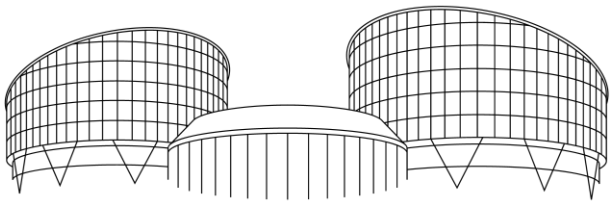

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF TSINTSABADZE v. GEORGIA

(Application no. 35403/06)

JUDGMENT

STRASBOURG

15 February 2011

FINAL

18/03/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tsintsabadze v. Georgia**,**

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

Françoise Tulkens, *President,*
Danutė Jočienė,
Dragoljub Popović,
András Sajó,
Nona Tsotsoria,
Kristina Pardalos,
Guido Raimondi, *judges,*

and Françoise Elens-Passos, *Deputy Section Registrar,*

Having deliberated in private on 25 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 35403/06) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Georgian national, Mrs Svetlana Tsintsabadze ("the applicant"), on 15 August 2006.

2. The applicant was represented by Ms Sophio Japaridze, a lawyer of the Georgian Young Lawyers' Association (GYLA) in Tbilisi, as well as by Mr Philip Leach and Mr Bill Bowring, of the European Human Rights Advocacy Centre (EHRAC) in London. The Georgian Government ("the Government") were represented by their Agent, Mr Davit Tomadze of the Ministry of Justice.

3. On 15 June 2007 the President of the Second Section decided to give notice to the Government of the complaint under Article 2 of the Convention. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

4. The Government and the applicant each filed observations on the admissibility and merits of the communicated complaints (Rule 54A of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1955 and lives in Batumi.

6. The facts of the case, as submitted by the parties, may be summarised as follows.

1. The investigation into the death of the applicant's son

7. On 2 June 2005 the applicant's son, Zurab Tsintsabadze, who was born in 1975, was sentenced to prison as a reoffender for having resisted police officers who were trying to stop him from committing an offence at the residence of his former wife, named Maka (violence and damage to the property of others). He was sentenced to three years in prison. Once the judgment became final, the applicant's son was transferred, on 6 July 2005, from Rustavi no. 1 prison to Khoni no. 9 Prison ("the Khoni prison") in Western Georgia. According to the applicant, her son was in good health both physically and psychologically at the time.

8. On 30 September 2005 the applicant's son was discovered hanged in the prison's storeroom.

9. On the same day A.L-iani, the Khoni prison governor, informed in writing the head of the Western Georgian investigation department of the Ministry of Justice ("the Ministry's investigation department"), the authority in charge of custodial institutions, and the Georgian General Prosecutor's Office, an unrelated authority which supervised investigation procedures within the Ministry of Justice, that Mr Tsintsabadze had committed suicide by hanging himself in the storeroom of the prison between the hours of 7 and 8 p.m. on 30 September 2005.

10. On 1 October 2005 between 12.15 and 1.40 a.m., an investigator from the Ministry's investigation department ("the investigator") examined the scene. Two deputy governors of the Khoni prison took part in this procedure. The investigator noted that the storeroom in question was a room standing alone, situated near the prisoners' quarters and the administrative building, which was used to house prisoners' belongings. It could be accessed through an iron door with a faulty lock. At the front of the building there were two windows in the wall with panes that were half glass and half covered in plastic. The room itself was 2.20 metres high. The windows closed from the inside. No items relevant to the investigation were found there.

11. One of the deputy governors explained that he had found Zurab Tsintsabadze hanging from a rope and handed the rope over to the investigator. The deputy governor also brought from his office a pair of shoes, stating that they had been found on the deceased at the site. The rope and the shoes were placed under seal by the investigator. The deputy governor then explained that he had found two wooden chairs beneath the feet of the deceased. He brought the chairs from his office to the investigator, who did not place them under seal. The deputy governor also stated that he had found a packet of cigarettes, a lighter and an analgesic

tablet in the pockets of the deceased. All three objects were placed under seal by the investigator.

12. The investigator, along with the prison's therapist, then carried out a visual examination of the body in the therapist's office. A strangulation mark on the neck and scars from old wounds were noted. No other lesions were found. The investigator stated in his report, without any further explanation, that there was a real risk that the evidence would be tampered with, and that, consequently, Zurab Tsintsabadze's body should be transferred to a place suitable for a forensic examination.

13. The same day Z.L-iani, an inmate in the Khoni prison, was questioned. He explained that on 30 September 2005, at approximately 8 p.m., he had met T.K.-adze, another inmate, near the storeroom. He had wanted to get a T-shirt out of the storeroom to give to T.K.-adze, but they had found the building locked from the inside. Z.L-iani had therefore looked through the window and seen someone inside. He had entered the room through that same window and, once inside, had discovered someone hanging from a rope, "attempting to commit suicide" but still alive. He had then kicked open the door for T.K.-adze. They had untied the inmate from the rope. Z.L-iani had called for help from the prison staff who were nearby. He said that the ambulance had arrived a few minutes later but, despite appropriate medical assistance, the applicant's son could not be saved. Z.L-iani stated that he knew the deceased by sight and had never had a dispute with him. He described him as a calm person. Z.L-iani categorically denied the possibility that any inmate could have been pressurising the deceased. According to him, no one in the prison would have wanted him dead.

14. When questioned immediately afterwards, T.K.-adze confirmed Z.L-iani's statement word for word.

15. Still on 1 October 2005, the prison therapist gave a statement to the investigator. He stated that on 30 September 2005, between 7.30 and 8 p.m., a prison employee had come to inform him of the hanging of an inmate. When he had arrived on the scene, the body was already lying on the ground. He had then removed the rope from the victim's neck and unsuccessfully tried to revive him. The body had then been taken to his office, where he had attempted resuscitation, to no avail. He had noted that biological death had already occurred, but had called for an ambulance anyway.

16. Between 1 and 3 October 2005, a forensic examination ordered by the investigator was carried out by an expert of the Kutaisi office of the National Forensics Bureau ("the NFB"), an institution under the supervision of the Ministry of Justice. In his report ("the NFB's autopsy report"), the State expert noted post-mortem lividity at the sides of the body, which disappeared when pressure was applied, and small haematomas on the muscles around the neck along the strangulation mark, as well as cerebral

swelling. The bones, including the collarbone and the skull, were unbroken. All the internal organs were examined and consequently dissected. Following the examination, the expert concluded that death had occurred following mechanical asphyxia by hanging. No lesions apart from the strangulation mark on the throat were found.

17. On 4 October 2005 the applicant's former husband, the father of the deceased, was questioned. He stated that as soon as he had been informed, on 30 September 2005, of the death of his son, he had headed to the Khoni prison, where he had been met by its governor. The prison governor had assured him that his son had committed suicide with a rope made from a quilt and that no one had killed him. In response to his question whether anyone could have driven his son to commit suicide, the governor had allegedly replied "no", saying that "his son had committed suicide after finding out that his wife was going to Turkey".

18. The applicant's former husband had then been sent by the prison governor to the Kutaisi morgue, where his son's body had been transported in the meantime. Once there, the applicant's former husband had discovered that the forensic examination had already taken place; he had taken his son's body home to Batumi. Once at home, the applicant and her former husband had noticed that their son did not appear to have committed suicide. The left side of the deceased's skull was fractured and, since his hair was not shaved at that spot, they had assumed that this was not a result of the damage caused to the body during the post-mortem examinations by the expert. The head was misshapen to touch and sported visible bumps, there was a haematoma on the neck, part of the jaw was swollen and seemed to be fractured and there was a haematoma on the collarbone, which seemed to be broken. The left arm was completely covered in bruises, there were visible haematomas on the back around the kidney area and on the hands, and sizeable haematomas were visible around the testicles. The deceased's father had noticed that the bruises on the left arm and hands were diagonal. In his opinion his son, whilst being beaten, had protected his face with his hands. Only the face was unharmed.

