



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



Strasbourg, 29 September 2010

CommDH(2010)35
Original version

**Monitoring of Investigations
into cases of missing persons
during and after the August 2008 armed conflict
in Georgia**

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INTRODUCTION BY THE COUNCIL OF EUROPE COMMISSIONER FOR HUMAN RIGHTS

The August 2008 armed conflict in Georgia victimised a very large number of people. In the aftermath of that conflict, I carried out a series of visits to assess the human rights situation and to clarify what contributions could be made by the international community. To address the most urgent requirements, I formulated six principles for urgent human rights and humanitarian protection.

As part of these endeavours I have sought to contribute to the protection of detainees and persons in captivity as well as to the clarification of the fate of those who were reported as missing. The aim has been to contribute to the release of persons who had been detained because of the conflict and to enable them to be reunified with their families. Likewise, I have made attempts to encourage the resolution of cases of persons who were known to have been killed on the other side or were reported as disappeared and, where possible, to encourage the dialogue between the sides in this context. These efforts have contributed to the release of more than a hundred people – including several minors - and to the process of handing over the mortal remains of a number of others, so that their families and communities could mourn them and give them a proper, dignified burial.

However, there are several persons who disappeared during the conflict or in its aftermath and whose fate remains unclear. Among those, certain specific cases of missing persons were brought to my attention, and representatives of the different sides asked me to provide assistance. I therefore contacted two international experts with considerable experience in the field of police investigations into serious crimes, including in an international and post-conflict context. My aim was to assist the relevant authorities to establish the circumstances surrounding those particular cases.

The two international experts I recruited are Bruce Pegg and Nicolas Sébire. Mr Pegg is an Officer of the Australian Federal Police who has led numerous investigations into war crimes, torture and crimes against humanity and has served in International Peace Monitoring Teams in the Solomon Islands and the United Nations Mission in East Timor (UNAMET). Mr Sébire is a Captain of the French National Police and has extensive experience in investigating serious crimes, politically motivated violence, genocide, crimes against humanity and war crimes, including while working with the International Criminal Tribunal for the former Yugoslavia (ICTY), as well as with the International Criminal Court (ICC).

The enclosed report is based on the work of these experts. They were requested to monitor investigations concerning specific cases of the treatment and fate of missing persons on all sides during and after the August 2008 armed conflict in Georgia. According to their Terms of Reference, it was envisaged that the experts would prepare a report containing a detailed, independent and balanced assessment of the events and investigations concerned, and that this report would be made duly available to all relevant stakeholders.

I introduced the experts to the Georgian authorities on 26 February 2010 in Tbilisi during my visit to Georgia. The experts were then introduced to the de facto authorities in Tskhinvali and to the representatives of the Russian Federation. They were also presented to representatives of the international community, including the European Union Monitoring Mission (EUMM). Their concrete work commenced on 5 March 2010, when they received confirmation that they could start meeting Georgian police and prosecutors in charge of one investigation. The work of the experts continued until 1 May (Nicolas Sébire) and 25 June 2010 (Bruce Pegg).

The cases which the experts were asked to include in their work had in fact all been published with some photographic evidence in the form of video recordings on the internet. One of the cases related to three young Ossetians who had gone missing two months after the August 2008 armed conflict, close to the administrative boundary line (ABL). They were Alan Khachirov (b. 22 December 1992), Alan Khugaev (b. 23 September 1989), and Soltan Pliiev (b. 19 March 1983). The date of their disappearance was 13 October 2008.

The other cases concerned disappearances which occurred during or immediately after the August 2008 hostilities. One case, which had been raised by the de facto Ombudsman in South Ossetia as well as the Georgian Public Defender (Ombudsman), related to the fate of Radik Ikaev (b. 15 December 1976) who was reported to have been captured by Georgian troops on 8 August 2008 and later disappeared.

The Georgian Ministry of Internal Affairs requested the experts to endeavour to find out what work had been done in Tskhinvali to clarify the fate of Giorgi Romelashvili (b. 17 September 1979). He had served in the Georgian army and had been a crew member in a tank (model T-72, number 406) together with two other Georgian soldiers, Zaza Birtvelashvili (b. 17 April 1976) and Otar Sukhitashvili (b. 29 April 1975). They had all disappeared on 8 August 2008.

The Ministry also provided a video showing a soldier, Giorgi Antsukhelidze (b. 18 August 1984), being subjected to serious ill-treatment during interrogation. His dead body had been handed over by the de facto authorities of South Ossetia to the Georgian authorities. Subsequently, an application concerning this case was brought to the European Court of Human Rights. Another case related to Kakha Khubuluri who was shown on a video with some facial contusions and bruising, in a group with other captive soldiers. His body had also been delivered to the Georgian authorities.

The approach of the experts to their tasks included the following activities and steps: meeting the representatives of the sides concerned working on the above-mentioned cases; reviewing investigation documentation, including analyses of various pieces of evidence and documentation, and assessing the investigation's progress and problems; conducting interviews with the families of disappeared persons, obtaining and reviewing relevant accounts and materials; facilitating transmission of the materials to the Georgian authorities when requested; identifying and interviewing possible witnesses, and analysing their accounts; and providing advice on the methodology and further direction of the investigation.

It was made clear that the role of the experts would not be to "take over" the investigations, but rather to monitor them and provide advice and support with a view to establishing the circumstances surrounding the cases of missing persons.

Useful cooperation was provided to the experts from the respective sides, in particular by their main contact persons, the Director of the Informational and Analytical Department of the Georgian Ministry of Internal Affairs and the de facto Ombudsman of South Ossetia. Without this, the present report would not have been possible. In particular, the work of the experts in observing the investigation relating to Khachirov, Khugaev, and Pliev necessitated many extensive discussions and meetings with the Georgian authorities, whose readiness to take part in the project should be positively assessed.

Valuable support was given by international representatives, including from EUMM and the Organisation for Security and Cooperation in Europe (OSCE). I would also like to place on record my respect and gratitude to the individual witnesses and relatives of the missing for the substantial input they provided to the efforts of the experts.

The report of the experts is critical. Its findings highlight some serious shortcomings in the process of clarifying the fate of missing persons and ensuring accountability for the perpetrators of illegal acts. The experts encountered a situation where a variety of obstacles surged on the path to the truth.

In the case of Khachirov, Khugaev, and Pliev, the experts found that very little activity had taken place to investigate this case in spite of prompting by EUMM, the Georgian Young Lawyers Association (GYLA) and the parents of the missing persons during the period of almost a year and a half which had elapsed since the disappearance. For instance, the police on duty in the area at the time of the disappearance had not been questioned. Neither was there any documented canvass of the residents in the relevant neighbourhoods.

Though some steps were subsequently taken following the advice of the experts, including the possibility for the mothers of the missing persons to give testimony to the prosecutorial authorities, there continued to be a number of technical shortcomings in the investigation, as spelled out in the report.

A major problem relates to the very integrity and impartiality of the investigation. Though there have been serious allegations implicating the involvement of law enforcement officials in the disappearances, the operational conduct of the investigation was not kept separate from the service to which the officials implicated belonged.

In fact, the experts report that the information they obtained indicates that Khachirov, Khugaev and Pliev were apprehended and taken into custody by Georgian law enforcement officials on 13 October 2008.

The inevitable conclusion is that the investigation into this case should be taken over by a highly professional team, whose impartiality and independence cannot be questioned. The supervision of the investigation should be transferred away from regional prosecutorial authorities and the operational conduct of the work should be moved away from the police in the area.

It is important, as the experts also recommend, that the investigation in the case of the missing Khachirov, Khugaev and Pliev examine the conduct of law enforcement officials, as well as any other public officials, who were either witnesses in this matter or who had a responsibility or a role in any stage in information collection or the investigation related to the disappearance of the three persons. The names of all police who were on duty in the relevant area at the time of the disappearance should be clearly specified.

The experts were not able to obtain from the Russian authorities technical information relating to the mobile telephones of the above-mentioned missing persons, such as relevant call charge records and data about site location. The Russian authorities and the de facto authorities in Tskhinvali should cooperate fully with any new, properly supervised investigation into this case.

On the case of the disappearance of Radik Ikaev in August 2008, the Prosecutor's Office of Georgia confirmed to the experts that it had registered the case. The experts sought to assist an investigation and obtained statements from relatives of Radik Ikaev and four witnesses, including three who had been detained together with him. The experts report that they are unaware of any follow-up to the information they provided to the Prosecutor's Office of Georgia.

The experts believe that it is well established that Ikaev was captured and detained by Georgian military personnel, that he was seen by witnesses while in captivity, and that he then disappeared. These circumstances call for a criminal investigation.

The case of Giorgi Romelashvili, which had been raised by the Georgian Ministry of Internal Affairs, was the subject of some confusion. The man shown in the video recording provided to the experts by the Georgian Ministry of Internal Affairs, and identified by them as Giorgi Romelashvili, was not recognised by the mother of Giorgi Romelashvili as her missing son. Nevertheless, the experts sought to contribute to the clarification of the case of the missing Giorgi Romelashvili and his fellow tank crew members, Zaza Birtvelashvili and Otar Sukhitashvili.

The experts concluded that Tank 406 was completely destroyed on 8 August 2008 and that the remains of the crew members were not readily recoverable. However, it is important to clarify more precisely the circumstances regarding this matter, as well as those relating to the two other Georgian tanks which were destroyed at about the same time in Tskhinvali. This is important for the families of the crew members, who suffer from not knowing the fate of their loved ones. Also, the real identity of the tank soldier on the above-mentioned video recording has to be clarified.

The video recordings received from the Georgian authorities depicting Georgian soldiers captured by opposing forces were discussed by the experts with representatives of the de facto authorities in Tskhinvali. The video of Giorgi Antsukhelidze showed very severe ill-treatment of this person and the one of Kakha Khubuluri - apparently filmed shortly after he was captured (alive) by opposing forces - shows him with injuries which, at the very least, require an explanation. However, the experts reported to me that the position of the de facto authorities in Tskhinvali prevented them from pursuing these cases. Whereas it was apparently acknowledged that the video recordings showed possible serious breaches of international law, it was argued that the cases concerned did not involve disappearances (the bodies of the persons had been delivered to the Georgian authorities) and were therefore outside of the purview of the work of the experts.

The experts and I have therefore deduced that there has not been any attempt to ensure accountability of the persons who are shown perpetrating violent acts against Giorgi Antsukhelidze - which may have resulted in his death - nor has there been any attempt to clarify how Kakha Khubuluri

sustained injuries and apparently came to die while in captivity, and to ensure accountability for the perpetrators of any violence against him.

Ensuring the humane treatment of detained persons is a principle which must not be abandoned. Any crimes against such persons must be thoroughly investigated. Whether such crimes occur during armed conflict makes no difference in this regard. Ill-treatment of prisoners constitutes a violation of both human rights treaties and international humanitarian law.

Thomas Hammarberg
Council of Europe Commissioner for Human Rights

REPORT OF THE EXPERTS TO THE COMMISSIONER FOR HUMAN RIGHTS

Summary of the findings of the experts

Case of Alan Khachirov, Alan Khugaev, and Soltan Pliev
Case of Radik Ikaev

In the course of their work in Georgia and in accordance with the Terms of Reference, the experts engaged in extensive discussions with the Georgian investigating authorities, and made a number of recommendations with a view to clarifying the circumstances of the disappearance of three young ethnic Ossetians, Alan Khachirov, Alan Khugaev and Soltan Pliev, who were last seen alive on 13 October 2008. One of the three, Alan Khachirov, was a minor who had not yet reached the age of 16 at the time of the disappearance.

When the experts started their work in Georgia on 5 March 2010 - almost a year and a half after the disappearance of the three persons – they observed that very little activity to investigate this matter had taken place, despite the prompting of various actors, including the European Union Monitoring Mission (EUMM), the Georgian Young Lawyers Association (GYLA), and the parents of the missing persons.

