

Legal Assessment of the Cartographers' Case

Introduction

Human Rights Education and Monitoring Center (EMC) presents a legal assessment of the cartographers' case and believes that the charges against Iveri Melashvili and Natalia Ilichova, are ungrounded and do not constitute a crime as defined by Article 308 of the Criminal Code (violation of Georgia's territorial integrity). Moreover, the timing and political context of the investigation and prosecution, as well as the pre-election information campaign for this case, organized by the ruling political team, raises doubts about the political instrumentalization of law enforcement power and the system, which contradicts the fundamental principles of legal state.

A detailed analysis of the criminal case file, conducted by EMC, shows that the positions of the state prosecution are manifestly ill-founded. In some cases, there are substantial factual and legal inconsistencies and unexplored circumstances, which raise suspicions of intentional neglect of important circumstances by the prosecution.

In this regard, the problem of the relevance of the application of Article 308 of the Criminal Code should be emphasized first. The official positions of Iveri Melashvili and Natalia Ilichova in the State Commission and their mandate/authority do not allow for the commission of a crime aimed at the transfer of the entire territory, or part of Georgia, to a foreign country, or the secession of a part of it from the territory of Georgia. They were ordinary members of the State Commission, which collectively made decisions on all expert recommendations, and in turn, all these expert recommendations were agreed upon with high-ranking state officials by the Chairman of the Commission. That is why, considering the official status of the accused and their competence, the application of Article 308 of the Criminal Code to Iveri Melashvili and Natalia Ilichova, for the expert decisions made by the collective body, seems irrelevant and unjustified.

At the same time, the main factual arguments presented by the Prosecutor's Office that Iveri Melashvili and Natalia Ilichova did not use and hid the original 1:200,000 scale topographic map of 1937-1938, which was in their possession, are also problematic and disputable. A detailed analysis of the case file shows that the issue of the use of the said map was discussed by the State Commission a few years ago and was finally ignored due to scientific arguments. It should be emphasized that the mentioned circumstances, in the case, apart from I. Melashvili and N. Ilichova, are confirmed by other members as well. Thus, the allegation of the Prosecutor's Office that the presentation and discussion of the mentioned map with the members of the commission were not performed intentionally by the accused is unfounded and artificially created. Moreover, according to the case materials, the fact of hiding the mentioned map is not confirmed either, as it was handed over in full by Natalia Ilichova to another person appointed to the State Commission in 2019, along with the case materials.

For a legal assessment of I. Melashvili and N. Ilichova's actions, it is important to establish the possibility of using a 1:200,000 scale map in the work process. Although conducting such an examination of 1:200,000 scale map was crucial, the case file shows that the prosecution did not prescribe appropriate procedural action and, without assessing the quality and accuracy of 1:200,000 scale map, seeks to create a public perception that the map contradicted cartographic material prepared by I. Melashvili and N. Ilichova in the work process, and exchanged with the Azerbaijan side.

The prosecution also misinterprets the issue of using other maps published by cartographers in the post-1938 period. The agreement of June 13, 1996, established that State Commissions, in the delimitation-demarcation process, should consider 1:500 000 scale border maps, approved by the Presidium of the Central Executive Committees of Georgia and Azerbaijan in 1938, *but*,

at the same time, other documents can be used. It should also be noted that in the substantiation of the accusation, the prosecution points out the illegality of the use of other maps by cartographers, but during the examination, *it was not assessed whether the boundary line drawn on the other maps was following the boundary line drawn on 1:500 000 scale map approved in 1938.* Assessing and establishing these circumstances was crucial for the criminal case, as the case file show that although the cartographers used maps published in 1942, and 1970-80, in the process of application, they necessarily determined the compatibility of these material with the 1:500,000 scale maps approved in 1938. It should also be noted that no suspicious circumstances were identified in the course of the work, nor did any member of the commission attempt to independently verify whether the prepared maps complied with the 1938 1:500,000 scale demarcation line.

