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Contact: Ireneusz Kondak
Tel: 03.90.21.59.86

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Meeting: 1577th meeting (December 2026) (DH)

Item reference: Action Report (30/10/2026)

Communication from Georgia concerning the case of Shamayev and 12 Others v. Georgia (Application No. 36378/02)

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Réunion : 1577e réunion (décembre 2026) (DH)

Référence du point : Bilan d'action (30/10/2026)

Communication de la Géorgie concernant l'affaire Shamayev et 12 autres c. Géorgie (Requête n° 36378/02) ***[anglais uniquement]***

DH-DD(2026)1456: Communication from Georgia
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DGI
30 OCT. 2026
SERVICE DE L'EXECUTION DES ARRETS DE LA CEDH

The Government of Georgia

Action Report

Shamayev and 12 Others v. Georgia and Russia

Application no. 36378/02, Judgment of 12/04/2005, final on 12/10/2005

I. Introduction

1. The case concerns several violations found in relation to the detention and extradition by Georgia to the Russian Federation of 13 applicants of Chechen origin suspected of terrorist activity in Chechnya. Five applicants were extradited and convicted by the Russian courts to different terms of imprisonment. Six applicants were not extradited and were liberated in accordance with the decisions given by Georgian courts.

2. The European Court found the following violations in respect of Georgia:

- the risk of ill-treatment of the applicant in case of enforcement of the decision of the Chief Public Prosecutor of Georgia ordering the extradition of Mr. Gelogayev to Russia (risk of violation of Article 3);
- inhuman treatment of the applicants as a result of the injuries inflicted on them during violent clashes with the Georgian prison guards, absence of investigation into the proportionality of the force used against the applicants, and the absence of appropriate medical care (substantive and procedural violations of Article 3);
- failure to inform the applicants about their extradition and lack of access to the relevant documents from the case files (violation of Article 5 § 2);
- lack of possibility to challenge the lawfulness of detention with a view to extradition (violation of Article 5 § 4);
- absence of an effective domestic remedy in respect of the applicants' complaints about an alleged risk of violations of Articles 2 and 3 in case of their extradition to the Russian Federation (violation of Article 13);
- failure to respect the Court's interim measure requesting the suspension of the extradition procedure (violation of Article 34).

II. Individual Measures

a. Just Satisfaction

3. By the action plan of 2 January 2017 containing the detailed information on the individual and general measures regarding the case of *Shamayev and 12 Others v. Georgia*,[1] the Government informed the Committee that the just satisfaction was paid to all the applicants.

b. Other individual measures

[1] Available at: https://hudoc.exec.coe.int/eng?i=DH-DD(2017)22E

4. The applicants are no longer detained in Georgia. The moral damage caused by the time spent in detention has been covered by the just satisfaction granted by the Court, which was paid within the time-limit.

- *Risk of violation of Article 3*

5. The extradition order of 28 November 2002 in respect of Mr Gelogayev was cancelled by the Supreme Court of Georgia on 16 May 2003. The applicant was released on 6 February 2004.

- *Substantive and procedural violations of Article 3*

6. It is to be noted that the case of *Aliev v. Georgia* (appl. no. 522/04) concerning the same facts which occurred on the night of 3 and 4 October 2002, was closed by the Committee of Ministers at its 1288th Human Rights meeting (June 2017) (CM/ResDH(2017)181).

7. In relation the incident of 3-4 October 2002, on 8 August 2016, the Prosecutor's Office of Georgia reopened the investigation in respect of the allegations of excess of powers used against the applicants by officials or persons equal thereto, with the use of violence or arms (crime envisaged by Article 333 § 3 (b) of the Criminal Code of Georgia). The main focus of the investigation was to determine the proportionality of the force used against the applicants, since the failure to establish this previously had resulted in the violation of Article 3 of the Convention.

8. *Independence and impartiality* of the investigation was ensured to the fullest extent. None of the team members or prosecutors from the initial investigation was involved or had any direct or indirect links with it.