19. At the end of his interview on 4 October 2005, the applicant's former husband requested the investigator to arrange for an additional, impartial forensic examination of his son's body.

20. When questioned on 5 October 2005, the Khoni prison governor, A.L-iani, stated that the usual evening inspection had taken place on 30 September 2005 at 7 p.m. B.J.-dze, the officer carrying out the inspection, had reported back that everything was in order and that all seventy-nine inmates were where they should be. Around 7.30 p.m., the inspection officer-in-chief had reported to the governor that an inmate was unwell. The governor had headed to the storeroom with two prison doctors and found the applicant's son lying on the ground. He was still alive. Zurab Tsintsabadze had then been transferred to the prison medical centre, but the

subsequent attempts at resuscitation had been unsuccessful. By the time the ambulance had arrived, he was already dead. The appropriate information had been entered in his medical records. The body had been examined by the doctors and a report had been compiled. The governor had then informed the relevant authorities by telephone and in writing. An hour later, the investigators had arrived at the scene. The prison governor said that he had personally informed the applicant's former husband by telephone of his son's suicide. According to him, the father had refused to believe it, since his son had already tried to trick him into visiting him in prison by claiming to be hurt.

21. The prison governor further stated that Zurab Tsintsabadze had, in the past, been treated at Batumi psychiatric hospital. He also said that since the deceased's incarceration he had received no visitors, and had suffered as a result. According to the governor, Zurab Tsintsabadze had also worried about the fact that his wife had gone to Turkey and his parents had divorced. The governor also stated that he knew a prisoner, O.E.-yan, with whom the applicant's son had served his previous sentence and who could confirm his statements.

22. When questioned separately on 6 October 2005, O.E.-yan confirmed that he knew the applicant's son well and that the latter had never been in dispute with anybody in the prison and had attempted to commit suicide on several previous occasions, notably by slashing his stomach and his throat; the corresponding marks could be seen on the body.

23. According to a certificate dated October 2005 contained in the case file, the applicant's son was not on the list of patients being treated at the psycho-neurological clinic of the Ajarian AR.

24. On 6 October 2005 B.J.-dze, the prison officer mentioned in the governor's statement (see paragraph 20 above), was questioned. He confirmed word for word the governor's statements as regards the circumstances surrounding the discovery of the applicant's son's body on 30 September 2005 and about his personality and behaviour, emphasising the fact that the deceased had been frustrated because of his family situation and had not been in conflict with anybody in the prison.

25. When questioned on 6 October 2005, an inmate at the Khoni prison, referred to as X in this judgment, stated that he had known the applicant's son well, as they had been born and raised in the same neighbourhood of Batumi, their parents still maintaining friendly relations with each other. He described the circumstances in which he and other inmates of the prison had learnt of the hanging incident, noting nothing suspicious. X similarly stated that the applicant's son had not been in conflict with anybody in the prison, that he had not received either telephone calls or visits from the outside world, that he had been anxious on account of his personal problems with his former wife and that he had had numerous old scars on various parts of his body.

26. When questioned on 6 October 2005, A.J.-dze, another inmate at the Khoni prison, stated that he had known the applicant's son for four or five months, that the latter was a polite, calm and quiet person and that he had never previously attempted to commit suicide in the prison. He stated that the applicant's son had received neither visits nor phone calls. Sleeping in the neighbouring bed, he had noticed that the applicant's son had old scars on his wrists.

27. On that same day, the chief doctor of the Khoni prison was also questioned. He confirmed the therapist's statement and added that he had examined the applicant's son on the day of his arrival at the prison. He had, on that occasion, noticed that there were cutaneous scars on the prisoner's stomach and a scar on the right side of his neck. The doctor categorically stated that the prisoner had had no other injuries on his body. To explain the scars on his body, the applicant's son had supposedly told him that he had attempted to commit suicide in Rustavi No. 1 prison and that he was grateful that the doctors had saved him. The doctor stated that the applicant's son, a reserved man, would come and confide in him often. He was a calm and pleasant person. He would tell him, among other things, that it hurt him that his parents and wife never came to see him. The doctor believed that Zurab Tsintsabadze had committed suicide, seeing that he had never clashed with anyone in the prison and had not been involved in gambling.

28. In a letter dated 7 October 2005 the ambulance service involved confirmed that it had received an emergency call from the Khoni prison on 30 September 2010 at 8.03 p.m.

29. On 7 October 2005 the applicant was questioned. She stated that she had called her son whenever she was able to. During one conversation, her son had asked her to send him 50 Georgian laris (GEL – about 0.42 euros[1] (EUR)), of which GEL 10 was for cigarettes and the rest to settle his contribution to the "kitty" (*obshiak* – the Latin transliteration of the Georgian word "*obSiaki*", an illegal common fund for prisoners; see also paragraphs 61 and 68 below). Since she was ill at the time, her sister had transferred this amount to her son. Her son had subsequently called his aunt back several times, asking for amounts varying from GEL 30 to GEL 40. Shortly before his death, he had told his aunt that if he was not given a further GEL 10, he would commit suicide. His aunt had sent him that amount. According to the statement, the questioning was interrupted as the applicant was accusing the investigating authorities of bias. She refused to sign the statement.

30. On 8 October 2005, at the request of the applicant and her former husband, an independent medical examination was carried out in the

[1] Here and elsewhere, approximate conversions are given in accordance with the exchange rate of the Georgian lari (GEL) and the United Kingdom pound sterling (GBP) to the euro on 20 November 2010.

presence of their two representatives and an agent of the Public Defender's Office. According to the relevant report on the findings ("the alternative autopsy report"), near the strangulation mark on the neck of the deceased, the experts discovered a lesion measuring 4.5 cm by 3 cm caused by a blunt object. The lesion was described as being minor and not a serious threat to health. No other injuries were found on the body. After having carried out a histological examination on various organs, including the brain, the lungs and the heart, the experts concluded that the cause of the applicant's son's death was mechanical asphyxia by hanging.

31. On 13 October 2005 an expert in criminology was called in to examine Zurab Tsintsabadze's clothes and to determine the nature of the knots tied in the sheet that had been used as a rope.

32. On 29 October 2005 a public prosecution was initiated against a person or persons unknown for having driven Zurab Tsintsabadze to commit suicide (Article 115 of the Criminal Code). That same day, the applicant was questioned as a civil party to the proceedings. She categorically stated that her son was a level-headed person who had not suffered from any psychological problems and had been very fond of himself. During the last two and a half months of his detention, she had spoken to him on the telephone several times, and during one conversation he had asked her to send him GEL 50 (see also paragraph 29 above). The applicant specified that it was the inmate X (see paragraph 25 above) who, through his own father, had informed her former husband by telephone of their son's death. The applicant stated that when she had examined her son's body she had found the above-mentioned injuries (see her former husband's statement at paragraph 18 above). She claimed that her son had been killed and hanged afterwards to conceal the murder. She asked that the alleged offence be classified as murder (Article 108 of the Criminal Code) and not incitement to suicide. The applicant requested the determination of the reasons why the prison administration had not immediately informed the parents of the death, leaving it to an inmate to do so, as well as why they had not been informed of and invited to attend a forensic examination of their son's body. She also requested clarification of the circumstances in which her son could have ended up in the storeroom, as prisoners could not normally enter the locked building without being accompanied by a warder. The applicant also noted that she had hired N.A.-dze, a local lawyer, to assist her in the investigation.

