. Accordingly the applicants' complaint under Article 14 in conjunction with Articles 3 and 13 of the

Convention has to be declared inadmissible as manifestly ill-founded pursuant to Article 35 § 3 (a) of the Convention.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

96. 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

97. The applicants claimed together 400,000 euros (EUR) in respect of non-pecuniary damage.

98. The Government considered the claimed amount evidently excessive and submitted that due to the application of Article 41 in the inter-State case *Georgia v. Russia (I)*, in which the applicants were named as victims, the Court should take the already granted application of damages into account.

99. The Court awards, in respect of non-pecuniary damage, all five applicants together the total amount of EUR 30,000.

B. Costs and expenses

100. The applicants also claimed EUR 5,000 for the costs and expenses incurred before the Court.

101. The Government argued that the claimed amount was evidently excessive and that the applicants did not submit any confirming documents regarding the claimed costs and expenses.

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

103. The Court notes that the applicants have not submitted any legal or financial documents in support of their claim for cost and expenses. Having regard to the absence of these documents the Court dismisses their claim for cost and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT

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

2. *Declares*, unanimously, the application admissible;

3. *Holds*, unanimously, that there has been a violation of Article 2 of Protocol No. 4 to the Convention;

4. *Holds*, by six votes to one, that there has been a violation of Article 4 of Protocol No. 4 to the Convention in respect to the first applicant;

5. *Holds*, unanimously, that there has been no violation of Article 4 of Protocol No. 4 to the Convention in respect to the second, third, fourth and fifth applicant;

6. *Holds*, unanimously, that there has been a violation of Article 3 of the Convention;

7. *Holds*, unanimously, that there has been a violation of Article 13 in conjunction with Article 3 of the Convention;

8. *Holds*, unanimously, that there is no need to examine the complaint under Article 14 of the Convention in conjunction with Articles 3 and 13 of the Convention and Articles 2 and 4 of Protocol No. 4 to the Convention;

9. *Holds*, unanimously,
   (a) that the respondent State is to pay the applicants jointly EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, to be converted into Georgian Lari at the rate applicable at the date of settlement;

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

10. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

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

Fatoş Aracı	Luis López Guerra
Deputy Registrar	President

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

L.L.G.
F.A.

STATEMENT OF DISSENT BY JUDGE DEDOV

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