9. *Evidence and medical expertise:* Prison No. 5 of Tbilisi (where the applicants were detained) was demolished in April 2008. Thus, it was impossible for investigators to examine the cell where the alleged facts took place and obtain information on the identity of the persons who were detained in cells adjacent to cell No. 88. The witnesses questioned (among others, newly identified witnesses - former staff members of Prison No. 5, former members of the Special Forces) could not recall the events in question with sufficient precision. Moreover, a number of witnesses could not be questioned given that some of them are deceased, and others are no longer in Georgia. As regards the medical expertise, the Government wish to clarify that even if the applicants were in Georgia, it would have been impossible for the investigation authorities to obtain any evidence through a forensic expertise, given that, by 2017, 15 years had elapsed after the facts complained of took place and the traces of alleged ill-treatment must have been disappeared.

10. *Involvement of the applicants*: The applicants are no longer in Georgia. The efforts of the investigative authorities to identify their current whereabouts were unsuccessful. It has not, therefore, been possible to interrogate them or ensure their active involvement in the investigative proceedings.

11. Based on the above mentioned, the Government wish to underline that due to the passage of time, the reopened investigation could not lead to any tangible results - it was not possible to carry out the medical expertise, identify the whereabouts and question all the witnesses, including the applicants, and define the criminal responsibility of specific individuals. Therefore, the reopened investigation was terminated. It was not possible to

serve the termination decision to the applicants as their whereabouts are unknown. In this context, it is recalled that a prosecutor's decision to terminate an investigation is subject to a hierarchical review. The applicants have not submitted any complaints concerning the conduct or outcome of the reopened investigation either before the domestic authorities or the Committee of Ministers. Additionally, it should be noted that according to the Office of the Prosecutor General, the statute of limitation for the criminal offence of exceeding official powers expired on 4 October 2017.

12. To conclude, it appears that no other individual measures can realistically be taken in the present case.

III. General Measures

a. Substantive violation of Article 3

13. A new remedy to complain about poor conditions of detention was introduced in the new Penitentiary Code of 2010. For other general measures concerning conditions of detention, see the final resolution (CM/Res(2014)209) adopted by the Committee of Ministers in the *Ghavtadze* group of cases.

b. Procedural violation of Article 3

14. General measures regarding effectiveness of investigation into facts of ill-treatment are examined in the *Tsintsabadze* group of cases.

c. Violation of Article 5 §§ 2 and 4

15. The Law on "International Cooperation in Criminal Matters"[2], which entered into force on 1 October 2010, with the new Code of Criminal Procedure, provides relevant guarantees for eradication of the shortcomings found by the Court in the extradition process and prevention of similar violations in the future. The Act is in line with the European Convention on Extradition of 13 December 1957 and contains the content of several articles of the said Convention. It should be underlined that Chapter III of the Law is dedicated solely to extradition issues.

16. The aforementioned law explicitly prohibits extradition if there is a reasonable doubt that a person can be subject to a death penalty or ill-treatment. Moreover, it outlines a clear procedure of consideration of the extradition request, procedural safeguards for the defendants and a judicial remedy available to challenge the extradition order. Unlike the previous rules which foresaw the issuance of the extradition order by the Prosecutor General, it is currently the competence of the first instance courts upon the motion of the Prosecutor's Office of Georgia (*hereinafter* - "the OPG").

- *Established procedure and competent bodies*

17. The OPG represents the first administrative body to assess the risks related to extradition. At this stage, all relevant extradition materials are examined. These include documents provided by the requesting State, information and evidence submitted by the defence as well as the open-source information investigated by the OPG. The review assesses, among other relevant issues, whether there are substantial grounds to believe that extradition may violate the rights of the person sought. When assessing the risks, all the relevant standards

[2] Available at: https://matsne.gov.ge/ka/document/view/112594

determined by the European Court of Human Rights are applied. The review is even more thorough in the cases of possible extraditions to the countries that are not signatories to the European Convention on Extradition or the European Convention on Human rights. After the assessment, if the evidence provided when deciding on extradition is not sufficient to conclude possible violations of human rights, the OPG files an application with a competent court to seek an extradition order. On the contrary, in case of the credible risks of the human rights violations, the request could be dismissed by the OPG itself. Where there are concerns that the person sought may face persecution, no formal decision is communicated to the requesting State, in order to protect that person's safety.

18. After the case is sent to the court, the judge decides on the admissibility of the extradition. The court hearings are held in person, in the presence of the prosecution and the defence. At this stage, the same standards stipulated by the relevant conventions and the European Court of Human Rights are applied by the domestic court in order to establish the admissibility of the extradition. The reasoned decision is served to the parties and can be appealed to the Supreme Court of Georgia. This remedy is effectively utilised by the defence, as evidenced by the fact that 291 cases have been appealed to the Supreme Court of Georgia since 2019.