The experts were particularly struck by the fact that, although there had been serious allegations implicating the involvement of Georgian law enforcement officials in the disappearance of Khachirov, Khugaev, and Pliev, there was hardly any attempt to safeguard the independence of the investigation. As far as the experts could ascertain, the legislative framework in Georgia provided sufficient possibilities to apply this principle.

In the view of the experts, a number of reasonable and fairly obvious steps had not been taken to secure evidence in the context of the investigation. For example, there was no documented canvass of residents in the relevant areas, and police on duty in the area on the day of the disappearance had not been questioned. No confidential informants had been sought among the people of the village of Koshka and its environs, i.e. in the area where the persons had last been seen alive.

Some significant steps were taken by the Georgian authorities following the advice of the experts, including allowing the possibility for the mothers of the missing persons to give testimony to prosecutorial authorities in Gori, and granting the mothers the status of victim pursuant to Section 68 of the Georgian Code of Criminal Procedure.

However, certain important recommendations made by the experts were not accepted by the Georgian authorities, e.g. regarding the promulgation of a reward for information leading to the discovery of the missing persons. Others received only a token or unjustifiably delayed response. No serious attempt was made to identify the person who first posted a video on the Internet in March or April 2009, showing the three missing persons in a situation of apparent captivity or custody, being subjected to what appears to be a threatening and violent interrogation by persons whose faces are not visible in the video. Moreover, the experts fail to see any reasonable justification for the delays they observed in the carrying out of the forensic analysis of the video and even in the preparation of a transcript; these acts were only concluded on 18 May 2010.

The experts could not identify an investigational strategy that was initiated or generated in this matter independently of the experts' own recommendations. Ultimately, there was little substantive progress toward officially clarifying the fate of the three missing persons.

The de facto authorities in Tskhinvali contributed little to the clarification of the fate of the three persons. In particular, many of the potential witnesses in South Ossetia had not been interviewed in the depth required. No technical inquiries had been undertaken by the de facto authorities with respect to the telephones of the missing persons – which were believed to be Russian registered mobile telephones - and no information could be obtained from the Russian authorities regarding the relevant call charge records. In addition, a proper survey of the conditions and personnel on duty on 13 October 2008 along the administrative boundary line had not been undertaken.

Based on the information at their disposal, the experts believe that Khachirov, Khugaev and Pliev were apprehended and taken into custody by Georgian law enforcement officials on 13 October 2008 on Georgian-controlled territory near the administrative boundary line. This belief is derived inter alia from a patrol report dated 14 October from the Organisation for Security and Cooperation in Europe (OSCE) recording information by the Georgian police in the village of Ditsi that three armed South Ossetian males were taken into custody in 'Ditsevi' (Disevi) on 13 October 2008 and subsequently conveyed to Gori. The time, location and the reference to the three persons match the elements relating to the disappearance of Khachirov, Khugaev and Pliev.

The disappearance occurred in the context of increased deployments of Georgian security forces, including regular and special tasks police, close to the administrative boundary line, including the areas around Koshka, Mereti, and Ditsi, following the withdrawal of the Russian armed forces from the former "buffer zone". Despite these increased deployments, the area concerned was still characterised by a fragile security situation at the time in question, with frequent incidents such as abductions, robberies, thefts and looting, and a number of arrests as well.

The experts regret to note that the Georgian authorities at different levels did not always provide reliable information regarding police deployments in the area along the administrative border at the time in question. The information given by those authorities, including by certain law enforcement officials who had in fact been deployed to those areas – though this was denied to the experts – tended to be misleading, if not deliberately false, and was contradicted by information compiled by international observers.

There was a lack of proper command and control of law enforcement officials in the areas along the administrative boundary line where the three went missing. The experts noted that police deployed to those areas included former residents of certain villages north and east of Tskhinvali, including Kurta and Eredvi, which had been destroyed during and after the August 2008 conflict, their ethnic Georgian residents forced to flee.

What exactly happened to Khachirov, Khugaev and Pliev after they were taken into custody is unclear. There are a number of potential possibilities. The identification of one of the persons who can be heard speaking in the video as a particular person displaced from the area north of Tskhinvali and not known to be a member of Georgian security forces – if true – leads to some further conjecture.

The families of Khachirov, Khugaev and Pliev continue to hope and believe that their missing relatives are alive. The experts are aware of various rumours and statements alleging that they are being held in a prison or a secret location. Regrettably, the experts have found no convincing information in support of the hypothesis that the three young persons are alive.

The experts provided detailed information to the competent Georgian authorities on the names of certain law enforcement officials and other persons who have been the subject of allegations or have otherwise been implicated in the case of the disappearance of Khachirov, Khugaev, and Pliev, as well as the context in which those persons have been implicated. This information has been excluded from the present report for obvious reasons.

Turning to the case of Radik Ikaev, the experts have no doubt that he was captured and detained by Georgian military personnel on 8 August in or near the village of Bakati-Kau in the Znauri District. It is also certain that he was subsequently taken to one of the lock-up wards of the Gori Police station, where he remained for a few days and then in the Georgian military barracks located in Vaziani. He was last seen alive on 22 August 2008, and was in Georgian custody at the time.

It is impossible for the experts to ascertain whether these clear indications implicating the responsibility of military and/or law enforcement personnel in the disappearance of Radik Ikaev have met with an adequate reaction. In other words, it is unclear whether the matter was being investigated effectively, with a view to establishing the circumstances of the disappearance and fate of Radik Ikaev and ensuring accountability of the persons responsible.

Case of Giorgi Romelashvili, Zaza Birtvelashvili, Otar Sukhitashvili (Georgian tank 406)

Case of Giorgi Antsukhelidze

Case of Kakha Khubuluri

The experts raised before the de facto authorities of Tskhinvali the cases of two Georgian soldiers, Giorgi Antsukhelidze and Kakha Khubuluri, who had been taken captive by opposing forces and whose mortal remains had been returned to the Georgian side. The experts referred to graphic video material showing Antsukhelidze being subjected to severe ill-treatment, as well as to another video recording showing Khubuluri with visible injuries. While the de facto South Ossetian Ombudsman acknowledged that the material depicted raised issues of a very serious nature, he underlined that the position and understanding of Tskhinvali was that the experts would only focus on investigations into cases of missing persons – not persons whose mortal remains had been recovered - and that the work of the Commissioner’s experts was “not the appropriate venue” to examine any investigations into any other types of cases involving possible misconduct of militias or security or armed forces. The experts must therefore report with considerable regret that this position of the de facto authorities in Tskhinvali prevented them from addressing the cases concerned, and can only deduce that there has not been any attempt to ensure accountability of the persons who perpetrated these abhorrent violent acts.

It should also be noted that the de facto authorities in Tskhinvali were conditioning their cooperation with the experts on cases where the victims were ethnic Georgians upon progress in the investigation into the disappearance of Khachirov, Khugaev, and Pliev.

One of the video recordings provided by the Georgian authorities to the experts featured, according to those authorities, a young Georgian serviceman by the name of Giorgi Romelashvili. This video showed a soldier with visible injuries on his face and head (bleeding and extensive contusions). In accordance with their terms of reference, the experts interviewed the relatives of Romelashvili. The meetings of the experts with the relevant officials and their interviews with Romelashvili’s relatives revealed that, while all crewmen (including Romelashvili) from Georgian Tank 406 remain missing, the person featured on the video in question was not recognised by Romelashvili’s mother as either of the two sons she lost during the August 2008 conflict.

The final position of the experts in the matter of Tank 406 is that it was completely destroyed on 8 August 2008 during the Georgian attack on Tskhinvali. The remains of the crew members were not readily recoverable. Indeed, photographs of the suspected remains of Tank 406 and two other destroyed Georgian tanks in close proximity indicate that the remains of the soldiers inside would have been almost completely destroyed. A witness has indicated having seen on 9 August 2008 a part of a human breast with the name “Sukhitashvili” printed on the cloth surrounding the flesh. In the aftermath of the destruction of those tanks, remains were allegedly subject to recovery and cremation.

A. The case of Alan Khachirov, Alan Khugaev and Soltan Pliev

Background

1. The case of the disappearance of Alan Khachirov, Alan Khugaev and Soltan Pliev was brought to the attention of the Commissioner for Human Rights by the de facto Ombudsman of South Ossetia, David Sanakoev, on 22 October 2008. According to the de facto authorities of South Ossetia, the three persons (ethnic Ossetians aged, respectively, 15, 19, and 25 at the time) were “illegally arrested” by Georgian forces on 13 October 2008 on the road between the villages of Korkula and Khelchua. However, the Georgian authorities have categorically denied that the persons concerned were arrested by or placed in the custody of Georgian forces.
2. The road on which the persons concerned were last seen is on or in the immediate vicinity of the administrative boundary line (cf. Appendix II). According to all the information at the disposal of the experts, the situation in the area during the time of the disappearance was extremely fragile in terms of security. By 10 October 2008, i.e. a few days before the disappearance of the three persons, Russian military forces had withdrawn from the former “buffer zone” adjacent to the administrative boundary line. The Commissioner was regularly receiving information about apprehensions and/or kidnappings on both sides in the areas close to the administrative boundary line during the autumn of 2008; the information came from various sources, including the Georgian authorities, the de facto authorities of South Ossetia, the Russian authorities, as well as international and non-governmental actors. The information subsequently obtained by

the experts revealed that Lev Tekhov, Oleg Gigolaev and Pavel Tekhov were among the persons apprehended or arrested by Georgian law enforcement officials during that period in the area in question.¹

3. Sometime in March or April 2009, a video was posted on the Internet² showing the three persons as sitting or cowering, looking frightened and dishevelled while being subjected to what appears to be a threatening and violent interrogation. Although the quality of the video is grainy, no one has disputed that the three persons shown are Alan Khachirov, Alan Khugaev and Soltan Pliev. As for the interrogators, their faces are not visible in the video, but their voices can be heard.

Information flows and evidence of first complaint

4. The mother of Alan Khachirov informed the experts that she first approached the authorities in Tskhinvali on 16 or 17 October 2008 to report the initial details about the three missing persons. On 20 October 2008 she remembers attending the office of the (de facto) Minister of Internal Affairs of South Ossetia, Mikhail Mindzaev, and further describing her concerns about her missing son and the two other young men.
5. As already indicated, the Commissioner for Human Rights first received information about this case on 22 October 2008 from the de facto Ombudsman of South Ossetia.
6. On 28 October 2008, the Georgian Young Lawyers' Association (GYLA) addressed a letter to the Georgian Ministry of Justice, and in particular to a representative of the penitentiary system, seeking information on some seventeen individuals, including Khachirov, Khugaev, and Pliev. The letter sought information under Sections 37, 38 and 40 of the General Administrative Code of Georgia as to the location and status of each of the seventeen persons. The reply dated 30 December 2008 addressed by an official of the penitentiary system to GYLA appeared to indicate that the authorities were not obliged to give a response to GYLA's query.
7. On 31 October 2008, an EUMM patrol conducting checks related to the destruction of a bridge near the administrative boundary line was requested by a (de facto) South Ossetian officer to find out where Khachirov, Khugaev and Pliev, who had disappeared earlier that month, were being detained. The same appeal was made to an OSCE patrol. Such requests were repeated by de facto South Ossetian officials to the EUMM on 1 and 6 November 2008. On 8 November, a meeting took place between a Russian military official and the Deputy Head of the EUMM, where the issue of the three missing persons was raised.