This and the detailed analysis presented below show that the charges against Iveri Melashvili and Natalia Ilichova are unfounded and that is why, in our estimation, it is important to stop the prosecution of the accused.

EMC will seek to support the proper exercise of the right to a fair trial for the accused within the framework of its mandate and the procedures provided by the procedural law.

1. A critical review of the factual circumstances of the case

1.1. The essence of the prosecution's accusation

On October 7, the Prosecutor's Office of Georgia [detained](#) Iveri Melashvili, Head of the Border Relations Service of the Department of Neighbouring Countries of the Ministry of Foreign Affairs of Georgia, and Natalia Ilichova, Chief Inspector of the Land Border Protection Department of the Ministry of Internal Affairs of Georgia.

According to the [Prosecutor's Office of Georgia](#), on August 17, 2020, the Minister of Defence of Georgia Irakli Gharibashvili addressed the Prosecutor's Office of Georgia and stated that according to their information, Delimitation and Demarcation of the Georgian-Russian State Border, Delimitation and Demarcation of the Georgian-Azerbaijan State Border, Delimitation and Demarcation of the Georgian-Armenian State Border, as well as for the Delimitation of the Territorial Sea on the Black Sea between Georgia and the Russian Federation, Special Economic Zone and Continental Shelf **State Commission**, wrongfully agreed on some sections of the Georgian-Azerbaijan state border to the detriment of Georgia. The commission's experts ignored important documents (1: 200 000 scale map published in 1937-1938), which in the spring of 2020, a Georgian citizen found in the archives of another country and handed over to the Ministry of Defence. Based on this information, the Prosecutor's Office launched an investigation into the fact of taking action to transfer part of the territory of Georgia to a foreign country (Part 1 of Article 308 of the Criminal Code of Georgia).

According to the [Prosecutor's Office](#), N.Ilichova and I.Melashvili were members of Delimitation and Demarcation of the Georgian-Russian State Border, Delimitation and Demarcation of the Georgian-Azerbaijan State Border, Delimitation and Demarcation of the Georgian-Armenian State Border, as well as for the Delimitation of the Territorial Sea on the Black Sea between Georgia and the Russian Federation, Special Economic Zone and Continental Shelf **State Commission (hereinafter, State Commission)**, who, for delimitation-demarcation of the border, were obliged to carry out geodetic and cartographic works, search for relevant maps and other materials, reconcile them, analyze them and based on them, compile map albums depicting the Georgian border.

According to the Prosecutor's Office, the Georgian-Azerbaijan agreement established State

Commissions¹ for delimitation and demarcation of the border between the two states and the bilateral commission agreement of June 13, 1996, stipulated that the parties would be guided in the process of agreeing on the borderline between the states, based on the existing 1: 500 000 scale map approved by the Central Executive Committees of both states in 1938. In the work process of the State Commission, I.Melashvili and N. Ilichova were instructed to make map albums on the relevant cartographic material, where the state border would be marked following the historical border of Georgia approved in 1938. Contrary to this, the defendants deliberately used cartographic material that did not reflect, from a historical and legal point of view, the real position of Georgia concerning its territories. In particular, according to the assessment of the Prosecutor's Office, I.Melashvili and N.Ilichova used cartographic material published in 1970-1980 in contrast to the June 13, 1996 agreement, but **did not use and hid the original 1:200,000-scale topographic map of 1937-1938, which better represented Georgia's position on historical sites.** According to the prosecution, **the defendants hid from the investigation and did not hand over the original 1:200 000 scale map of 1937-1938 and other cartographic materials of 1970-80.** The extraction of the mentioned materials was carried out by the investigative actions within the framework of the current investigation, in particular, as a result of the search of N.Ilichova's and I.Melashvili's offices, material interesting for the investigation was found.

