

April 2011

Enukidze and Girgvliani v. Georgia - 25091/07

Judgment 26.4.2011 [Section II]

Article 38

Article 38-1-a

Obligation to furnish all necessary facilities

Article 38 applicable even in absence of separate decision on admissibility

Facts – The case concerned the abduction, beating and killing in 2006 of the applicants' son by a group of senior law-enforcement officers and the lack of an effective investigation and appropriate punishment. The applicants complained that the Government had submitted only part of the evidence necessary for the examination of the application, and even that had been done with a significant delay.

Law – Article 38 § 1: Noting that Article 29 § 3 of the Convention, as that provision stood at the material time, had been applied at the time of communication of the present application, the Court considered that, in the consequent absence of a separate decision on admissibility, it retained jurisdiction under Article 38, as it read at the material time, to examine the relevant events which had taken place during the subsequent proceedings. The Court found the Government's explanations for their delay and the partial failure to submit the requested items of evidence unconvincing. The Government had failed to justify that omission in their written observations and had remained silent even after the applicants had explicitly reproached them on that account at the public hearing on 27 April 2010. Referring to the importance of a respondent Government's cooperation in Convention proceedings and being mindful of the difficulties associated with the establishment of facts in complex cases of such a nature, the Court found that, in the present case, the Government had fallen short of their obligations under Article 38.

Conclusion: violation (six votes to one).

The Court also found a violation of the procedural aspect of Article 2 but no violation of the substantive aspect.