The investigation

8. A criminal investigation was opened by the Georgian authorities on 20 June 2009 into the "unlawful detention" (Section 143 of the Georgian Criminal Code) of Khachirov, Khugaev and Pliev, i.e. more than seven months after the date they went missing (13 October 2008). The experts were able to examine the original criminal case file (case number 074098089).
9. As of 9 March 2010, the file consisted of 44 pages, a substantial part of which consisted of correspondence, in particular with the Georgian Young Lawyers' Association (GYLA) and the Public Defender (Ombudsman). Nine pages of the file related to the investigative actions undertaken, which comprised a request dated 29 June 2009 to declare the vehicle³ in which the three went missing as stolen, and the handwritten statements taken from four witnesses in November 2009.
10. Each of the witness statements was a negative one, i.e. a statement testifying to what the witnesses had not seen or heard, and indicating that they could not remember what they were doing on the date of the disappearance of the three persons. By way of example, one of the statements records a witness as saying:

¹ Lev Tekhov and Oleg Gigolaev were apprehended on 14 October 2008 on the road between the villages of Zemo Korkula and Khelchua, and Pavel Tekhov (the brother of Lev Tekhov) was apprehended the following day (15 October 2008) near the police checkpoint in Koshka.

² The video can still be viewed at Rustaveliave, <http://www.youtube.com/watch?v=SUczCfP6EI4>

³ The car was a "Laguna blue" (blue-green) "Lada" model VAZ-21099, belonging to David Khugaev, the father of Alan Khugaev.

"I have not met anyone of Ossetian origin nor have I heard anything about the military persons. I did not meet any Georgian military persons or police officers, nor did I see anything. I shall also answer that I have not seen any Georgian military persons leave any civilians of Ossetian nationality or any other persons of another nationality or military persons. I have not seen anyone in the police department; I shall also answer the question that I do not know Alan Khachiev, Alan Kegoev or Ruslan Pliev [sic]. I have never heard of such names or surnames. I also submit that on 13 October 2008 I do not remember exactly what I was doing during the whole day."

And another witness's statement contains the following:

"On 13 October 2008 I don't remember in particular what I was doing, or where I was, but presumably I was at home all the time and didn't go out, because I had only housework to do. On that question I can answer you that in that period I didn't meet or see people of Ossetian nationality in camouflage or civilian clothes, nor have I seen or heard from someone that in that period police or military soldiers detained any people of Ossetian nationality in camouflage or civilian clothing, nor have I seen that detained Ossetians or Georgians were taken somewhere to a police station, nor have I heard something similar from someone, because as I have mentioned I am always at home."

An excerpt from an interview from yet another witness follows:

"On the questions asked by you I can answer that in October 2008 and particularly on 13 October and after that I haven't been near the village of Disevi of Gori region or its surroundings, nor near the territory controlled by us, nor South Ossetia - that means after the war was over I stayed all the time in Tbilisi. I don't know anything about the incident that took place on 13 October 2008 near the village of Disevi. Also I don't know whether some Ossetians or people of other nationality were detained by Georgian law enforcement."

The experts consider that the last sentence of the latter statement is strongly indicative of knowledge by Georgian investigators that there had been allegations implicating Georgian law enforcement officials in the detention of the three.

11. Only one of the statements records that the witness interviewed was aware that Alan Khachirov, Alan Khugaev and Soltan Pliev had gone missing in October 2008. The witness describes being contacted during the summer of 2009 by David Khugaev, the father of Alan Khugaev, who sought help in the clarification of the fate of the three. The witness is recorded as stating: *"I explained that in case they have been detained, they would be alive. Other than that I told him that I could not help them or find out anything for them [...] I submit that I have never visited the village in October 2008. I know nothing about the detention of the three Ossetians and I know nothing about their fate."*
12. The case file did not contain any information as to how the four witnesses came to light, or details of how or when contact was established with them by the investigating authorities.⁴ It was also unclear from the file why statements from these witnesses were taken only in November 2009, i.e. more than a year after the three persons went missing.
13. The letters from GYLA to the Chief Prosecutor⁵ contain various requests for information or recommend that specific investigative actions be undertaken. In particular, GYLA raised the following questions: whether Khachirov, Khugaev and Pliev were detained by Georgian law enforcement officials; if so, on which basis and where; whether a criminal investigation was initiated into the disappearance of the three; if so, to identify the authority in charge of the investigation and to specify under which articles of the Criminal Code the investigation was initiated; queries about the Georgian military, police, or other government forces stationed around the villages of Korkula, Khelchua and Disevi; whether government forces conducted any

⁴ When the experts sought clarification on this question, they were informed by Shida Kartli Regional Prosecutor Gela Mamaladze that the information had been received from an independent humanitarian organisation via a senior law enforcement official from Gori.

⁵ The letters were dated 19 March and 21 April 2009.

special operations in those areas, as well as the type of operations conducted and whether any arrests were made; the governmental bodies supervising any special operations, and whether the operations were concluded in line with domestic and international standards; a request that all individuals involved in such operations be questioned; that a search to locate the missing persons be undertaken, starting from the area where the disappearance occurred; to identify and question potential local witnesses from Korkula and Khelchua; to search for the car used by the disappeared persons and to include its description and registration information in the police database on missing or stolen vehicles; to identify the officers who arrested Lev Tekhov on 14 October 2008 and to indicate where he was held; and to conduct an expert analysis of the video recording showing the missing three, notifying GYLA beforehand so that further questions can be submitted in this regard.

14. The experts consider that the queries submitted by GYLA contain a number of very pertinent ideas for generating information about the three missing persons, which would have warranted thorough follow-up. However, as of 9 March 2010, the criminal investigation file did not contain any information which would confirm that GYLA's queries were answered or, indeed, that any action had been taken in response to some of GYLA's most significant recommendations or suggestions (e.g., expert analysis of the video, identification of military and police forces stationed in the area of interest, etc.).
15. At a meeting with the experts on 17 March 2010, the Shida Kartli Regional Prosecutor informed the experts that the testimony of the mothers was required to allow the investigation to proceed further. The experts acted promptly to facilitate this.
16. The experts received information that the mother of Alan Khachirov had addressed a letter to the Chief Prosecutor of Georgia following her son's disappearance, in which she alleged that a certain police officer - whom she named in the letter - was involved in the detention of her son and the two other young men.⁶ The experts noted that a copy of this letter was not included in the criminal investigation file, nor was there any reference to it.

The "unofficial" investigation

17. The experts were also informed about an "unofficial" investigation which preceded the official criminal investigation outlined above. A summary of this unofficial investigation can be found in an undated letter or memorandum addressed by Lieutenant Colonel Vladimer Jugheli, Head of the Regional Main Division of the Shida Kartli Police to Mr Shota Utiashvili, Director of the Informational and Analytical Department of the Georgian Ministry of Internal Affairs.⁷ The foregoing document ("unofficial investigation report") refers to steps taken following receipt of information in November 2008 from the Russian authorities about the disappearance of Khachirov, Khugaev, and Pliev. However, this unofficial investigation report was not part of the file of the official criminal investigation described in the previous section, nor was it referenced in any way.
18. According to the unofficial investigation report, the leadership of the Shida Kartli police met the Russian authorities at Ergneti two weeks after first receiving information about the disappearance (presumably, either in November or in December 2008). It is noted that the parents of the missing persons were also present at the meeting and asked for help in finding their sons, and that the leadership of the Shida Kartli police asked the relatives to convey any news received from the Russian authorities. Whereas the report indicates that "due to the fact that the incident took place on the territory controlled by the Russian party we were not able to launch the criminal case", an "operative research group" comprising seven police detectives was nevertheless established, "by the order of the authorities", to investigate the case.
19. The steps taken by the operative research group, as outlined in the unofficial investigation report, were the following: distribution of photographs of the missing persons to all police departments and of the vehicle data to the Patrol Police; sending an instruction to police

⁶ The contents of this letter were discussed by the EUMM with Shalva Tramakidze, Deputy Head of the Shida Kartli Regional Police, on 17 November 2009 (cf. Patrol report of the EUMM Field Office in Gori dated 17 November 2009).

⁷ The document was signed by the Head of the Shida Kartli Police, however his deputy was responsible for running the "unofficial investigation".

departments throughout Georgia to inspect hospital admissions records for the missing persons and to check information on parking violations with a view to locating the vehicle; questioning of 85 % of the population of the villages of Mereti and Ditsi;⁸ checking prisons and pre-trial detention establishments; and inspection of several places (of deprivation of liberty) in the Kaspi and Kareli region as well as the prison in the Gldani district of Tbilisi, as suggested by the relatives of the missing three. The report notes that the foregoing steps did not bear results.

20. The unofficial investigation report further notes that, after the video showing the missing persons was uploaded on the website www.osinform.ru at the end of April 2009, another meeting was held with the participation of Russian and Georgian representatives, as well as the relatives of the missing persons. According to the report, "the investigators' group was assigned to undertake an expert analysis of the video and the recordings of the conversation of the police officers who had been working on the checkpoints close to Korkula and Khelchua at that time."
21. This expertise resulted in the following assessment on the part of the Shida Kartli police leadership: "The investigator on the video seems to be Ossetian. And after all this the Ossetian party blamed us in keeping these people under arrest or at least doing nothing to find them." In response to allegations made by the Ossetian representatives that the missing persons were held in police departments in Mereti or Ditsi, the report notes that such information "could not be correct for the simple reason that neither Ditsi nor Mereti police departments existed in October-November 2008. These departments were handed over to our side and reconstructed by us in January 2009".
22. However, reports relating to October 2008 from international observers, including EUMM and OSCE, contain a considerable amount of detailed information that undermines the veracity of the previous quote (cf. paragraphs 25, 26 and 27 as well as footnotes 10 and 11 below).
23. The unofficial investigation report concludes that, while the Shida Kartli police leadership was ready to verify any new information provided by Russian or Ossetian representatives, "Pliev, Khugaev, Khachirov and their vehicle VAZ 21099 are not and have never been on the territories controlled by the Georgian Ministry of Internal Affairs."

Information collected by the experts from different sources

Reports by international monitors

24. The case of the missing Khachirov, Khugaev and Pliev was brought to the attention of the European Union Monitoring Mission (EUMM).⁹ The EUMM distributed photographs of the three persons to the Georgian authorities and actively sought to clarify this case, including by seeking information from the Georgian, Russian, and de facto South Ossetian authorities.
25. The patrol reports of the EUMM confirm that, following the withdrawal of the Russian forces from the former "buffer zone", there was a significant redeployment of Georgian police resources in the areas adjacent to the administrative boundary line. In particular, the patrol reports of October 2008 note the presence of police checkpoints and police stations in the Ditsi, Koshka, and Mereti area of interest and record their GPS coordinates; these locations largely match those recorded more recently by the experts for police stations and checkpoints in the same area of interest. Georgian police officers from these checkpoints and police stations are recorded as informing EUMM members about various incidents, such as detentions of South Ossetians, assaults and crimes perpetrated against ethnic Georgians, as well as night-time attacks on their own posts by Russian or de facto South Ossetian forces.

⁸ The experts were informed by the Deputy Head of the Shida Kartli Police that he had personally spoken to 5000 persons about this matter.

⁹ The mandate of the EUMM includes contributing to stabilisation, by monitoring, analysing and reporting on the situation pertaining to the stabilisation process, centred on full compliance with the Six Point Agreement, including troop withdrawals, and on the freedom of movement as well as on violations of human rights and international humanitarian law. The EUMM is an unarmed monitoring mission with no executive powers, and its mandate does not foresee the possibility for EUMM monitors to conduct investigations.