Cartographic examinations conducted as part of the investigation revealed that 1) the defendants in the delimitation process were guided by the borderlines drawn on maps issued in 1970-80, which is essentially contrary to the historical Georgian-Azerbaijan border, including with respect to Davit Gareji; 2) The examination also revealed that N.Ilichova and I.Melashvili, in the process of delimitation of the state border, were using a prepared outline of 1:500 000 scale map, which, in the opinion of experts, could not be used as a cartographic product, as such outlines do not include complete topographic information; 3) The examination revealed that several sections of the agreed border between Georgia and Azerbaijan in the period up to and including 2007, do not correspond to the Georgian borderline drawn on 1:200 000 scale topographic maps published in 1937-1938, and the difference to the detriment of Georgia is up to 3500 ha.

Accordingly, according to the Prosecutor's Office, the fact that defendants deliberately ignored the relevant cartographic material and used inconsistent materials created the threat of losing the territories historically belonging to Georgia, due to which Iveri Melashvili and Natalia Ilichova were prosecuted.

A picture, different from the reasoning and conclusions developed by the Prosecutor's Office of Georgia emerges from the materials of the criminal case and after a detailed study of them, critical questions arise with regards to I.Melashvili and N.Ilichova committing a criminal offense. Given the above, we will review in detail, the important circumstances established by the materials of the criminal case.

1.2. The factual circumstances surrounding the charge that has not been properly investigated or are inconsistent

1.2.1. Establishment of a State Commission, the purpose of the commission's activities, the role of the I.Melashvili and N. Ilichova in the work commission

აზერბაიჯანის რესპუბლიკისა და სომხეთის რესპუბლიკის თათბირითი მიტინგის საზღვრის დელიმიტაციისა და დემარკაციისთან, აგრეთვე შვედეთის ტერიტორიული ზღვის, განსაკუთრებული კონომიკური ზონისა და კონტინენტური შელფის დელიმიტაციისთან დაკავშირებით; განსაკუთრებული რუსეთის, აზერბაიჯანისა და სომხეთის მხარეებთან სახელმწიფო საზღვრის დელიმიტაციისა და დემარკაციის, აგრეთვე ტერიტორიული ზღვის, განსაკუთრებული კონომიკური ზონისა და კონტინენტური შელფის დელიმიტაციის პროცედურული მოთხოვნები და ამ მოთხოვნების ფარგლებში ხელი მოეწერა შეხვედრის ოქმებზე და სხვა დოკუმენტებზე;

გ) მოეწადებოდა სათანადო ხელშეკრულებების პროექტები რუსეთის ფედერაციისთან, აზერბაიჯანის რესპუბლიკასა და სომხეთის რესპუბლიკასთან სახელმწიფო საზღვრის დელიმიტაციისა და დემარკაციის, აგრეთვე რუსეთის ფედერაციისთან შვედეთის ტერიტორიული ზღვის, განსაკუთრებული კონომიკური ზონისა და კონტინენტური შელფის დელიმიტაციის შესახებ;

დ) პრინციპული საკითხები წინასწარ შეთანხმებული და გაწეული საქმიანობის შესახებ ანგარიში პერიოდულად წარედგინა საქართველოს საგარეო საქმეთა სამინისტროსთვის, საჭიროების შემთხვევაში, მოხსენებით წარდგენილიყო საქართველოს პრეზიდენტის, ეროვნული უშიშროების საბჭოს, საქართველოს პარლამენტის, საქართველოს მთავრობისა და დაინტერესებული უწყებების წინაშე.

In the ongoing criminal case, against Natalia Ilichova and Iveri

¹See. Re

Melashvili, it is important to assess their activities and role in the delimitation-demarcation process of the Georgian-Azerbaijan state border, which raises the issue of their influence and legal outcome on the final decision.