19. Lastly, the Minister of Justice (*hereinafter* - "the MoJ") can refuse extradition even if the courts decide to allow it. While exercising this authority, the MoJ takes into consideration the domestic court's decision on the admissibility of extradition as well as the compliance of the extradition with the sovereignty, security, or main interests of State. Moreover, the international obligations of Georgia in terms of human rights protection are duly evaluated. The MoJ also has the authority to refuse extraditing individual to a foreign State out of humanitarian purposes or in consideration of other circumstances. Despite the fact that the extradition cases are being thoroughly examined, *inter alia* in respect of its compliance with human rights standards throughout the proceedings, this last domestic legal stage still remains as the possible effective remedy against extradition. In the case of extradition of S. A. to the Russian Federation, the extradition was found inadmissible by the decision of the MoJ due to possible violation of Article 8 of the European Convention, despite the fact that the case has successfully passed the court assessment phase.

- *Procedural rights of the defendant*

20. According to the legislation introduced in 2010, the extradition proceedings in Georgia are adversarial and ensure the equality of arms throughout the proceedings. The person subject to extradition has the same rights as the defendant in the criminal proceedings as provided in the Criminal Procedure Code of Georgia, which envisages the obligation of the authorities to inform the defendant on the reasons for the detention and ensure his/her access to the case file. The defendant has the right to participate at all stages of the extradition process. In particular:

21. During the assessment of the case by the prosecution, the defence may provide a written statement and pertinent evidence to challenge the admissibility of the extradition. If the person subject to extradition is being detained, the information and evidence can be collected by the attorney of the person subject to extradition. Moreover, if the defence alleges that due to objective reasons it was not possible to collect the evidence relevant to decide on extradition, the OPG, within its capacity, requests the information and possible

evidence from the requesting or any other third states. Another safeguard to ensure the right to defence is the obligation to provide all the extradition materials collected by the OPG immediately after the enquiry of the defence. The same obligation is imposed on the defence in order to balance the principle of equality of arms.

22. During the examination of the case by the court, both parties have an opportunity to make their case for or against extradition and examine the evidence. Moreover, the defence may address the court and request to enquire additional information or evidence from the requesting state. In such a case, the defence should be able to demonstrate that all reasonable actions had been conducted, however, it was not possible to obtain materials that are crucial on deciding whether to extradite the person sought.

23. During the case consideration by the MoJ, the parties are not restricted to provide written submissions and refer to the circumstances relevant to deciding on extradition.

- *Judicial practice*

24. The Government wish to underline that the legislation is accordingly implemented in practice by the judiciary. The Supreme Court's decisions[3] demonstrate that it considers various aspects when deciding on the questions of extradition and its decisions are aligned with the general principles stemming from the Convention and the Court's case-law related to extradition. The Supreme Court emphasized that individuals granted humanitarian status under Georgian law cannot be extradited. It also underlined that the claims of torture or inhuman treatment must be supported by precise and unequivocal evidence rather than generalized reports about the requesting country's human rights situation. Additionally, the Supreme Court takes into consideration international human rights commitments of the requesting country, alongside the human rights guarantees provided by the latter.

d. Violation of Article 34

25. As regards the Article 34 violation, the Government underline that it was isolated in nature. The Government confirm that Georgia has complied in full with all interim measures indicated by the Court under Rule 39 of the Rules of Court and reaffirm once again their commitment to ensuring full, prompt and unconditional compliance with any interim measure the Court may indicate.

VI. Conclusion

26. Taking into account all the above-mentioned, the Government hold the view that the aforementioned measures implemented at the domestic level will contribute to the prevention of violations similar to those established by the Court. Therefore, the Government hereby refer to the Committee to close supervision of the case of *Shamayev and 12 Others v. Georgia and Russia*, regarding the violations found in respect of Georgia.

[3] The decisions of the Supreme Court of Georgia of 12 February 2020 (Case no. 5[I]-20); 24 February 2020 (Case no. 9[I]-20); 1 July 2021 (Case no. 385[I]-21), and 4 October 2021 (Case no. 423[I]-21).