26. Some of the EUMM patrol reports also recorded the names of police officers with command responsibilities at these posts. For example, an EUMM report dated 9 October 2008 refers to a visit to Mereti Georgian Police Station, which records the name of the officer in charge and quotes the officer as saying that there were 17 Special Tasks Police officers and eight regular Police officers. The same report refers to a visit to Ditsi Georgian Police Check Point, noting the presence of eight Police officers and nine Special Tasks Police officers, and recording that the officer in charge informed the EUMM of the arrest of five Ossetians the previous evening (8 October 2008) and their subsequent transport to Gori to be charged with looting. Another EUMM patrol report mentions a different officer in charge at Mereti Police Station on 20 October 2008, and records the manpower on that date as 20 officers, including ten regular Police officers and ten Special Tasks Police officers. This information would appear to contradict the assertion made in the unofficial investigation report (cf. paragraph 21 above) – as well as the statements that were made repeatedly to the experts by certain of the Georgian officials - to the effect that police departments in Mereti and Ditsi did not exist in October-November 2008.¹⁰
27. The experts were also able to review the relevant daily patrol and weekly activity reports by the Organisation for Security and Cooperation in Europe (OSCE), and noted with interest an entry in the daily patrol report for 14 October 2008, relating to “the central area of the former [Joint Peacekeeping Force’s Area of Responsibility]”, i.e. the areas of Gori, Ditsi, Arbo, Mereti, and Tkviavi: “Ditsi: The patrol noted a new police CP [checkpoint] on the Tirdznisi-Ditsi road [...] **The patrol was informed by the police that 3 armed South Ossetian males were detained in Ditsevi [sic] on 13 October and had been transferred to Gori** (emphasis added).” Based on all the information at their disposal, the experts believe that this is a direct reference to Khachirov, Khugaev, and Pliev.¹¹

Interviews with relatives of the missing and other witnesses

28. The experts interviewed the families of the three missing persons and a number of other witnesses in the relevant area. The following narrative emerges from those accounts: On 13 October 2008, Alan Khachirov, Alan Khugaev and Soltan Pliev left their respective homes. At approximately 10 a.m., Khachirov’s friends saw him getting into the Laguna blue “Lada” (model VAZ-21099) car belonging to David Khugaev, the father of Alan Khugaev. According to Alan Khugaev’s parents, their son had the intention of visiting his grandfather in the village of Kvemo Makhis, a journey which would entail a round-trip drive of up to five hours in normal conditions. Sometime between 11 a.m. and noon the car was seen travelling in an easterly direction through the village of Khelchua towards Disevi. Khugaev was seen to be driving. Local Ossetian villagers who were witnesses to the travel of the three through Khelchua spoke to the experts of the fragile security situation in the area in October 2008 and indicated that they would have been greatly reluctant themselves to embark on such a journey at that time.
29. Later that day, between 1 and 3 p.m., the vehicle was seen travelling in the opposite direction, from Korkula towards the villages of Koshka and Disevi. A witness states that he saw the young men standing next to the car near Korkula. He recalls that each was carrying a Kalashnikov rifle. After a short conversation, the vehicle and its occupants departed in the direction of Disevi.
30. The parents of the three missing persons gave the experts certain information which they had not witnessed directly, but had obtained through second-hand accounts. The information that they had obtained indirectly included allegations implicating serving Georgian police officers in the apprehension and detention of their sons. One of the police officers named by the relatives previously served and resided in the area of Kurta, one of the villages in the area north of

¹⁰ Cf. also in this regard an extract from an EUMM patrol report of 21 April 2009: “[In Mereti], we got in contact with local dwellers who informed us that before the conflict which occurred last year, police acting in Mereti was located in Kurta and Eredivi cities which are nowadays on the S[outh] O[ssetia] side. During the conflict, those police officers were all gathered in Tbilisi. Then, after 10 October 2008, when the Russian troops left [...], Mereti police station was settled in an old house which has been renewed later. Currently, this building is still the location of Mereti police station. To sum up, there has never been any former police station building in Mereti, only the current police station building”.

¹¹ Moreover, the experts have noted that a further OSCE daily patrol report, concerning 18-19 October 2008, indicates that the Deputy Head of the Georgian Ministry of Internal Affairs Special Forces Police Regional Headquarters fully confirmed to OSCE patrol members “the information contained in the OSCE report regarding the Arbo / Mereti area”.

Tskhinvali, which was under the control of the Georgian authorities prior to the August 2008 conflict and which had been destroyed.¹²

31. On 25 March 2010, parents of the missing three appeared before the prosecutor in Gori, where they largely reiterated the information they had conveyed earlier to the experts.

The video

32. As already indicated, in March or April 2009, a video was posted on the Internet featuring Alan Khachirov, Alan Khugaev and Soltan Pliev in a situation of detention or captivity, apparently being subjected to a violent and threatening interrogation. Inquiries reveal that the video first appeared on the website "Myvideo.ge" and was posted by someone using the pseudonym "kmac". The experts consider it to be self-evident that the transcript of this video and an examination and analysis of its provenance are vitally important to any cogent investigation into the disappearance of the three missing persons.
33. When the experts first reviewed the criminal investigation file (9 March 2010) into the unlawful detention of the three missing persons, the file did not contain a transcript of the video, nor did it contain any analysis of where the video was first publicised. On 22 April 2010, the experts were informed by Georgian prosecutorial authorities that the video was being processed for noise reduction, which would take about two weeks and a transcript could be produced afterwards. Nevertheless, the Georgian authorities did not produce a transcript of the video - which first came to their attention at the end of April 2009 – until 18 May 2010. Clearly, the manner in which this important aspect of the investigation was proceeding can hardly be described as expeditious.
34. On 10 June 2010, one of the experts was given access by the Georgian authorities to the criminal file which had been supplemented with a forensic analysis document relating to the video. Two important, but somewhat contradictory, excerpts from the document are quoted herewith: *"In the parts where phonograms are audible, there is a featured intonation, sequence of speech, answer-question is matched in the context. The acoustic disturbance is even, there are no cuts when listening to the phonogram."* And further: *"Based on the analysis conducted, it has been established that the record is not an original and there are some amendments made to it via the digital processing. Three major changes have been registered in the phonogram phase and in background in lower frequencies"*.¹³ There is no further analysis or comment on this point.
35. According to the information obtained by the experts, the persons interrogating Khachirov, Khugaev and Pliev in the video appear to be native speakers of the Georgian language. The experts are not convinced by assertions that the interrogators are Ossetian. One of the voices speaking in Georgian can be heard saying, apparently about the captives Khachirov, Khugaev and Pliev, that they have "already [expletive] our boys", which is presumably a reference to violent actions undertaken by opposing forces during the August 2008 conflict.
36. The father of Soltan Pliev, who is himself called Soltan (Rostik) Pliev, indicated to one of the experts that he recognised the voice of one of the interrogators from the video. This information was conveyed by the expert to the Georgian authorities.

Interviews with Georgian law enforcement officials

37. The experts discussed the case of the missing Khachirov, Khugaev and Pliev with a number of Georgian law enforcement officials at different levels in the Shida Kartli area, including Special

¹² The report of the Independent International Fact-Finding Mission on the Conflict in Georgia (IIFFMCG, commonly referred to as the "Tagliavini Report" after the Head of the IIFFMCG, Ambassador Heidi Tagliavini) concluded inter alia that several elements suggested that ethnic cleansing was carried out against Georgians in South Ossetia both during and after the August 2008 conflict, and noted that Kurta was among the villages which had been burned down and were completely uninhabited. Cf. also paragraph 27 of the report on the Humanitarian consequences of the war between Georgia and Russia by Corien Joncker, Rapporteur of the Committee of Migration, Refugees, and Population of the Parliamentary Assembly of the Council of Europe (PACE), which notes that Eredvi was among the destroyed villages east of Tskhinvali formerly populated by ethnic Georgians. As already mentioned in footnote 10, some of the police officers deployed to Mereti after the withdrawal of the Russian troops came from Kurta and Eredvi.

¹³ National Forensics Bureau, 'Conclusion No. 5631/02/6 on phonoscopic and image expertise', 18 May 2010, p.4.

Tasks Police officers. To the surprise of the experts, with the exception of the Head and Deputy Head of the Shida Kartli Police, all the officials they interviewed indicated that they had not seen any photographs of the missing persons, and that they had only a vague notion about the case, having heard about the Internet video. A senior officer with responsibility for Special Tasks Police in the area in question in October 2008 indicated (on 2 March 2010) that he had not heard about the case at all, and another senior Special Tasks Police officer who also had responsibility for that area in October 2008 indicated (on 8 April 2010) that he had learned about the case only recently, from television.¹⁴

38. The experts have serious doubts about the veracity of information regarding police deployments in October 2008 near the area of interest, which they were receiving from a number of Georgian law enforcement officials. Some of those officials denied that there had been Georgian police deployments of any significance along the administrative boundary line, despite the overwhelming evidence to the contrary, including from contemporaneous reports from international observers¹⁵ and, indeed, public statements dating from October 2008 by the Georgian authorities themselves about the re-assertion of control over the former “buffer zone”. In addition, the experts would like to stress that the very fact that the Georgian authorities were carrying out a series of apprehensions of persons along the administrative boundary line during October 2008 necessarily presupposes a significant presence of law enforcement or other security officials in the relevant area.
39. The variation in the accounts the experts obtained from the Georgian authorities as regards police deployments in October 2008 is indicative of a lack of reliability of this information. For example, one account was that police stations and checkpoints had not been operational, and that special tasks police forces were based in Karaleti and did not venture into other areas unless there was a particular assignment. Certain senior law enforcement officials indicated that no police work had been conducted in the period between August 2008 and January 2009, which is when police stations in Ditsi, Mereti and other places close to the administrative boundary line were said to have opened. Another account was that prior to January 2009, Georgian police were in the areas concerned but were unarmed. Subsequently, the experts were told that police stations and checkpoints were indeed partly operational, but only during the day, and that each was serviced only by one police vehicle. In addition, they were told that police which had - prior to the conflict - been stationed in Kurta (the area near Tskhinvali from which ethnic Georgians had been forced to flee) had not commenced their duties in Ditsi and other areas adjacent to the administrative boundary until January 2009 and that it was police from Gori who were assigned to those areas during the autumn of 2008. A certain officer maintained that he could not remember where he was posted during the period between August 2008 and January 2009, even though there were reports by international observers providing specific details on this matter. Moreover, the officer concerned – who was stationed in a village in the area of interest – insisted that he did not know who was in charge of the police in his area of responsibility prior to his arrival at the beginning of 2009. Another officer named in contemporaneous EUMM reports as being posted in a particular place also denied this when contacted by his superior on behalf of the experts.
40. Two possible theories regarding the fate of Khachirov, Khugaev and Pliev were advanced by the leadership of Shida Kartli Police in their discussions with the experts: that the three persons were accidentally killed or taken captive by Russian or South Ossetian forces due to the fact that they may have been wearing Georgian military uniforms; or that they had been killed by local villagers who sought to avenge, prevent or retaliate against acts of plundering. The experts consider the first theory to lack validity, as the vehicle driven by the three was clearly marked with Russian number plates designating the vehicle as registered in South Ossetia, and was known by many people in the area to belong to David Khugaev, the father of Alan Khugaev. In the view of the experts, the second theory bears some examination, but should be taken together with the very strong circumstantial evidence which shows that the three were taken into custody by Georgian law enforcement officials on 13 October 2008.

¹⁴ At a meeting with various Georgian authorities on 19 April 2010, the experts were informed that photographs of the three missing persons had been posted in police stations in Kaspi, Kareli, and Gori (cf. also paragraph 19 above).

¹⁵ Cf. paragraph 25, 26 and 27 above.