33. On 2 November 2005 the Western Georgian regional prosecutor ("the regional prosecutor") sent a written instruction to the investigator stating that, for a ruling to be made in the case, the following investigative steps had to be carried out:

- identification and questioning of the security guard who, while on duty during the night of 30 September 2005, had been monitoring the gate of the Khoni prison's inner courtyard a few metres away from the storeroom and

was thus capable of testifying as to when and with whom the applicant's son had entered the storeroom, when T.K-adze and Z.L-iani had gone in and when they had come out;

- questioning other inmates who could possibly provide any information capable of casting doubt on the possibility of suicide and suggesting instead that the applicant's son might have been driven to commit suicide or otherwise subjected to violence;

– questioning the State-appointed and independent experts who had carried out the relevant forensic examinations of the applicant's son's body (see paragraphs 16 and 30 above) about the existence of the injuries pointed out by the parents.

34. By a covering letter dated 10 November 2005, the NFB transmitted to the Ministry's investigation department a handwritten letter found by one of its employees in the room where the forensic examination of 1 to 3 October 2005 had taken place. In this letter the author told the addressee, named Nino, that the reason he was committing this act was to prove his love, which she had always doubted. The author criticised the woman for leaving him when he most needed her. He accused her of lying about going to Russia when in reality she had gone to Turkey. He wished her happiness after his death. At the bottom of the letter was the name of the applicant's son, as well as the date, 28 October 2005.

35. As to the contents of the NFB's covering letter of 10 November 2005, it briefly informed the Ministry's investigation department of the circumstances in which the letter dated 28 October 2005 had been found in the refrigerator of the morgue and stated that, since the letter had been drafted by the applicant's son, it was being transmitted for inclusion in the relevant case file.

36. When questioned on 21 November 2005, the NFB employee in question (see paragraph 34 above) stated that two or three times a month he had to clean the refrigerator room where bodies were stored. On 8 November 2005, whilst doing the usual cleaning, he had discovered the letter dated 28 October 2005 in a corner wrapped in a plastic bag. No other relevant questions were put to him by the investigator. As disclosed by the case file, no other investigative measures were taken in relation to the letter.

37. Still on the same day, 21 November 2005, the State expert who had conducted the forensic examination of Zurab Tsintsabadze's body between 1 and 3 October 2005 (see paragraph 16 above) was questioned. The expert confirmed that apart from the strangulation mark on the middle part of the neck, which could indeed have been caused by hanging, he had found no other lesions on the body. As to the independent experts who had conducted the alternative forensic examination of the body, they were not examined by the investigator, according to the case file, contrary to the regional prosecutor's instructions (see paragraphs 30 and 33 above).

38. The next day, 22 November 2005, the regional prosecutor dismissed the case for lack of evidence. He found that it had not been established that the applicant's son had been the victim of threats or physical assault of such a nature as to drive him to commit suicide. In any case, the letter dated 28 October 2005 discovered "in the deceased's clothes" proved that he had committed suicide in the name of love at 8.30 p.m. on 30 September 2005. The fact that the date at the bottom of the letter was after the date of the prisoner's death was explained by the fact that he had mixed up the months when writing the letter. Concerning the lesions that the applicant had allegedly found on her son's body, the prosecutor referred to the NFB's autopsy report, according to which no lesions other than the strangulation mark had been noted. The investigator considered the haematomas pointed out by the applicant to be mere post-mortem lividity, and the various marks on the body to be old, as noted by the prison doctor on the day the applicant's son had been admitted to the prison. On the basis of various depositions, including that of the inmate X, the prosecutor concluded that no act constituting an offence under the Criminal Code had occurred (Article 28 § 1 of the Code of Criminal Procedure).

39. The applicant challenged that decision before the Kutaisi City Court, maintaining that the authorities had treated her son's death as suicide from the outset; that the prison administration had destroyed the evidence, the deputy governor having brought the chairs, the rope and her son's shoes from his office; that no fingerprints had been taken at any point from the chairs, the padlock, the door or the lock on the storeroom to be compared with her son's; that there had been no investigation of whether the storeroom was being monitored by security guards and who was in charge of the keys; that there had been no assessment of the injury found by the independent expert on the deceased's throat beside the strangulation mark; that only three items had been discovered in her son's clothing immediately after the death; that no forensic handwriting examination had been carried out on the letter dated 28 October 2005; and, finally, that it was insane to think that an inmate counting the days and hours until his release could have mistaken the date whilst writing the letter attributed to him.

40. On 9 January 2006 the Kutaisi City Court rejected the applicant's complaint as being unfounded on the grounds that all of the necessary investigative steps had been carried out and that the evidence obtained ruled out the existence of a crime. The City Court reproached the applicant for not having indicated alternative investigative measures which could have led to a different outcome in the investigation.

41. The applicant appealed, reiterating her arguments. She added that bodies were always placed naked in the refrigerator room, thus excluding any chance of the letter dated 28 October 2005 having fallen out of her son's clothes, and that the prosecutor was mistaken in saying that the letter had been discovered in her son's clothes. The applicant also added that,

according to her sources, her son had been killed by his fellow prisoners on the order of one of his former inmates in Rustavi no. 1 prison, and called for an investigation of that allegation also. She also claimed that it was impossible for a person 1.78 metres tall, like her son, to commit suicide if the ceiling was 2.20 m high and the chairs were 22 cm high. The applicant criticised the authorities' failure to protect the site. She also complained that the investigator had compiled his report on the inspection of the scene on the basis of the statements by the prison's deputy governor, who had brought from his office first the chairs, then the rope and the shoes to "prove" that there had in fact been a suicide. The applicant further observed that the doctors from the ambulance had not been interviewed.

42. On 16 January 2006 the Kutaisi Court of Appeal dismissed the appeal at final instance, on the same grounds as the lower court. As disclosed by the decision, during the appellate hearing the regional prosecutor, in reply to the applicant's complaint that no forensic handwriting examination had been carried out on the letter dated 28 October 2005, claimed, without referring to evidence in support or giving any additional details, that the impugned letter had been compared with and found to be similar to other samples of Zurab Tsintsabadze's handwriting.

2. The criminal proceedings against X for extortion and the Public Defender's probe into Mr Tsintsabadze's death

43. In a written explanation given to her representatives before the Court on 13 July 2006, the applicant stated that, after her son's burial, X had called her former husband from prison to ask him to settle the debt of GEL 80 that his son had borrowed from the "kitty". The applicant explained that the "kitty" was a sum of money that the inmates were forced to collect by the *makurebeli*[1] of the prison, with the administration's tacit agreement. She said that the money went to both the *makurebeli* and the administration. The applicant inferred from this that the sums of money demanded by her son over the telephone had also been meant for the "kitty" (see also paragraphs 29 and 32 above). She alleged that, not having repaid the sum of GEL 80, her son had been killed. According to the applicant, herself destitute, it was Nino, her good friend and apparently the addressee of the letter dated 28 October 2005, who would send her son GEL 300-400 on a regular basis. Considering this, she found it surprising that her son would have needed to borrow GEL 80 from the kitty.

[1] A *makurebeli* (the Latin transliteration of the Georgian word "*mayurebeli*", which can be translated literally into English as "observer") is an influential prisoner, either unlawfully favoured or tacitly tolerated by the prison administration, who oversees the activities of other inmates. The institution of *makurebeli* ("*смотрящий*" in Russian) is a criminal phenomenon dating back to the Soviet era.

44. On 13 December 2005 the applicant's former husband lodged a criminal complaint on account of the demands for money made to him from prison by the inmate X, and on the same day the latter was placed under investigation for extortion. The investigation was entrusted to the same investigators of the Ministry's investigation department (see paragraph 9 above).