By questioning the witnesses during the investigation², it was established that by the resolution of the Council of Ministers of Georgia of December 31³, 1994, a bilateral commission was set up to delimit the state border between Georgia and Azerbaijan, to work on delimitation and demarcation issues of the border between the states. The Georgian State Commission consisted of representatives of various state agencies and specialists in the field, including a group of experts. The purpose of the commission was to carry out delimitation of the state border with the bordering states (Russia, Azerbaijan, and Armenia) after the collapse of the Soviet Union, to supervise demarcation works, to submit procedural requirements for delimitation, to sign agreements, to prepare draft treaties, etc. **The Commission was supervised by the Chairman, although critical matters were agreed in advance with senior officials (Minister of Foreign Affairs, President, And National Security Council).**

As for the decision-making procedure by the State Commission, some of the respondents in the investigation indicate that the commission made decisions by a majority of votes, while others explained that decisions were made based on consensus, which was later agreed with senior officials by the Chairman of the Commission. The statute of the commission is neither available in the case file nor official public sources.

It is clear from the case files⁴ that the State Commission also had to carry out the necessary work in the delimitation and demarcation process, including the preparation of relevant cartographic material, which was then to be exchanged with the Government/State Commission of Azerbaijan. The necessary technical work (measurement, surveying, cartography, and search for cartographic material) was essentially performed by members of a group of experts.

According to the case files⁵, Iveri Melashvili (engineer, *agronomist*) became a member of the commission in 1995, who headed the group of experts in 2005-2006. Natalia Ilichova has also been a member of the Commission and a group of experts since 1998. According to the protocols of the questioning, it is confirmed that N.Ilichova and I.Melashvili were experienced cartographers and were leading figures in the preparation of relevant cartographic material. Accordingly, within the framework of the commission's activities, it was their responsibility and other experts to search for relevant cartographic materials and to prepare albums of maps depicting the state border of Georgia and Azerbaijan. **However, none of them had the authority to decide the issue independently, and in any case, prepared positions had to be agreed in advance with the Chairman of the Commission, who, in turn, agreed on the positions with the**

²See. protocols of Nodar Khorbaladze, Tedo Gorgodze, Iveri Melashvili, Natalia Ilichova, Zurab Gumberidze, Malkhaz Mikeladze, Giorgi Karalashvili, Givi Kekelidze, Davit Bedoshvili, Merab Nadaraia and others (volumes 1st, 2nd, 2nd, 5th, 3rd), Annexes to the Protocol of withdrawal of 27 August 2020, Volume 2, Documents from the Ministry of Foreign Affairs, Protocols of the Commission.

³Then in 2006, a new presidential decree was passed, which was declared invalid in 2017

⁴Statements of the above-mentioned persons, as well as annexes to the protocol of extraction of 27 August 2020, 1997 report taken from the Ministry of Foreign Affairs on the work done on the demarcation of the state border between Georgia and Azerbaijan Volume 2, as well as Russian documents Agreement of 13 June 1996, Volumes I, II 5 Statements.

⁵IveriMelashvili's statement, Volume 2

higher officials.

1.2.2. Agreement of the Bilateral State Commission of 13 June 1996 and the Guiding Borderline for the Commissions

At the stage of the investigation, it is important to study the agreements reached between the State Commissions of the two countries and their legal basis. According to the Prosecutor's Office of Georgia, N.Ilichova and I.Melashvili bypassed 1996 agreement between Georgian and Azerbaijan State Commissions, which required the commissions to be guided by a 1:500,000-scale border map approved by the two republics in 1938, and in contrast to this, the defendants used maps of 1970-80 in the work process, which contradicts historical border of Azerbaijan and Georgia. Contrary to the above-mentioned explanation of the Prosecutor's Office, the materials of the criminal case establish:

In the delimitation of the Georgian-Azerbaijan state border, it was important to determine according to which border delimitation-demarcation line, the commissions would discuss the delimitation-demarcation issues, as, during the Soviet era, various decisions were made on the border between the Soviet republics, some of them put the territories on the Azerbaijan side to the detriment of Georgia, and in some cases vice versa. Accordingly, the **Agreement between the Georgian-Azerbaijan State Commissions of 13 June 1996 established that in the delimitation-demarcation process, State Commissions had to base their reviews on borderline reflected in 1:500,000 scale maps approved by the Presidium of the Central Executive Committees of the Soviet Republics of Georgia and Azerbaijan in 1938, although other documents could be used in the process.** It was also determined that based on the 1:500 000 scale map, the parties would prepare 1:50 000 scale maps reflecting their positions, which would be exchanged in the form of albums. These albums were exchanged on October 17, 1996. After that, the border agreement process started, the agreement between the two states was easily reached on some sections (about 66% is agreed), and the agreement on some sections has not been reached yet.