Other relevant incidents

41. In order to shed light on the circumstances of the disappearance of Khachirov, Khugaev, and Pliev, the experts scrutinised the available information concerning other incidents in the area of interest at the time in question. They noted that several persons were apprehended in the area of interest between 10 and 15 October 2008. By way of example, on 14 October 2008, Lev Tekhov and Oleg Gigolaev¹⁶ travelled on the same stretch of road where Khachirov, Khugaev and Pliev had been seen on the previous day. Travelling towards Disevi, Tekhov and Gigolaev were stopped and detained by the Georgian authorities in the vicinity of Disevi and Koshka, in an area with orchards.
42. Lev Tekhov has alleged that he and Gigolaev were stopped by a large number of persons who appeared to be Georgian Special Tasks Police officers and after a short period of detention near an abandoned house was made to walk to the nearby village of Koshka. According to Lev Tekhov, the two were then taken by vehicle via Koshka, Mereti, Arbo and "Kord" (Kordi) to an area near Ditsi where he feared he would be executed, because of threatening remarks allegedly made by the police officers, who reportedly carried firearms with silencers. Lev Tekhov further alleged that one of the officers then received a telephone call, following which they were driven to Gori; during this part of the journey, he and Gigolaev were reportedly treated correctly by the officers. In Gori, the two persons were reportedly interviewed by the Georgian police. Later that night, the two persons were taken to Koshka and released.
43. It emerges from EUMM reports that around 2 p.m. on the same day as the apprehension of Lev Tekhov and Oleg Gigolaev (14 October 2008), three ethnic Georgians - two men and a woman from the same family - were abducted while working in their fields. The persons who abducted them were a group of some ten South Ossetian armed persons, who reportedly beat their captives and brought them across the administrative boundary line into South Ossetia. The Georgian police informed the Russian forces in South Ossetia, and following a Russian intervention two of the ten abductors were arrested. Moreover, it would appear that preparations were under way for a release of the three abducted Georgians when an EUMM patrol visited Koshka at approximately 4 p.m. on the same day and noted the presence of some 20 Georgian police officers and two Russian military officers. During their short period of captivity, the three Georgians allegedly spoke to Pavel Tekhov, the younger brother of Lev Tekhov.¹⁷
44. Georgian law enforcement officials confirmed to the experts that Lev Tekhov and Oleg Gigolaev had been apprehended in the village of Koshka, and that they were taken to Gori and subsequently released over the administrative boundary line at Koshka. However, the Georgian officials maintained that only four police officers detained Tekhov and Gigolaev, and that they were ordinary police officers, not special tasks police. Furthermore, the officials indicated that Tekhov and Gigolaev were taken directly from Koshka to Gori, without any detours or stops.
45. Despite the acknowledgement by Georgian officials that Lev Tekhov and Oleg Gigolaev had been deprived of their liberty by the police, the experts noted with concern that this fact did not feature in any Georgian police records relating to the period of October 2008.

Further steps proposed by the experts in the course of their work and follow-up action

46. The Terms of reference of the experts provided that they would monitor investigations and assist the relevant officials in clarifying the cases of missing persons, including by providing advice on methodology and further direction of the investigation. The following paragraphs contain a summary of the main proposals and recommendations on the case of the missing Khachirov, Khugaev, and Pliev made by the experts to the Georgian authorities in the course of their work in Georgia, as well as of the follow-up action taken by the Georgian authorities. They also summarise the proposals and recommendations of the experts addressed to the

¹⁶ The persons are ethnic Ossetians. Oleg Gigolaev lost his life some weeks later, in a sniper attack on 5 November 2008 around the village of Korkula close to the administrative boundary line.

¹⁷ Interview of experts with Pavel Tekhov, 6 and 23 March 2010. Pavel Tekhov was himself detained the following day at the Georgian police check point in Koshka, reportedly by Special Tasks Police officers (in his words, "Spetsnaz") originating from Kurta - an area north of Tskhinvali formerly populated by ethnic Georgians, who were forced to flee during the August 2008 conflict - and subsequently charged with possession of a hand grenade.

Russian authorities and to the de facto Ombudsman of South Ossetia, and indicate whether follow-up action was taken. The experts discussed their recommendations directly with representatives of the Georgian Ministry of Internal Affairs, prosecutors and representatives of the Ministry of Justice, as well as with the de facto Ombudsman of South Ossetia and Russian officials where relevant. A number of the experts' requests were reiterated in a letter dated 21 May 2010 sent by the Commissioner for Human Rights to the Georgian Permanent Representative to the Council of Europe.

47. On 16 and 18 March 2010, the experts recommended that a financial reward be advertised for information leading to the discovery of the three missing persons, based on the premise that the prospect of a substantial remuneration may motivate someone to reveal the location of the persons concerned.¹⁸ The experts emphasised that a reward should only be paid upon confirmation of results, and that anonymity would be guaranteed to the person(s) providing information. This recommendation was ultimately not taken up.
48. As already indicated, on 25 March 2010 the mothers of Khachirov, Khugaev and Pliev crossed the administrative boundary line and went to Gori to give testimony in the case of their missing sons before the prosecutor. The experts initially raised this possibility with the Georgian Ministry of Internal Affairs on 8 March 2010. The Georgian authorities accepted this initiative, and the experts began taking steps in cooperation with the Georgian authorities to put the necessary arrangements in place. This was the first time the families could speak for the official record of the investigation, and was therefore a very important event and a major impetus to the investigation. While they would not wish to diminish the importance of this achievement, the experts would nevertheless like to highlight certain shortcomings which blighted the process and which should be avoided in future.
49. Given the circumstances and sensitive nature of the case, the experts were conscious of the potential of the witnesses to be intimidated were they to give testimony in police premises in Gori. The experts therefore sought on 17 March 2010 the agreement of the Shida Kartli and Mtskheta regional prosecutor, Gela Mamaladze, to allow the mothers to give testimony at the prosecutor's office in Gori. Whereas Mr Mamaladze initially indicated to the experts that this would be the case, he subsequently informed them via e-mail (18 March 2010) that the mothers would be interrogated "in the police station with the [attendance] of prosecutor as we have agreed during the meeting in my office".
50. In the end, the mothers gave their testimony to the prosecutor in police premises in Gori, in an environment which could be fairly described as highly intimidating. Initially, a prosecutor objected to the presence of the experts in the room; fortunately, this disagreement was resolved, as it is highly doubtful that the mothers would have given their testimony had the experts been prevented from being present. At one point, the mother of Alan Khachirov was faced by eight men in the room - including police officers, some of them visibly and demonstratively armed - as she gave her statement detailing her beliefs with respect to the circumstances of her son's disappearance and the persons suspected by her to be responsible for his fate.¹⁹
51. Whereas it was positive that an interpreter was provided to the witnesses during the statement-taking process, there was no read-back of the statements which were being recorded by hand in the Georgian language, and the witnesses were merely asked to sign the handwritten statements which were not readily comprehensible to them.
52. On 2 April 2010 the experts made the following recommendations to the Georgian Ministry of Internal Affairs, which were subsequently confirmed in writing on 5 April 2010: that information be collected on police officers who were stationed at Koshka, Mereti and Ditsi between 10 and 15 October 2008; that the officers be interviewed by authorities, the interviews be audio and video taped and voice comparisons be made to the voices heard on the video recording showing the three missing persons; that particular attention be paid to those officers stationed in the above-mentioned area who had come from the area of Kurta; that a specific Georgian

¹⁸ It is not unusual for the Georgian Ministry of Internal Affairs to post a reward for information leading to the capture of a fugitive or to the clarification of the fate of a person who has disappeared.

¹⁹ Cf. in this regard paragraph 16 above.

police officer be interviewed about this matter, based on the allegations made by the family in respect of his alleged role in the detention of the three; that the evidence provided by the experts from other witnesses concerning events on 13, 14 and 15 October 2008 be formally taken into account; that a professional transcript and analysis be made of the video recording featuring the missing three; that DNA from the parents be accepted and kept on record for future comparison if necessary; and that all interviews on this matter be video- and audio-taped henceforth.

53. On 16 April 2010 the experts recommended to the Georgian authorities that the parents of Khachirov, Khugaev and Pliev be given the status of victim in the matter of their missing sons. After an initial refusal, this was implemented on 14 June 2010, when the mothers of three missing persons were formally granted the status of victim pursuant to Section 68 of the Georgian Code of Criminal Procedure. Obviously, this development is of major importance to the investigation process.²⁰
54. An additional recommendation made by the experts on 16 April 2010 concerned the need to obtain call charge records for the telephones belonging to the missing persons, which would help to shed further light on their whereabouts and movements at the time they went missing.
55. During a further meeting between the experts and various Georgian officials on 19 April 2010, the experts stressed that a much more energetic and proactive approach was needed in this investigation. It was agreed during that meeting that some fifteen law enforcement officials would be interviewed in the context of the investigation, including the officers who detained Lev Tekhov and Oleg Gigolaev, and those who patrolled the area in and around Ditsi, Koshka and Mereti from 10 to 15 October 2008. The experts indicated that they would not wish to be present during all of those interviews, but they requested to be informed in advance when the interviews would take place so that they could observe some of them; the experts reiterated this point to the Georgian authorities the following day (20 April 2010). Nevertheless, the Georgian investigating authorities conducted the interviews with the law enforcement officials concerned and only informed the experts after the fact.
56. At the meeting of 19 April 2010, there was also agreement that court orders would be sought to enable the telecommunication interception of the officers concerned. The experts recommended a 20-day period of telecommunication interceptions and – in particular – highlighted that the interceptions should be in place prior to the interviews. It later became clear from the transcripts reviewed that the intercepts were only in place after the interviews with the relevant officers. Moreover, the flagrant lack of security of the intercepts greatly compromised the effectiveness of this measure, as was illustrated by the fact that uniformed police officers in Gori were perusing the intercept material at will, which was observed directly by one of the experts during a visit to this station on 19 May 2010.
57. The Georgian authorities did not accept the recommendation - which had been repeatedly made by the experts - that the interviews with those officers be video- and audio-recorded.
58. At their meeting of 19 April 2010, the experts were also informed by the Georgian authorities that photographs of the three missing persons had been posted in police stations in Kareli, Kaspi, and Gori. The experts subsequently noted that the photographs were posted on the door of the duty office in Gori; however, since the door was usually open, the photographs were facing the wall and could not be seen most of the time.
59. A further major recommendation made by the experts on their meetings of 19 and 20 April 2010 with the Georgian authorities was that information be sought from the Georgian Internet

²⁰ The European Court of Human Rights has held in its case-law on Article 2 of the European Convention on Human Rights (the right to life) that any investigation into a suspicious death or disappearance must be “accessible to the victim’s family”. Cf. for example *Asadulayeva and others v. Russia* (no. 15569/06, 17 September 2009): “These principles also apply to cases in which, although it is has not been proved that a person has been taken into custody by the authorities, it is possible to establish that he or she entered a place under their control and has not been seen since.” In the *Asadulayeva* case, the Court found that there was a violation of Article 2 of the Convention because inter alia “even though the third applicant [sister of the missing person] was eventually granted victim status, it transpires that she was not informed of any significant developments in the investigation [...] Accordingly, the investigators failed to ensure that the investigation received the required degree of public scrutiny, or to safeguard the interests of the next of kin in the proceedings.”

company ITDC concerning the available data about “kmac”, i.e. the person who first posted the video showing the three missing persons in custody or captivity. This matter was not pursued in a prompt or expeditious manner, and the experts are not aware of any results.