45. Examined as a civil party on the same day, the applicant's former husband confirmed that it was X who, through his father, had informed him of his son's death (see paragraph 25 above). He had subsequently met that inmate in the prison governor's office on the day he had gone to the prison to retrieve his son's body. In the governor's presence, X had told the applicant's former husband that his son had committed suicide "because of a woman". Feeling that the inmate wanted to tell him something else, the applicant's former husband had then taken X into the corridor. However, upon seeing an inmate whom X described as a *makurebeli*, X had become afraid and said nothing. The applicant's former husband stated that X had called him every day leading up to the funeral to say that he would have to be moved to another prison in order to be able to speak. In one of those telephone conversations, the inmate, hinting that he had found something suspicious about the death of his son, had advised the applicant's former husband to exert pressure on the prison governor. After the funeral, on 9 December 2005, X had called him again, demanding the GEL 80 that his son owed to the "kitty", and threatened to kill him. He had called and repeated the threats on 12 December 2005.

46. When questioned as a suspect on 23 February 2006, X, who had been transferred from to another prison, referred to as the prison Y in this judgment, denied the charge, explaining that the applicant's former husband had offered him money of his own accord, to honour their shared memory of the deceased. The inmate confirmed that he had been the one who had first informed the applicant's former husband of his son's death. X further confirmed that he had had doubts about the suicide theory from the very beginning, and that he had shared those doubts both with the applicant and with her former husband during telephone conversations. However, those doubts remained mere speculation, as he had failed to identify any tangible facts in support of them. X also suggested that the applicant and her former husband had accused him of extortion by way of retribution, as they believed that he had been hiding the truth about the death of their son.

47. On 3 April 2006 X was questioned again by the Ministry's investigation department, this time as an accused. He explained that the inmates in the Khoni prison had been "supervised", particularly in so far as the contributions to the "kitty" were concerned, by the chief *makurebeli*, V.T.-shvili, a former police officer serving a sentence for murder. The applicant's son had borrowed GEL 80 from the "kitty", using it to buy an Ericsson T10 mobile phone from another inmate. However, being unable to

repay the debt, the applicant's son had started receiving threats and insults. Thus, he had been beaten on two previous occasions by V.T-shvili, Z.L-iani, another *makurebeli* at the Khoni prison, and A.B.-ia, also known as "Dizela". X stated that he had personally witnessed the first of those beatings, a fact which could also be confirmed by two other inmates, G.G-iani and V.M.-shvili.

48. X further stated that on 30 September 2005 he had seen V.Th.-shvili, Z.L-iani and "Dizela" taking the applicant's son to the *kutoki* (a place for discussion and settling of scores). A few minutes later he had seen these individuals leave the room, dragging the applicant's son, who was unconscious. They had carried him through the window of the barber's room towards the storeroom, where, several minutes later, the very same Z.L-iani, with T.K.-adze, had "discovered" the applicant's son hanging and had started shouting. X claimed that the inmate G.G.-iani had also seen the applicant's son being taken unconscious to the storeroom. X then gave a detailed description of the events that followed. He stated that when the prosecutors and the expert had arrived, the body was in the prison doctor's office. The governor and the inmates were also present.

49. The inmate X explained to the Ministry's investigation department that he had wanted to confide in the deceased's father when he had come with his own father to collect the body on 1 October 2005, but he had been closely watched at that time by V.T-shvili, the chief *makurebeli*. Consequently, it was only after the applicant's husband had left the prison that X had started telephoning both him and the applicant, telling them that he knew the truth about the death of their son. He had asked the deceased's parents to arrange for his transfer to another prison, so that he could feel more secure and thus give them all the necessary details. Subsequent to those telephone talks with the deceased's parents, the lawyer N.A-dze (see paragraph 32 above) had telephoned X, asking him for a meeting in order to learn more about the suspicious death. However, the Khoni prison governor, A.L-iani, had never allowed the lawyer inside the prison. After the death of the applicant's son, X himself had become the target of the *makurebelis*, who had demanded that, as someone close to the deceased, he repay his debt or have it repaid by the family. Not being able to repay the debt, X had been beaten by the two *makurebelis* on 25 November 2005. He had therefore been forced to call the deceased's father to attempt to obtain the required amount. He had explained over the telephone that he was experiencing problems himself because of the son's debt.

50. In reply to the investigator's question as to why he had not mentioned all those facts during his previous examinations, X stated that he had feared for his life in the Khoni prison, at the hands of the *makurebelis* who had murdered the applicant's son. He also added categorically that his current statements were true and made voluntarily, that he had himself asked for the additional examination, that he had been duly warned about

the possibility of incurring liability for perjury and false accusation and that he would be ready to stand by his word.

51. Subsequently, on an unidentified date in April 2006 Z.L-iani and V.Th.-shvili were questioned by the Ministry's investigation department as witnesses in the criminal proceedings against X for extortion. The two inmates denied that they were *makurebelis* or that the practice of a "kitty" existed in the Khoni prison, explaining that, since that prison was reserved for former law-enforcement officers, no such criminal practices were tolerated there. They maintained that they had had friendly relations with the applicant's son, who had not been known for having a conflict with anybody in the prison. The two inmates' statements were confirmed word for word by the barber of the Khoni prison (see paragraph 48 above), who, likewise questioned on an unidentified date in April 2006, also stated that he had not observed anything suspicious on 30 September 2005.

52. On an unspecified date in May 2006 X's father was also questioned as a witness. He confirmed that his son had first informed the applicant's former husband of his son's death on 30 September 2005. He also stated that X had never told him anything suspicious about the death; the role of the *makurebelis* or of the "kitty" had never been mentioned in that connection. However, the witness acknowledged that the applicant's former husband had thought that X was hiding the truth about his son's death.

53. On 4 May 2006, representatives from the Public Defender's Office visited X in the prison Y. He reiterated word for word his deposition of 3 April 2006 (see paragraphs 47-50 above). The inmate added that when, on 1 October 2005, the expert had asked him to undress Mr Tsintsabadze's body in the prison doctor's office, he had noticed that there was a big black mark on the body in the collarbone area and that there were hand prints on the back and the skin was red. He had asked the deputy governor for permission to call his own family, who would inform the father of the deceased. He had been forbidden to do so on the ground that the prosecutors had to examine the case first. After eight hours of waiting, X had called his father anyway, asking him to inform the deceased's family. He stated that during his previous questioning he had asked the investigator to arrange for him to be transferred to another prison to ensure his safety when giving his testimony, which was of great importance to the case. However, that request had been denied.

54. On 8 May 2006, representatives from the Public Defender's Office met V.M.-shvili (see paragraph 47 above), who was then being held in Tbilisi no. 1 prison. The inmate refused to give a written statement, claiming that it could cost him his life. He stated orally that the applicant's son had not committed suicide; Zurab Tsintsabadze had borrowed money from the kitty and had got into various disputes over it with the *makurebelis*. V.M.-shvili confirmed that on 30 September 2005 the applicant's son had been summoned by the *makurebeli* for a talk. He had

then returned to make a phone call to someone, before leaving again. V.M.-shvili did not rule out the possibility that the pressure resulting from the debt could have caused Mr Tsintsabadze's death. V.M.-shvili stated that the crime had been carefully covered up by A.L-iani, the prison governor, who was a relative of Z.L-iani,[1] one of the *makurebelis* of the Khoni prison directly implicated in the incident.

55. The Public Defender's Office also met G.G-iani on an unspecified date (see paragraph 47 above). However, the latter inmate stated that he did not possess any relevant information concerning the circumstances surrounding the death of the applicant's son.

56. On 13 July 2006, the Public Defender submitted the report on his meetings with the above-mentioned inmates to the Prosecutor General of Georgia and requested, by virtue of section 21(3) of the Public Defender's Act, that a public prosecution be initiated.