Assessment and final recommendations of the experts on the case of Khachirov, Khugaev and Pliev

60. Prior to the commencement of the monitoring by the experts, the official investigation file did not bear the hallmarks of an effective investigation. There was a multitude of significant and inexplicable delays as well as a striking lack of thoroughness. It was clear that the officials responsible for the investigation did not take a number of reasonable steps which should have been self-evident and many of which had been suggested to them by different actors.
61. Even more fundamentally, although there had been serious allegations implicating the involvement of Georgian law enforcement officials in the disappearance of Khachirov, Khugaev, and Pliev, there was hardly any attempt to safeguard the independence of the investigation. It is a very basic principle that officials involved in the operational conduct of an investigation should be independent from those who may be implicated. As far as the experts could ascertain, Georgian law can provide a suitable framework for ensuring accountability and applying the principle of independence.²¹ However, this presupposes that the requisite will exist.
62. Certain important steps were taken by the Georgian authorities following the advice of the experts, including allowing the possibility for the mothers of the disappeared persons to give testimony to prosecutorial authorities in Gori, and granting them the status of victim pursuant to Section 68 of the Georgian Code of Criminal Procedure.
63. However, other important recommendations made by the experts were not accepted by the Georgian authorities, e.g. regarding the promulgation of a reward for information leading to the discovery of the missing persons. Some recommendations received only a token or unjustifiably delayed response; examples of the latter included the granting of victim status to the mothers, which occurred some two months after the recommendation was first made by the experts, and which had met with an initial refusal. Furthermore, there were major delays in the carrying out of the forensic analysis of the video featuring the missing persons in a situation of apparent captivity or custody, and in the preparation of a transcript of that video.
64. Telephone intercepts of “officers of interest” only occurred after officers were interrogated, thereby diminishing the value of the information gathered. Moreover, the security of intercept material was not guaranteed, and other officers from the same units could access such material at will, as the experts themselves observed directly.
65. The experts could not identify an investigational strategy that was initiated or generated in this matter by the Georgian authorities independently of the experts’ own recommendations. Ultimately, there was little substantive progress toward officially clarifying the fate of the three missing persons.
66. The experts would therefore like to make the following final recommendations to the Georgian authorities regarding the case of the disappearance of Khachirov, Khugaev and Pliev:
 - The necessary steps to be taken to ensure that the investigation is fully independent, with reference *inter alia* to Sections 56, 62 and 105 of the Georgian Code of Criminal Procedure and in accordance with the principles for effective investigations developed in the case law of the European Court of Human Rights. At a minimum, the officials responsible for carrying out the investigation should not be from the same service form those who may be implicated in

²¹ Cf. Sections 56 (Prosecutor at the Stage of Preliminary Investigation), 62 (Departmental and Personal Investigative Jurisdiction), 63 (Territorial Investigative Jurisdiction), 105 (Circumstances Excluding the Participation of the Judge, Prosecutor, Investigator and Registrar in a Case) and 108 (Procedure for Submitting and Sustaining Petition of Challenge) of the 1999 Georgian Criminal Procedure Code, which was in force at the time of the disappearance of Khachirov, Khugaev and Pliev and throughout the mandate of the experts. Cf. also Section 62 (Self-Recusal) of the new Georgian Criminal Procedure Code (which was adopted on 9 October 2009 and is expected to enter into force in October 2010).

the investigation. The operational conduct of the matter should be transferred away from the Shida Kartli police. Ideally, those responsible for the operational conduct of this investigation should be completely independent from the agency implicated;

- The supervision of the investigation should be transferred away from regional prosecutorial authorities;
 - The investigation should examine the conduct of Georgian law enforcement officials, including Special Tasks Police, as well as any other Georgian officials, who were either witnesses in this matter or who had a responsibility or a role at any stage in information collection or the investigation related to the disappearance of the three missing persons;
 - The names of all police – including Special Tasks Police – who were on duty in or near Koshka, Mereti, and Ditsi between 10 and 15 October 2008 should be clearly identified;
 - The Commissioner of Human Rights should be informed about the activities of the new investigation;
 - The training of law enforcement officials to incorporate and continuously reinforce instruction on principles related to ethics, including the prevention of and accountability for violence against persons deprived of their liberty, corruption and other illegal behaviour;
 - Whenever someone is deprived of their liberty by law enforcement officials, whatever the reason or length of time – and even if the person is not placed in a cell - a proper and comprehensive record to be made.
67. The de facto authorities in Tskhinvali contributed little to the clarification of the fate of the three persons. In particular, many of the potential witnesses in South Ossetia had not been interviewed in the depth required. No technical inquiries had been undertaken by the de facto authorities with respect of the telephones of the missing persons – which were believed to be Russian registered mobile telephones – and no information could be obtained from the Russian authorities regarding the relevant call charge records and cell site location information. The experts consider that the foregoing data is of key importance to the investigation and would therefore recommend that the Russian authorities furnish this data - as well as any signal intercept material relevant to 13 October 2008 and the disappearance of Khachirov, Khugaev, and Pliev - to the Georgian investigative authorities. More generally, the de facto authorities in Tskhinvali and the Russian authorities should cooperate fully with any newly instituted and judicially supervised investigation launched by the Georgian authorities.

B. The case of Radik Ikaev

68. In the course of their work in Georgia the experts also looked into the case of Radik Ikaev (Ikaev) who disappeared in August 2008. This case had been brought to the attention of the Georgian Ministry of Justice and the Chief Prosecutor by the Georgian Public Defender (Ombudsman) and the Georgian Young Lawyers Association (GYLA). It had been alleged that prior to his disappearance, Ikaev had been captured by Georgian armed units and held in the Gori Department of the Military Police.²²
69. A representative of the Prosecutor's Office of Georgia confirmed to the experts that the case was being investigated by this Office (case number 074088079) and that it was part of a larger file covering all investigations relating to missing persons during the August 2008 conflict. The official further informed the experts that the Georgian authorities had received a video relating to the Ikaev case from the Georgian Public Defender and GYLA, but that the video was short (some 20 seconds), without audible sound, and "not exploitable".

²² Cf. "The Public Defender addresses the Prosecutor General regarding the disappearance of Radik Jambulov Ikaev", 1 June 2009, <http://www.ombudsman.ge/index.php?page=1001&lang=1&id=1066>. This case had been raised before the Commissioner by the de facto Ombudsman of South Ossetia.

70. The experts sought to assist the Georgian authorities in charge of the criminal investigation with a view to establishing the date, location and circumstances of Ikaev's disappearance as well as identifying those responsible for his alleged detention and disappearance. To this end, the experts obtained statements from Ikaev's relatives, as well as from four other witnesses. The experts provided these signed statements to the Georgian prosecutorial authorities (Investigation Division, Prosecutor's Office of Georgia).
71. The witnesses in question included three persons who were captured and/or detained with Ikaev between 7 and 22 August 2008. These three eyewitnesses directly witnessed Ikaev's capture by the Georgian army and subsequent detention in Gori and Vaziani.
72. Ikaev was a member of the de facto Ministry of Internal Affairs of South Ossetia. According to his wife, in August 2008, he was taking part in a 'volunteer defence group' assigned to the village of Veliti. She stated that she last saw him when he came to the village of Bakati-Kau²³ to attend a funeral on 7 August 2008; he stayed overnight and left on 8 August 2008 around midday after the large-scale hostilities had already started.
73. According to all the information at the disposal of the experts, on or around 10 August 2008, Ikaev was taken with about 18 other detained Ossetians to a military unit in Vaziani, in the vicinity of Tbilisi. Towards the end of August 2008, exchanges and releases of persons detained during the conflict began to take place. On 22 August 2008, Ikaev was taken to Igoeti by bus together with 13 other Ossetians who had, like him, been detained at the Vaziani barracks. Once in Igoeti, he and four other prisoners were ordered out of the bus and left to remain in Igoeti. The other detainees were taken back to Vaziani. Radik Ikaev has been missing since then.
74. In addition to confirming that Ikaev was captured by Georgian military personnel and subsequently detained in Gori and Vaziani, the three eyewitnesses (cf. paragraph 71 above) stated to the experts that Ikaev was then taken by bus from Vaziani to Igoeti, which is where he was last seen. One eyewitness, in particular, recalled talking with Ikaev on the bus that took him and other Ossetian prisoners from Gori to Vaziani. While this witness could not recall the exact date, he surmised that it was two to three days after he had himself been captured by the Georgian military forces on 9 August 2008. Another eyewitness, who was one of the detainees who were taken by bus to Igoeti and then returned to Vaziani, clearly remembered that event and that Ikaev was called to get out of the bus. Allegations were also made that Radik Ikaev had been seen by the witnesses, whilst in detention, displaying injuries indicative of ill-treatment. The eyewitnesses stated to the experts that they had themselves been subjected to "severe beatings" at the time of their capture and subsequently.²⁴
75. The experts were also able to locate on the Internet a better and more complete video than the one described by the Georgian authorities.²⁵ This video clearly depicts Ikaev, together with an elderly person, in custody of soldiers wearing Georgian military uniforms.²⁶ The Georgian flag is easily discernible on the sleeves of some soldiers, the Georgian language can be heard and the combat activity in the background suggests that the video could have been recorded on or about 8 August 2008. The video footage also contains potential additional identification features such as soldiers' shoulder patches which could help identify the military units involved. The experts communicated the Internet links to the video to the Georgian authorities.
76. In addition, the experts provided DNA samples from the relatives of Ikaev to the Georgian authorities for processing and comparison to unidentified bodies in their custody. These DNA samples were processed by the Georgian National Forensic Bureau and no matches were found with any other samples currently held.

²³ Veliti and Bakati-Kau are villages in the Znauri District.

²⁴ Cf. also "The Public Defender addresses the Prosecutor General regarding the disappearance of Radik Jambulov Ikaev", 1 June 2009, <http://www.ombudsman.ge/index.php?page=1001&lang=1&id=1066>, which notes that "[a]s the Young Lawyers Association explains, three persons of Ossetian nationality remember seeing beaten Radik Ikaev in the building of the Gori Department of the Military Police."

²⁵ The version located by the experts had audible sound and was nine minutes in duration, with the portion related to Ikaev about one minute and 35 seconds.

²⁶ The elderly person is an inhabitant of the village of Tsnelisi who was identified and interviewed by the experts. He confirmed that both himself and Ikaev are depicted on the video and that they had been captured and detained by Georgian military personnel. He was released from the military barracks in Vaziani a few days after his capture.

77. The Prosecutor's Office of Georgia agreed to receive the statements of the relatives and witnesses collected by the experts (together with the DNA samples from Ikaev's relatives). However, the experts received no reply from the Georgian authorities as to whether those witnesses would be interviewed, and whether the relatives would be granted the status of victims pursuant to Section 68 of the Georgian Criminal Procedure Code. The experts are also unaware whether the statements concerned were duly included in the investigation file, as they were not given access to this important material despite their repeated requests, which were reiterated by the Council of Europe Commissioner for Human Rights.²⁷ Moreover, while the experts were initially informed that a full criminal investigation would be carried out by the Georgian authorities provided that Ikaev's relatives submitted the proper legal application, subsequent proposals of the experts to facilitate this process were left unanswered.
78. Ultimately, the experts did not receive any concrete response to their recommendations and were not in a position to determine what actions, if any, the Georgian prosecutorial authorities had undertaken to follow up the information provided by the experts.
79. The experts consider that there cannot be any doubt that Ikaev was captured and detained by Georgian military personnel on 8 August in or near the village of Bakati-Kau in the Znauri District. It is also certain that he was subsequently taken to one of the lock-up wards of the Gori Police station, where he remained from 8 to 10 August 2008.²⁸ However, given the paucity of the information provided by the Georgian authorities, it is impossible for the experts to ascertain whether these clear indications implicating the responsibility of military and/or law enforcement personnel in the disappearance of Radik Ikaev have met with an adequate reaction. In other words, it is unclear whether the matter was being investigated effectively, with a view to establishing the circumstances of the disappearance and fate of Radik Ikaev and ensuring accountability of the persons responsible.
80. The experts' recommendations to the Georgian authorities on the case of Radik Ikaev are as follows:
- A full criminal investigation to be carried out into the disappearance of Radik Ikaev, in accordance with the principles for effective investigations developed in the case law of the European Court of Human Rights, and taking into account all of the information provided by the experts, including the statements of the relatives and witnesses;
 - The relatives to be granted victim status according to relevant Georgian criminal law provisions;
 - The existence of any detention facilities in Vaziani and the detention of about 18 Ossetians in August 2008 to be verified;
 - Inquiries to be made about the journey from Vaziani to Igoeti on or about 22 August 2008, after which Radik Ikaev went missing;
 - The Ministry of Defence to be consulted in order to identify the military personnel seen and heard on the relevant video footage, with indication of the unit to which they belong, and to identify the Georgian military units present in the area of Bakati-Kau at the time in question;
 - A full transcript to be produced of the relevant part of the video footage, the video to be enhanced and images of all identifying features produced;
 - To inform the Commissioner of Human Rights of the activities and progress of the investigation.

²⁷ Cf. letter by the Commissioner for Human Rights to the Georgian Deputy Minister of Justice dated 9 June 2010. Cf. also in this regard the Commissioner's letters to the Georgian Permanent Representative to the Council of Europe dated 30 March and 21 May 2010.

²⁸ It should be noted that the exact location of detention in Gori is still unclear as several different buildings were used by the police and the army at the time.

C. The case of Giorgi Romelashvili, Zaza Birtvelashvili, and Otar Sukhitashvili (the crew of Georgian tank No. 406)

Background

81. On 26 February 2010, Shota Utiashvili, Head of the Information and Analytical Department of the Georgian Ministry of Internal Affairs, gave the Commissioner and the experts a disk containing three video recordings which were of concern to the Georgian authorities. The videos had been found on the Internet. Two of those videos featured Georgian soldiers who were being physically ill-treated and/or displayed injuries. These cases are discussed in a subsequent section (cf. paragraphs 93 to 97 below).
82. The third video given to the Commissioner and the experts showed a uniformed Georgian soldier who appears disoriented, displays extensive facial contusions and is bleeding. The soldier wears a helmet of the type used by tank crews marked with the numerals 109. The Georgian authorities initially identified this person as Giorgi Romelashvili, the commander of the missing T-72 tank 406. The young soldier is shown being questioned by his captors. To the experts, it appears quite clear that the soldier can no longer be considered as a combatant and that he should receive the protection of the Geneva Conventions.

Information gathered by the experts

83. An official of the Georgian Ministry of Defence informed the experts that Romelashvili, Birtvelashvili and Sukhitashvili were in the crew of Tank T72 No. 406. According to this official, the three soldiers were participating in the military actions in Tskhinvali on 8 August during which the tank drove towards the village of Tamarasheni. The tank was ambushed and connection was then lost.
84. Information on the website of the Georgian Parliament indicated that the members of the crew of tank No. 406 had perished in the attack on their tank in Tskhinvali. According to that information, the tank had been destroyed and no remains could be recovered.²⁹
85. An article from the Georgian newspaper *Kviris Palitra* from 2 February 2009 contained a reference to the destruction of the tank in Tskhinvali on Factory Street towards the direction of Tamarasheni.
86. Mrs Nanuli Romelashvili discussed with the experts the fate of both of her sons. The body of one of her sons, Gela Romelashvili, was identified among the bodies in ten coffins which were handed over to the Georgian authorities.³⁰ However, the fate of her son Giorgi Romelashvili remained unclear to her. Mrs Romelashvili and her daughter-in-law (Mr Giorgi Romelashvili's wife) were separately shown the third video referred to above. Both women stated that they did not recognise the person on the video. The experts also interviewed the mothers of the two other missing crew members of tank 406, Birtvelashvili and Sukhitashvili, showing them the third video; in a similar vein, they could not identify the person in the video who had been identified as Giorgi Romelashvili by the Georgian authorities.
87. One of the experts handed over the original statement of Mrs Romelashvili to the de facto authorities in Tskhinvali on 11 May 2010, and made the request that immediate enquiries be made to clarify the fate of T-72 tank 406 and of its entire crew. The expert also requested that attempts be made to ascertain the fate of the young man featured in the third video given to the Commissioner by the Georgian authorities. During this exchange, the following information was given to the expert: while no Georgian tanks had been destroyed on Factory Street, three Georgian tanks had been destroyed on another location in Tskhinvali. These three tanks had been in proximity to one another, when one of them exploded, leading to the destruction of the other two. It was mentioned that a turret of one of the tanks remained at that location.

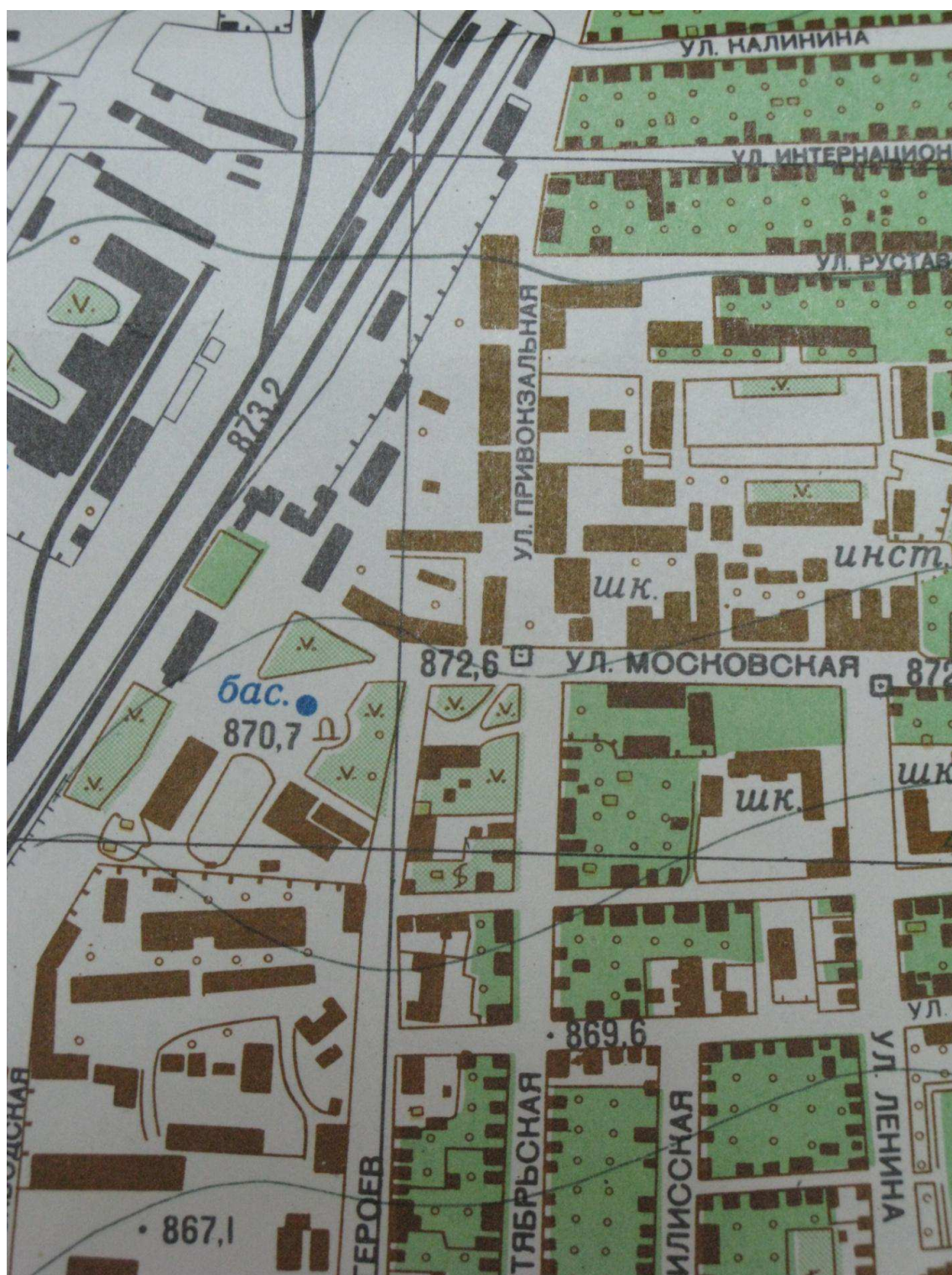
²⁹ http://www.parliament.ge/index.php?lang_id=ENG&sec_id=1329&info_id=21926

³⁰ The handover of ten coffins containing the mortal remains of Georgian soldiers took place on 16 November 2008. This was done following efforts by the Commissioner to ensure the return of the bodies of the soldiers; afterwards, a State funeral for the soldiers was held in Tbilisi, and further DNA evidence was obtained for the purpose of identification.

88. The expert was subsequently able to go to the location and view the turret of the T-72 tank. He observed that the turret had partially dug into the concrete of a building. Certain persons representing the de facto authorities in Tskhinvali have indicated that following the explosion small remnants of the bodies of the soldiers in the tanks were left in the surrounding area. A witness has stated that, early on 9 August 2008, she walked through the area where the tank turret remains to the present time and observed two destroyed tanks and multiple human body parts. This witness also mentioned that she saw a part of a human breast to which part of a military uniform was still attached, and the inscription "Sukhitashvili" sewn onto the uniform. This is somewhat surprising, as the intense heat of the explosion would normally destroy clothing.
89. The examination of the turret revealed certain serial numbers on the breech block and internal working parts of the main armament. These serial numbers were supplied to the Georgian authorities along with a request for indicative research. Images of the indicative location and remnant of the turret as it may still be seen are shown in the photograph below.



IMG-3701



Area map

90. Unfortunately, none of the serial numbers supplied by the experts were matched exactly to tank serial numbers known by the Georgian authorities. However, a senior official of the Georgian Ministry of Defence indicated that the numbers were so similar to those recorded after the purchase of tank 406, that he felt that the remains of the tank which seen by the expert in Tskhinvali were probably the remains of tank 406.

Assessment and final recommendations of the experts on the case of Romelashvili, Birtvelashvili, and Sukhitashvili (the crew of Georgian Tank No. 406)

91. The experts have concluded that the young man in the video handed to the Commissioner is not Giorgi Romelashvili of Tank 406, nor is he Zaza Birtvelashvili or Otar Sukhitashvili of the same crew. The remnant of the tank turret which is still located in Tskhinvali is probably that of T-72 tank 406. The de facto authorities in Tskhinvali are now making efforts to clarify this matter. However, the bodies of the crew members who were in the tank are likely to have been completely destroyed and may not be capable of recovery.
92. In addition to the recommendations above, the experts would like to recommend the following steps to the relevant actors on the case of the missing crew of tank 406:
- All sides should make further attempts to clarify the location where and how Tank 406 was ambushed;
 - The Russian authorities should provide any details in their possession concerning the location and identification of serial numbers of Georgian tanks destroyed during the 2008 August conflict.
 - The de facto South Ossetian authorities and the relevant Russian authorities should step up their efforts to identify the burial sites of missing persons who might have perished in the course of the August 2008 conflict.
 - The Georgian authorities should provide grief counselling for the family members of Tank 406 crew and relatives of other missing persons.
 - The Georgian authorities should clarify the identity of the soldier depicted on the third video (having regard to the fact that he was not recognised by the mother of Giorgi Romelashvili as being her son). The video should be shown to a forensic pathologist with experience in examining wounds sustained during combat. Once the person's identity has been correctly established, efforts to clarify his fate should be undertaken by all sides.

D. The cases of Giorgi Antsukhelidze and Kakha Khubuluri

93. Of the videos provided by the Georgian authorities to the Commissioner and the experts (cf. paragraph 81 above), the first video showed the Georgian soldier Giorgi Antsukhelidze (b. 18 August 1984) being subjected to severe ill-treatment while being questioned about his previous whereabouts. Antsukhelidze had been captured on 9 August 2008 and his body was later handed over by the de facto authorities of South Ossetia to the Georgian authorities and positively identified through DNA analysis in December 2008. On 8 April 2010, an application was lodged with the European Court of Human Rights alleging violations of Articles 2 (right to life), 3 (prohibition of torture), 5 (right to liberty and security), 13 (right to an effective remedy), and 14 (prohibition of discrimination) of the European Convention on Human Rights.³¹
94. The second video showed Kakha Khubuluri, amongst a group of other captive Georgian soldiers, with Khubuluri displaying facial contusions and bruising. Statements subsequently made by the other captive Georgian soldiers revealed that Khubuluri was taken away from their group on 13 or 14 August 2008. The mortal remains of Khubuluri had been returned to the Georgian side and were identified through DNA analysis in December 2008.
95. These cases were later discussed with the de facto Ombudsman of South Ossetia, David Sanakoev. While acknowledging that the violence shown in the video material was of a very serious nature, he underlined that the position and understanding of Tskhinvali was that the experts would only focus on investigations into cases of missing persons, and not investigations into any other types of cases involving possible misconduct of militias or security or armed forces. It was argued that, since the bodies of Antsukhelidze and Khubuluri

³¹ The case was registered by the European Court of Human Rights as Chikviladze and Antsukhelidze v. Russia (Application no.22580/10).

had been returned to the Georgian authorities, they could not be regarded as missing persons and the work of the Commissioner's experts was "not the appropriate venue" to examine these cases.