57. In a letter of 9 August 2006 the regional prosecutor's office which had issued the order of 22 November 2005 dismissing the case (see paragraph 38 above) replied to the Public Defender that there were no grounds for initiating a public prosecution. In support of that conclusion, it went over the reasons stated in the previous decision of 22 November 2005 and added that when questioned, V.M.-shvili, who had been transferred for security reasons from the Khoni prison to the prison Y, had not confirmed that the applicant's son had suffered any kind of pressure in prison. The prosecutor's office also emphasised that during the visits he had received in the prison, X had never said anything to his father about the alleged murder and that he had clearly invented the murder story the better to defend himself against the extortion charges. The prosecutor's office also highlighted the letter addressed to Nino which, having been found "in the deceased's clothes", validly substantiated the suicide theory.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL MATERIALS

A. The Code of Criminal Procedure (CCP), as it read at the material time

58. Article 28 § 1 (a) of the CCP ("Grounds for discontinuing proceedings") provides:

> "Criminal proceedings may not be brought, and pending criminal proceedings shall be discontinued, if:

[1] As disclosed by the material in the case file, A.L-iani and Z.L.-iani have the same surname.

(a) the act or omission concerned is not an offence under the Criminal Code; ...”

59. Pursuant to Article 333 § 1 of the CCP (“Aims and types of inspections”), only an investigator or a prosecutor has the right to inspect the scene, the dead body and material pieces of evidence and documents which are related to the commission of a crime.

Article 335 §§ 1 and 3 of the CCP (“Inspection of the scene”) reads as follows:

“1. An inspection of the scene is to be conducted on the site where the crime has been committed or its traces discovered. The scene must be preserved until the termination of the inspection.

3. The person who is inspecting the scene must take and seal the prints, objects and documents discovered there...”

60. Pursuant to Article 366 of the CCP, a civil party must be informed in advance of an investigator's or prosecutor's decision to order a forensic examination, so that the party may effectively exercise the relevant rights, such as questioning or seeking the removal of the expert appointed.

B. Country Report on Human Rights Practices in Georgia, released by the US Department of State on 8 March 2006

61. Excerpts from the above-mentioned Report by the US State Department concerning the practice of collecting *obshiaks* in Georgian prisons read as follows:

“The '[t]hieves in law', a powerful network of organized crime gangs, was prevalent in all prisons and routinely extorted payments called *obshiak* from fellow prisoners that were in turn used to bribe prison officials and judges. In the G[e]g[u]ti prison colonies, prison officials refused to patrol at night for fear of assault from the [t]hieves. NGOs reported that many prisoners sought placement in punishment isolation cells in spite of their deplorable conditions, to evade the [t]hieves' influence. According to the [Public Defender's O]ffice, refusal to cooperate with gangs provoked physical and psychological intimidation.

Payment of guards and prison staff salaries became more regular during the year, which reportedly decreased corruption. However, in June mounting NGO and ombudsman pressure culminated in the criminal investigation of S[.] K[.], director of the penitentiary department of the Ministry [of Justice], for alleged collaboration with the [t]hieves to extort and abuse prisoners; the [Public Defender's] [O]ffice accused K[.] of extorting over $166 thousand (300 thousand GEL) *obshiak* from prisoners monthly. The [M]inistry refused to dismiss K[.], although two prison administrators were subsequently arrested – one for extorting a bribe from a detainee's relative, and the other following an incident in which [the Public Defender's] and [G]eneral [P]rosecutor's officials were harassed during a monitoring visit to the detention facility under his supervision....”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

62. The applicant complained, under Article 2 § 1 of the Convention, that her son had been killed in prison, the homicide being disguised as suicide, and that the authorities had failed to conduct an adequate investigation into the matter. The relevant provision reads as follows:

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

63. The Government contested that argument, maintaining that the applicant's son had committed suicide in prison but that the respondent State should not be held responsible as the relevant authorities could not have foreseen that tragic event. Thus, the Government submitted that Zurab Tsintsabadze had never reported to the prison administration about any instance of ill-treatment by fellow prisoners or about any other anxiety that he might have been experiencing in prison; no medical records of his suicidal trends had existed. Consequently, there had been no basis for the relevant domestic authorities to suspect that such a sinister event would occur and thus to undertake preventive measures.

64. The Government further submitted that the investigation into the death of the applicant's son had fully met the requirements under Article 2 § 1 of the Convention. Thus, the investigation had been launched immediately after the discovery of the body, all the witnesses who could have possessed relevant information, amongst both the inmates and the administration of the Khoni prison, had been duly questioned and the relevant forensic examination had been conducted. The applicant had also had the possibility of challenging the termination of the investigation before the domestic courts. The mere fact that she was not satisfied with the outcome of the investigation should not be imputable to the State.

65. Amongst the various investigative measures taken by the domestic authorities, the Government particularly emphasised the importance of the discovery of the letter dated 28 October 2005. Referring to the contents of the NFB's covering letter of 10 November 2005 (see paragraphs 34 and 35 above), the Government claimed that it had been established by the investigation, and confirmed by the applicant herself, that the handwriting in the letter dated 28 October 2005 belonged to her son.

66. In reply to the Court's question concerning the phenomena of the *makurebeli* and the "kitty" in Georgian prisons, and the role of prison administrations in that regard, the Government asserted that, since the Khoni prison was reserved for former law-enforcement officers, being, in

colloquial language, "a red zone", that precluded any possibility of its inmates belonging to the criminal underworld. Consequently, there was no place for mafia bosses there – the so-called "thieves in law"[1] – which, in turn, ruled out the existence of any criminal practices in the Khoni prison.

67. In reply, the applicant first referred to those circumstances of the case which confirmed, in her opinion, that the investigation into her son's death had been inadequate. She noted, in particular, that the letter dated 28 October 2005 had been addressed to a certain Nino, whereas the name of her son's wife, because of whom he had allegedly committed suicide, was Maka. The applicant also referred to the concordant statements of X and her former husband, which confirmed the fact that her son had had problems with the *makurebelis* of the Khoni prison, which could have been an explanation for his suspicious death. She maintained that the domestic authorities had failed to explore adequately the possibility of homicide.

68. The applicant further contended that the Government had evaded the Court's question concerning the two above-mentioned prison phenomena, only submitting information concerning mafia bosses. However, she continued, at the time in question, the practice of collecting the "kitty" was common in all prisons in Georgia, irrespective of whether the prison was a so-called "red zone" (a prison where only former officials and representatives of law-enforcement bodies were held) or "black zone" (a prison where ordinary criminals served their sentences). Thus, the "kitty" was established as an obligatory "tax" with the connivance of the prison authorities, which also benefited personally, and was compulsory for all prisoners save the *makurebelis*, with certain other exceptions. Besides monthly payments, other types of income were also put into the common fund, such as a percentage of any money won by prisoners from gambling. Part of the "kitty" was paid to the prison administration, which, in return, would impose less severe restrictions (for example, permission to play cards, permission for prisoners to leave the cell when they wished to do so, and permission to receive items prohibited by law from visitors, such as mobile phones). If the prison was a "black zone", then the "kitty" was also used for various activities of mafia bosses. As to the role of the *makurebelis*, the applicant submitted that there existed two types of such "supervisors" in prisons – the cell *makurebeli* and the building *makurebeli*. The cell *makurebeli* monitored the situation within the cell to ensure that his cellmates duly paid their contributions, whilst the building *makurebeli* operated at a higher level and supervised the process of collecting the "kitty" in the whole prison. A *makurebeli* was not necessarily a mafia boss

[1] "Thieves in law" ("*kanonieri qurdebi*" in Georgian, and "*воры в законе*" in Russian) are criminals who are respected, have authority and a high-ranking status within the criminal underworld in the countries previously forming the Soviet Union. "Thieves in law" are the elite of the underworld of organised crime, an equivalent to the rank of "Godfather" in the Italian mafia.

either in a "black zone" or a "red zone", but an influential prisoner whose authority was tolerated by the prison administration.

69. Thus, the applicant continued, since the administration of the Khoni prison formed part of the above-mentioned prison phenomena, it was clear that it could not have had any interest in establishing the truth about whether or not her son had indeed been killed by the *makurebelis* because of the debt he owed to the "kitty". She reproached the domestic authorities for not having reopened the case after they had received the highly important new pieces of information in early 2006 surrounding the death of her son.

A. Admissibility

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

B. Merits

1. General principles

71. The Court reiterates that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see, among many other authorities, *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports of Judgments and Decisions* 1998-VIII).

72. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Persons in custody are in a vulnerable position and the authorities are under a duty to protect them. Consequently, where an individual is taken into custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V). The obligation on the authorities to account for the treatment of an individual in custody becomes even more stringent where that individual dies (see *Keenan v. the United Kingdom*, no. 27229/95, § 91, ECHR 2001-III; and *Salman v. Turkey* [GC], no. 21986/93, § 99, ECHR 2000-VII).

73. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow

from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman*, cited above, § 100, and *Ertak v. Turkey*, no. 20764/92, § 32, ECHR 2000-V).

74. The obligation of States to protect the right to life under Article 2 of the Convention requires by implication that there should be an effective official investigation when individuals have been killed. The duty to conduct such an investigation arises in all cases of killing and other suspicious deaths, whether the perpetrators were private persons or State agents or are unknown (see *Menson v. the United Kingdom* (dec.), no. 47916/99, ECHR 2003-V, and *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 110, ECHR 2005-VII).

75. The investigation must be effective in the sense that it is capable of leading to the establishment of the relevant facts and the identification and punishment of those responsible. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death (see *Salman*, cited above, § 106; *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 109, ECHR 1999-IV; and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). The investigation's conclusions must be based on thorough, objective and impartial analysis of all the relevant elements. While the obligation to investigate relates only to the means to be employed and there is no absolute right to obtain a prosecution or conviction, any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall foul of the required measure of effectiveness (see *Esat Bayram v. Turkey*, no. 75535/01, § 47, 26 May 2009, and *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 321, ECHR 2007-VI).

76. For an investigation to be effective, the persons responsible for and carrying out the investigation must be independent and impartial, in law and in practice. This means not only a lack of hierarchical or institutional connection with those implicated in the events but also practical independence (see *Ramsahai and Others*, cited above, §§ 325 and 333-346, and *Scavuzzo-Hager and Others v. Switzerland*, no. 41773/98, §§ 78 and 80-86, 7 February 2006). There must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice, maintain public confidence in the authorities' adherence to the rule

of law and prevent any appearance of collusion in or tolerance of unlawful acts. In all cases, the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see, for example, *Güleç v. Turkey*, 27 July 1998, § 82, *Reports* 1998-IV).

2. Application in the present case

77. It is undisputed that the investigation into the death of the applicant's son commenced promptly and that a number of urgent and relevant investigative measures were taken, such as the visit to the site, the autopsy and the examination of various witnesses. The Court observes, however, that there were serious inconsistencies and deficiencies in the manner in which those measures were conducted, from the very beginning of the investigation and throughout its duration. Consequently, many obvious questions concerning Zurab Tsintsabadze's suspicious death remained unanswered.

(a) The shortcomings of the official version of suicide

78. At the outset, the Court notes that the applicant's son was found dead in the Khoni prison, a custodial establishment under the direct supervision of the Ministry of Justice (see paragraph 9 above). Even setting aside any suppositions about the deliberate taking of the prisoner's life, in the particular circumstances of the present case one of the possible lines of inquiry, calling for a careful and impartial analysis, was whether his death could have resulted from the negligent functioning of the prison authorities. The Court further notes that all the main investigative measures were conducted by the Western Georgian investigation department of the very same ministry, and that department's findings were then straightforwardly endorsed by the public prosecutor, without any additional inquiries of his own, as the basis for dismissing the case (see paragraphs 10 and 38 above). That institutional connection between the investigators of and those implicated in the incident, in the Court's view, raises legitimate doubts as to the independence of the investigation conducted (see *Ergi v. Turkey*, 28 July 1998, §§ 83-84, *Reports* 1998-IV, and *Scavuzzo-Hager*, cited above, §§ 78 and 80-86). Those doubts are further substantiated by the actual manner in which the investigative authority acted in the present case.

79. Thus, a more detailed analysis of the circumstances surrounding the various investigative steps taken reveals a number of serious omissions. Notably, the site where Zurab Tsintsabadze's body was discovered was not sealed off pending the arrival of the investigators, contrary to Article 333 § 1 and Article 335 § 1 of the CCP (see paragraph 59 above and compare with *Vachkovi v. Bulgaria*, no. 2747/02, § 91, 8 July 2010). The Court is particularly struck by the fact that the prison staff – who, as was noted in the preceding paragraph, should logically have been implicated by the sinister discovery – were allowed to remove the shoes from the deceased, to go

through his pockets and even to remove from the site such extremely important pieces of evidence as the chairs and the rope made from a quilt, with which the prisoner had allegedly committed suicide (see paragraph 11 above). It is highly regrettable that the investigative, prosecution and judicial authorities failed to give due consideration to that important procedural irregularity, despite the applicant's repeated complaints to that effect (see paragraphs 39 and 41 above). Nor can the Court overlook the fact that, in contrast to the action taken in respect of the other objects allegedly discovered by the prison staff on the site, the investigator inexplicably failed to seal the chairs which, having been reportedly discovered underneath the feet of the hanged prisoner, obviously represented an extremely valuable piece of evidence (see paragraph 11 above).

80. The Court is further struck by the fact that, as the applicant maintained, the investigators failed to take fingerprints from the chairs, the padlock, the door or the lock of the storeroom to compare them with those of the deceased (see paragraph 39 above). The Court has no doubt that such a simple but, in the circumstances, indispensable investigative measure could have significantly elucidated the facts surrounding the manner in which Zurab Tsintsabadze had entered the locked storeroom and whether, indeed, he had made preparations to hang himself (see *Beker v. Turkey*, no. 27866/03, § 47, 24 March 2009). It is also regrettable that, contrary to the regional prosecutor's clear and very useful instruction to that end, the Ministry's investigation department never took the trouble to identify and question the security guard at the Khoni prison who, while on duty on the night of 30 September 2005, had been monitoring the storeroom and was thus capable of testifying as to when and with whom the applicant's son had entered it (see paragraph 33 above).

81. Another serious omission of the investigation was that, contrary to Article 366 of the CCP, neither the applicant nor her former husband was informed in advance of the investigator's decision to order a forensic examination of their son's body. On the contrary, the authorities confronted them with a *fait accompli* in providing them, *ex post facto*, with the NFB's autopsy report establishing the cause of the death. Such a manifest lack of involvement of the applicant in such a significant investigative procedure deprived her of the opportunity to exercise her rights as a civil party, which limited the public scrutiny of the relevant forensic examination, thus tainting the credibility of its findings (see, *mutatis mutandis*, *Beker*, cited above, §§ 49 and 51-52).

82. The Court further observes that there existed an inconsistency between the NFB's autopsy report, which was flawed because of the civil party's lack of participation in the relevant procedure (see the preceding paragraph), and the alternative autopsy report, which took into account an additional forensic examination of Zurab Tsintsabadze's body, conducted in the presence of the applicant and the Public Defender's representatives, thus

allowing a greater degree of the requisite public scrutiny (see, *mutatis mutandis*, *Beker*, § 49, and *Güleç*, § 82, both cited above). In particular, the alternative autopsy report established, along with the strangulation mark on the deceased's neck, another lesion, caused by a blunt object (see paragraph 30 above). Obviously, a further verification of the origins of that additional lesion could have shed light on the well-foundedness of the official version of suicide, on the one hand, and the applicant's allegations of homicide, on the other. It is regrettable that the investigative authority failed adequately to investigate or explain that patent contradiction between the two autopsy reports. For example, as was also suggested by the regional prosecutor (see paragraph 33 above), the investigator could have interviewed the independent experts or even confronted them with the State expert on the issue of the existence and origins of the lesion in question. However, in deciding to rely on the State expert's oral explanations only, the investigator acted one-sidedly in the Court's opinion (see *Esat Bayram*, cited above, § 51).