96. The experts were therefore left with no choice but to focus on assisting the relevant officials and authorities in control in establishing the circumstances of the case related to the third video recording supplied by the Georgian authorities (relating to the missing crew of Georgian Tank 406 – cf. previous section).
97. The experts' recommendations on the cases of Giorgi Antsukhelidze and Kakha Khubuluri are as follows:
 - The relevant sides should identify and punish those responsible for the severe ill-treatment of the Georgian soldier Giorgi Antsukhelidze, as depicted in the first video;
 - The relevant sides should clarify the circumstances of the death of the captive Georgian soldier Kakha Khubuluri. The investigation should be capable of leading to the identification and punishment of persons responsible for any illegal acts;
 - The experts invite all sides to keep the Commissioner informed of the progress in relation to the above-mentioned recommended steps.

Bruce Pegg
Nicolas Sébire
August 2010

APPENDIX I. TERMS OF REFERENCE

MONITORING INVESTIGATIONS CONCERNING CASES OF THE TREATMENT AND FATE OF MISSING PERSONS DURING AND AFTER THE AUGUST 2008 WAR

Objectives:

The two experts will monitor investigations concerning cases of the treatment and fate of missing persons on all sides during and after the August 2008 War. They will assist the relevant officials and authorities in control in establishing the circumstances surrounding these cases.

The experts will work with partners from the Incident Prevention and Response Mechanism (IPRM), including the EUMM. They will also coordinate their work with the ICRC in order to avoid unnecessary duplication. They will report to the Council of Europe Commissioner for Human Rights, providing a detailed, independent, balanced assessment and review of the events concerned. Preliminary observations, as well as the final report should be made duly available to all relevant stakeholders.

Scope of services and investigative approach:

The work of the experts should include the following activities or steps.

- Meeting the relevant officials, as well as other relevant authorities in control, working on the above-mentioned cases;
- Reviewing investigation documentation, including analyses of forensic evidence and documentation, and assessing the investigation's progress and problems;
- Conducting interviews with the families of disappeared persons, obtaining and reviewing relevant accounts and materials;
- Identifying and interviewing possible witnesses; analyzing their accounts;
- Providing advice on methodology and further direction of the investigation.
- Preparing a report of the findings, including recommended measures to be taken as well as drafting a full report for the Commissioner for Human Rights on the findings, the quality of cooperation and suggestions for follow up.

It is expected that the work of the experts will require three weeks work. One further week could be needed for summarizing and debriefing. This time frame may vary depending on the developments.

The respective interlocutors should extend full cooperation to the experts, including as regards access to various sites and the right to travel without restriction. Experts are entitled to receive full information on all matters which are relevant to the accomplishment of the objectives of their mission.

The experts will refrain from any act or statement liable to be damaging to the integrity the Office of the Commissioner for Human Rights or the Council of Europe.

This project is financed by the Commissioner for Human Rights.

Relevant documents:

ICRC 2003: The missing – the right to know. Study of existing mechanisms to clarify the fate of missing people by Jean-Francois Rioux/Marco Sassoli/with the assistance of Mountaga Diagne and Marianne Reux. Report and recommendations.

ICRC 2007: ICRC guidelines on the missing persons. ('Best practices' in countries that have adopted provisions and laws on the missing. It applies to armed conflicts and situations of violence and can be extended, in certain circumstances, to other situations of emergency).

ICRC 2009: missing people, DNA analysis and identification of human remains: a guide to best practice in armed conflicts and other situations of armed violence.

United Nations, Principles on the Effective Prevention and Investigation on extra-legal, arbitrary and summary executions, 24 May 1989.

Model protocol for a legal investigation of extra-legal; arbitrary and summary executions (Minnesota Protocol).

See for more details United Nations Manual on the Effective Prevention and Investigation of Extra-Legal; Arbitrary and Summary Executions, U.N.Doc.E/ST/CSDHA/12 (1991).

February 2010

APPENDIX II. DISAPPEARANCE OF KHACHIROV, KHUGAEV, AND PLIEV: THE RELEVANT GEOGRAPHY

Following from testimony of family members and other witnesses from the Tskhinvali region an understanding of the geography pertinent to the disappearance of Khachirov, Khugaev and Pliev is necessary to the process of clarifying their fate. An examination of a relevant mapping shows the road where the three were travelling, the positions of relevant Georgian police posts both then and now, the suspected locations where it was believed Lev Tekhov and Oleg Gigolaev were detained as well as the suspected location where Pavel Tekhov was detained. The road of interest on which the missing three drove on 13 October 2008 mimics to some extent the flow and demarcation of the administrative boundary line, and was a very insecure area on 13 October 2008.

Flowing from south to north, the road of interest eventually reaches Disevi (now emptied of its former ethnic Georgian inhabitants) and from where a cross road leads along a distance of some 150 metres to a Georgian police checkpoint and the village of Koshka. Before reaching Disevi, the road skirts abandoned houses belonging to ethnic Georgians who had been forced to flee, and passes relatively closely to the currently occupied houses of Koshka. A number of side roads and paths of various conditions lead into Koshka itself.

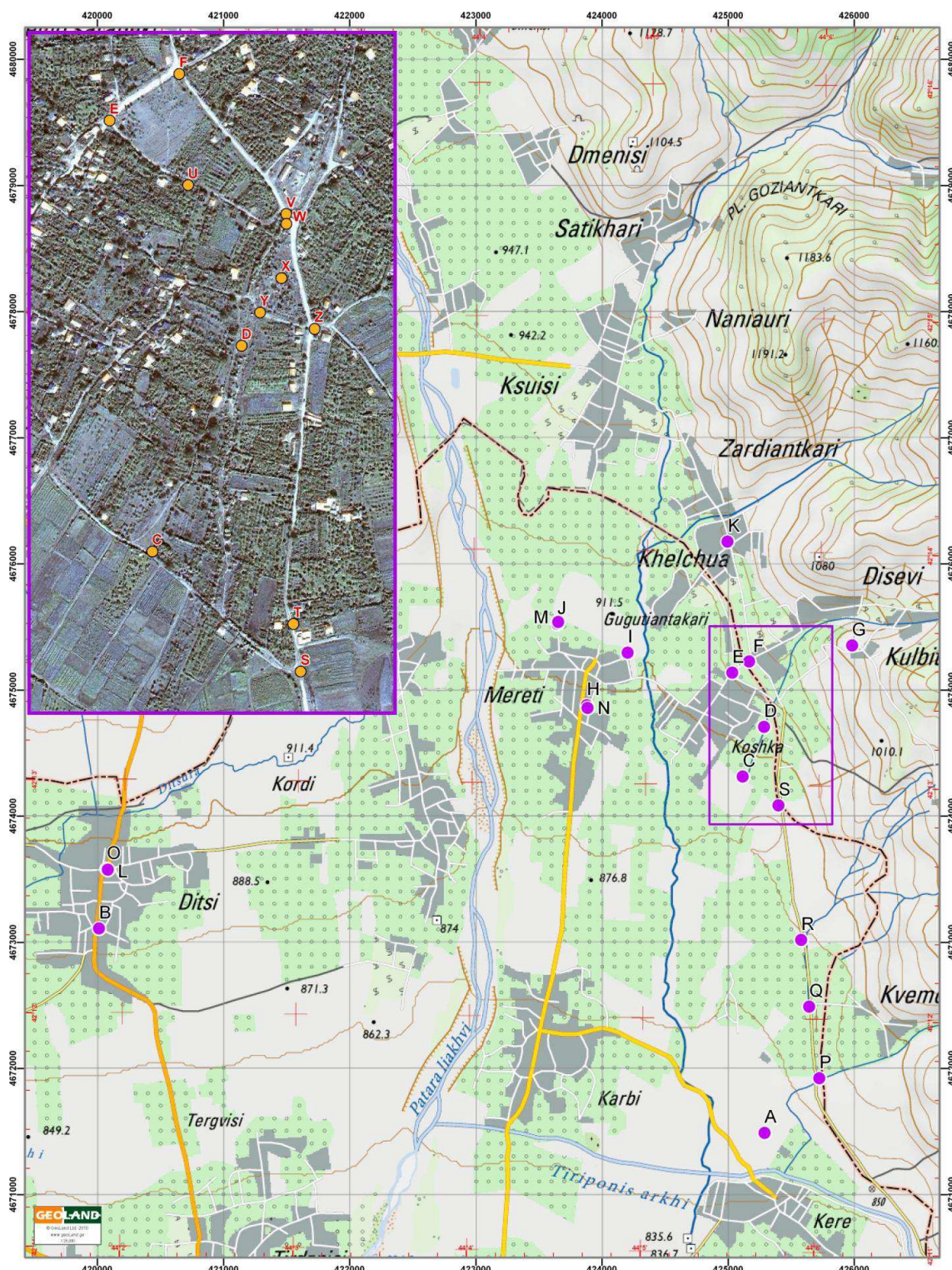


Figure 1: Map of the area of interest to the case of Khachirov, Khugaev and Pliev

The above mapping indicates a road running north-south with a series of waypoints³² marked upon it. The points P, Q, S and F mark the course of the road of interest. The experts believe that the missing three travelled in a south to north direction along this road when they were detained. P marks the intersection of the road of interest and a water course which is in the vicinity of the village of Korkula.

³² These waypoints were either recorded by the experts themselves or are derived from EUMM reporting in October 2008.

There is also a small vehicle track which runs in the direction of Korkula. It is believed that it is relatively close to this point that a witness observed the three young men and spoke to them shortly before their disappearance. The waypoint Q marks the intersection of the road of interest and another vehicle track leading toward Korkula.

Waypoint S marks an intersection of the road of interest and another road leading towards Georgian territory outside South Ossetia and the village of Koshka. Georgian police informed the experts that it was this road they used to travel from Koshka to the road of interest where they state they detained Lev Tekhov and Oleg Gigolaev on 14 October 2008. Georgian police who have indicated to the experts that they detained Tekhov and Gigolaev escorted the experts to waypoint C and stated that on 14 October 2008 they moved from this point and turned right onto the road of interest where after a short distance travelling south they met Tekhov and Gigolaev travelling in the opposite direction and detained them.

Waypoint T marks the road of interest next to the house from where Lev Tekhov alleges he and Gigolaev were arrested by a "Georgian *Spetsnaz* team". Georgian police officers who have indicated that they detained Tekhov and Gigolaev have also stated to the experts that the detention occurred at a house on the road of interest, and identified the house concerned on a photo shown to them by the experts.

Waypoint F records the location of a cross-roads in Disevi village and is located in South Ossetia, very close to the administrative boundary line and some 150 metres from waypoint E, which is a Georgian checkpoint and bunker in Koshka. It is from this point that Tekhov alleges that he was released on 14 October 2008.

Waypoint D records the location of the second and current Georgian checkpoint in Koshka. Waypoint Y on the inset aerial image marks a small vehicle ford across the watercourse in front of the second Georgian checkpoint in Koshka (waypoint D).

Waypoint Z marks the intersection of the road of interest and the small road leading from waypoint Y.



IMG-3448

Taken prior to the full onset of spring, the above photograph indicates a broad sweep of the road of interest. Both sides informally indicate that this road is part of a so-called “no man’s land” along the administrative boundary line in this area. On the right side of the photograph, along the line of the road of interest, some abandoned houses can be seen.

As indicated in Lev Tekhov’s statement to the experts, the below photograph (IMG-3446) shows the house where he was allegedly detained. The house has an all-white roof and is, of all the other houses shown, the one closest to the top of the photograph. As can be seen, even in late winter/early spring (which is when the photograph was taken), the road of interest - which passes between the house from where Lev Tekhov alleges he was ambushed and the house to the left of it with the two-toned roof – is not clearly visible. In autumn 2008, this area would have been covered with foliage giving excellent cover and concealment, even from nearby observation points.



IMG-3446

These abandoned houses are situated on the outskirts of Koshka, close to Georgian checkpoints. Lev Tekhov alleges that he was detained at the uppermost house in this photograph.