83. Lastly, as regards the letter dated 28 October 2005, the discovery of which permitted the relevant authorities to underpin the suicide theory with an otherwise missing motive – Zurab Tsintsabadze's passion towards his former wife – the Court considers that the credibility of that piece of evidence cannot resist even the slightest criticism. Firstly, the letter bore a date subsequent to the applicant's death on 30 September 2005, and the investigator's explanation that the applicant's son had "no doubt" mixed up the months was pure guesswork. Secondly, even assuming that he had indeed mistaken the date, it would be incongruous to think that the applicant's son had forgotten the name of his former wife as well, bearing in mind that his passion towards her had supposedly driven him to suicide. Thus, the Court notes that the forename of his former wife was Maka, whereas the impugned letter was addressed to a certain Nino (see paragraphs 7 and 34 above). If the letter was meant to be addressed to the applicant's friend Nino, who had apparently been sending money to the applicant's son in prison (see paragraph 43 above), then it becomes difficult to understand why the investigator never attempted to approach that woman to enquire about the nature of her relationship with the applicant's son. Most importantly, as the applicant complained on several occasions, the authorities failed to notice that the pockets of her son's clothes had been examined by the prison staff immediately upon the discovery of his body, and only three objects – a packet of cigarettes, a lighter and an analgesic tablet – had been discovered there (see paragraphs 11 and 39 above). Nor did the investigators take the trouble to verify whether it was possible for the letter, which had supposedly dropped from the deceased's person, to remain unnoticed in the refrigerator of the morgue for more than a month, between 1-3 October and 8 November 2005, given that the established practice was to clean the refrigerator two or three times a month (see

paragraphs 16 and 34-36 above). Furthermore, the investigative authorities failed to arrange for an examination of the letter by a forensic handwriting and/or fingerprint expert, as requested by the applicant on several occasions. In this connection, the Government's argument, based only on the NFB's covering letter of 10 November 2005 (see paragraphs 34-35 and 65 above), that the handwriting had been identified as belonging to the applicant's son remains an unsubstantiated assertion, in the absence of an expert report on the requisite handwriting examination.

84. The above-mentioned omissions and unexplained discrepancies in the conduct of the investigation are sufficient for the Court to conclude that the finding of suicide, as established by the domestic authorities, together with the underpinning pieces of evidence, does not hold up. The Court, sharing the applicant's concerns, is thus unable to accept that finding as a convincing explanation of Zurab Tsintsabadze's suspicious death in prison (see *Beker*, cited above, § 51).

(b) The failure to explore adequately the possibility of homicide

85. The Court reiterates that, in order for an investigation to be effective, its conclusions must be based on a thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of inquiry undermines the investigation's ability to establish the circumstances of the case and the person responsible (see *Kolevi v. Bulgaria*, no. 1108/02, § 201, 5 November 2009).

86. Turning to the circumstances of the present case, the Court observes that before the domestic authorities, the applicant consistently denied that her son had committed suicide, claiming that he might have been killed and that the murder had then been disguised as suicide by the Khoni prison administration. That allegation was far from being unsubstantiated, as it followed from the coexistence of the sufficiently strong, clear and concordant inferences which emanated from the various credible sources of information and remained unrebutted by the relevant domestic authorities.

87. Notably, at the very beginning of the investigation, during her first interview, the applicant informed the investigator, referring to the specific factual circumstances, that her son had been anxious about his contributions to the “kitty”, an unlawful common fund of the prisoners at the Khoni prison, constantly demanding his relatives to send him money for that purpose. Subsequently, she reiterated those statements and explicitly requested the authorities to launch a probe in that direction (see paragraphs 29 and 32 above).

88. The Court further observes that the applicant was not alone in doubting the suicide theory and that X, an inmate at the Khoni prison, became an even more informative source for the investigation. Thus, X provided the Public Defender's Office and the Ministry's investigation department with specific and concordant details about Zurab Tsintsabadze's

conflict with influential inmates at the Khoni prison – the *makurebelis* – over the issue of the debt he owed to the "kitty". In particular, X gave a detailed account of how the two *makurebelis* of the prison, V.Th.-shvili and Z.L.-iani, had started harassing the applicant's son after his failure to repay the sum of GEL 80 which he had borrowed from the "kitty" to buy an Ericsson T10 mobile telephone from another inmate. According to X, the applicant's son had been beaten on two previous occasions by the *makurebelis* because of the debt. The inmate also described, in a specific and convincing manner, the events which he had witnessed on 30 September 2005, namely that the applicant's son had first been summoned by the *makurebelis* for a conversation, and that, a few minutes later, those *makurebelis* and another inmate, A.B.-ia, had dragged his unconscious body to the storeroom (for more details, see paragraphs 47-50 above).

89. Admittedly, X said nothing about the possibility of homicide at the beginning of the investigation. However, his silence could validly be explained, as the inmate noted himself, by the fear factor. The Court, in general, is not oblivious to the well-known illicit practices prevailing in Georgian prisons at the material time and of the consequent fear amongst ordinary prisoners of either mafia bosses or prison administrations (see also the relevant excerpts from the US State Department's Country Report on Human Rights Practices in Georgia, paragraph 61 above), the latter being capable of acting, as the applicant eloquently described, through the informally privileged inmates known as *makurebelis* (see paragraphs 66-68 above). In particular, as was also confirmed by the statements of Zurab Tsintsabadze's father, when the latter came to the Khoni prison on 1 November 2005 to collect his son's body, X approached him as if he wanted to confide something in him but could not do so as the meeting was closely watched by one of the *makurebelis* in question (see paragraph 68 above). Indeed, the Court does not find it implausible that, being in the hands of the *makurebelis* and the prison administration, the inmate X, possessing incriminating information against them, was too intimidated to speak up overtly and dared to give the relevant hints to the deceased's parents only during telephone conversations (see paragraphs 43, 46 and 49 above). The same fear factor could also be the reason for the retraction of the incriminating statements against the *makurebelis* and the prison administration by another inmate, V.M.-shivili, who had apparently also observed the suspicious events preceding Zurab Tsintsabadze's death on 30 September 2005 (see paragraphs 47, 64 and 57 above).

90. In that regard, the Court cannot overlook the fact that, immediately after the discovery of Zurab Tsintsabadze's body, when not even preliminary investigative findings had yet been made available, such as the result of the autopsy establishing the cause of the death, the prison governor, instead of maintaining the requisite appearance of discretion and

impartiality with regard to the outcome of the investigation, started publicly advocating the suicide theory as the only possible explanation of the suspicious death; strikingly enough, the governor was even able, at that stage, to detect the motive for the suicide, namely Zurab Tsintsabadze's passion for his former wife (see paragraphs 17 and 45 above). Consequently, the Court does not exclude the possibility that the governor's clearly predisposed position could have easily influenced the statements of the prison staff and inmates, including X, since those witnesses in the investigation were under his direct authority and supervision.

91. In any event, the question of why X gave his incriminating statements after the investigation had already been terminated is less relevant. What matters is that those statements – which were given only three months after the investigation had ended with, as the Court has already established, the inconclusive finding of suicide (see paragraph 84 above) – contained numerous serious and credible allegations relevant to the establishment of the truth surrounding Zurab Tsintsabadze's death. Consequently, the domestic authorities were under a direct obligation to take all the necessary measures for the objective verification of those allegations, which were also confirmed by the results of the Public Defender's Office's own inquiry, including the possibility of bringing charges against the persons incriminated by X (see *Brecknell v. the United Kingdom*, no. 32457/04, §§ 70-71, 27 November 2007). Indeed, if a single complaint of extortion sufficed for the immediate initiation of criminal proceedings against X (see paragraph 44 above), then the legitimate question arises as to why so many serious accusations against the *makurebelis* and the Khoni prison administration, credibly implicating them in Zurab Tsintsabadze's homicide and the cover-up of the crime, did not lead to the initiation of criminal proceedings against them as well.

92. The Court further observes that, having received those important new pieces of information, the Ministry's investigation department, instead of launching a fresh round of comprehensive investigations into Mr Tsintsabadze's death, limited itself to a brief interview of V.T.-shvili and Z.L.-iani as witnesses. Furthermore, despite the serious indications calling for caution as regards those two persons, who in the normal course of events should have been treated as the main suspects in a case of homicide (see *Anguelova v. Bulgaria*, no. 38361/97, § 120, ECHR 2002-IV), the investigative authority simply accepted their statements, in which V.T.-shvili and Z.L.-iani merely said that they were not *makurebelis* and denied the existence of the practice of a "kitty", referring to the unofficial status of their prison (see paragraph 51 above). The authority never sought to undertake any further investigative measures to prove or disprove X's allegations. Thus, for example, it could probably have approached the lawyer N.A-dze who, as disclosed by the case file, had served as a link between the applicant and X and who could thus have appeared to be an

additional source of information concerning the well-foundedness of X's allegations (see paragraphs 32 and 49 above); the applicant's sister could also have been interviewed, as she was apparently aware of the debt owed by her late nephew to the "kitty" (see paragraph 29 above); nor did the investigative authorities take the trouble to verify the allegation that the prison governor, A.L.-iani, was related to one of the suspects, Z.L.-ani, the establishment of which fact would have also been relevant to the verification of alleged collusion between the two (see paragraph 54 above).

93. The above-mentioned observations are sufficient for the Court to conclude, without further analysis of any other relevant circumstances of the case, that the applicant's allegation of homicide, with the crime being disguised as suicide, is plausible, and at least as credible as the official version of suicide. Yet the authorities refused to explore adequately the possibility of homicide, contrary to their obligation to follow all credible lines of inquiry (see *Vachkovi*, §§ 86 and 88, and *Kolevi*, cited above, § 201, both cited above).

(c) Conclusion

94. In the light of the foregoing, the Court finds that the investigation into the death of the applicant's son was not independent, objective or effective.

95. The Court thus concludes that the respondent State failed to satisfy the burden of proof resting on it to provide a satisfactory and convincing explanation as regards Zurab Tsintsabadze's death, which occurred in suspicious circumstances in prison, thus directly engaging the State's responsibility for the loss of life. It follows that there has been a violation of Article 2 of the Convention (see *Mojsiejew v. Poland*, no. 11818/02, § 65, 24 March 2009, and *Beker*, cited above, §§ 53 and 54).

II. ALLEGED VIOLATIONS OF ARTICLES 3 AND 13 OF THE CONVENTION

96. Relying on Articles 3 and 13 of the Convention, the latter provision being invoked in conjunction with Article 2, the applicant reiterated the complaint about the death of her son and the absence of a meaningful investigation, which had caused her distress.

97. However, having regard to its comprehensive findings under Article 2 of the Convention, relating to the central legal issue of the present application, the Court considers that it is not necessary, in the particular circumstances of the present case, to examine separately the complaints under Articles 3 and 13 of the Convention as well (see, for example, *Khaindrava and Dzamashvili v. Georgia*, no. 18183/05, § 72, 8 June 2010, and *Abdullah Yılmaz v. Turkey*, no. 21899/02, § 77, 17 June 2008).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. Article 41 of the Convention provides:

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

A. Damage

99. The applicant claimed EUR 15,000 in respect of non-pecuniary damage.

100. The Government considered the applicant's claim to be unfounded and excessive.

101. The Court has no doubt that the applicant suffered distress and frustration on account of the suspicious death of her son under the State's responsibility and the authorities' failure to account convincingly for the death. Ruling on an equitable basis, the Court awards in full the applicant's claim of EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

102. The applicant claimed EUR 1,450 and 2,200 United Kingdom pounds sterling ((GBP) – EUR 2,570) on account of her representation before the Court by, respectively, the Georgian lawyer and the two British lawyers (see paragraph 2 above). The two amounts were broken down into the number of hours spent and the lawyers' hourly rates – 29 hours at the rate of EUR 50 for the Georgian lawyer and 22 hours at the rate of GBP 100 for the British lawyers. That itemisation also indicated the dates and the exact types of legal services rendered. As regards the British lawyers, the applicant submitted an invoice showing that on 15 February 2008 Mr Bowring had claimed GBP 200 for two hours that he had spent reviewing the case file. No other invoices or vouchers were submitted.

103. The applicant also claimed GBP 175 (EUR 204) and EUR 467 for postal, telephone, translation and other types of administrative expenses. In support of those claims, the applicant submitted only a copy of the postal receipt showing that GEL 64 (EUR 27) had been paid for posting the initial application from Tbilisi to Strasbourg on 15 February 2008. There was also a certificate dated 25 September 2006 according to which the GYLA and EHRAC had paid a certain person 421 United States dollars (EUR 307) from their common budget for the translation of unspecified documents; the certificate did not contain any additional information capable of linking the translation work to the present application.

104. The Government submitted that the claims were mostly unsubstantiated and excessive. They noted that the applicant's Georgian representative, Ms Sophio Japaridze, was a member of GYLA, a non-governmental organisation known for rendering its legal services to the Georgian population free of charge. Consequently, there was no call to award the applicant any costs on account of the representation by that particular lawyer.

105. The Court considers that the insufficiency of the relevant financial documents cannot eradicate the fact that the Georgian and British lawyers actually rendered the necessary legal assistance to the applicant (see *Patsuria v. Georgia*, no. 30779/04, § 103, 6 November 2007). As to the Government's argument that since the Georgian lawyer was a member of the non-profit-making organisation GYLA, the legal assistance in question should automatically be considered to have been rendered free of charge, the Court observes that in a recent Georgian case it found that the teamwork of the lawyers from GYLA and EHRAC in proceedings before the Court could not be left without compensation and that similar evidence of the lawyers' work – a detailed and credible itemisation of the hours spent – was acceptable proof of the expenses incurred by the applicant's representatives (see *Klaus and Iouri Kiladze v. Georgia*, no. 7975/06, §§ 91-94, 2 February 2010, and also *Volkova v. Russia*, no. 48758/99, § 46, 5 April 2005, and *Fadeyeva v. Russia*, no. 55723/00, § 149, ECHR 2005-IV). Thus, ruling on an equitable basis, the Court considers it appropriate to award the applicant EUR 1,450 and GBP 2,200 (EUR 2,570) on account of her representation by, respectively, the Georgian lawyer and the two British lawyers.

106. As regards the postal, translation and other types of administrative expenses, the Court, in the light of its well-established case-law on the matter (see, for instance, *Ghavtadze v. Georgia*, no. 23204/07, §§ 118 and 120, 3 March 2009), and having due regard to the documentary evidence submitted, considers that the applicant should be awarded only EUR 27 for mailing the initial application form.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 2 of the Convention admissible;

2. *Holds* that there has been a violation of Article 2 of the Convention;

3. *Holds* that there is no need to examine the remainder of the application;

4. *Holds*

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

(i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, and

(ii) EUR 4,047 (four thousand and forty-seven euros), plus any tax that may be chargeable to the applicant, for costs and expenses;

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

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

Done in English, and notified in writing on 15 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos Deputy Registrar	Françoise Tulkens President