According to the statements of the former members of the Georgian State Commission, the Georgian side itself raised the issue of border management based on 1:500 000 scale maps approved in 1938, as the border strip approved by the two republics before or after 1938 was detrimental to Georgia, and the decree passed in 1938 was the last document approved by the presidiums of the central executive committees of both states.

The case file⁶ shows that since the agreement allowed the parties to use other cartographic material in the work process, and the 1:500 000 map was a small-scale map⁷ from which it was difficult to transfer accurate data, I.Melashvili and N.Ilichova used maps drawn with a scale of 1:100,000 drawn up after 1938 in the work process, however, with the proviso that each section should be in line with the boundary line approved in 1938.

According to the case file, the cartographers were guided by copies of 1:500 000 scale graphic image, when preparing 1:50,000 maps, as the original of this map was stored in Armenia and the certified copy was only obtained after 2010. However, until 2010 I.Melashvili saw the map in one of the archives in Armenia and compared it to the drawing. Besides, the 1:500,000 scale map drawing of 1938 was actively used in the mapping process. However, when using each auxiliary material, their compliance with the 1938 boundary line was paramount.

Accordingly, the persons interviewed in the case (mostly members of the State Commission) indicate that the cartographic material was prepared by I.Melashvili and N.Ilichova with the

⁶Interview protocols of Melashvili and the above-mentioned persons

⁷Such small-scale maps are not used in the delimitation process

ადრეულ რუკებზე საზღვრის ხაზი ძირითადად გადიოდა ისე, როგორც ასახული იყო მორიგ რუკებზე და განმარტება დატვირთვად არ არსებობდა რუკებზე შექმნილ არსებულ საზღვრის ხაზს და აზერბაიჯანული მხარის პოზიციით დაფიქსირებულ საზღვრის შესაბამისებელი ხაზის განმარტება შორის და შესაბამისად შედგენა იყო საქართველოს მხარის პოზიციას რადგან როგორც აღვნიშნე, ჩვენი მხარის პოზიცია გამოიყვანა 1938 წლის დამტკიცებული 1:500 000 მასშტაბის რუკაზე არსებული ხაზის მონაცემიდან. აღვნიშნე, რომ საქართველოს მხარის აღნიშნული არსებულ რუკებზე დატანილი საზღვრის ხაზის სიზუსტეზე შედეგობის აჯიღებლად გასაცადისწინებელი ჩემი მიერ ზემოთ აღნიშნული გარდაკლილი 110 მტკიცებით დამოძღვრების არსებობა. აქვე აღვნიშნე, რომ აზერბაიჯანის მხარის მიერ წარმოდგენილი აღნიშნული ჩაკერებული რუკების გარკვეულ ნაწილზე დატანილი საზღვრის ხაზი თანხვედრით იყო, როგორც 1938 წლის, დამტკიცებულ 1:500 000 მასშტაბის რუკის საზღვრის ხაზთან ასევე, შესაბამისად საქართველოს მხარის პოზიციასთან, გადასტუმრებით, რომ აზერბაიჯანის მხარის გადმოცემულ რუკებზე საზღვრის ხაზი მონაცემების მონაცემებზე დაფუძნებით არ იყო შეურთლებული და დატანილი და არც იქნებოდა, რადგან მათ ასეთი მონაცემების გამოცდების დასაშვებობის კატეგორიულად გამოიტყეს. აღნიშნულის შემდეგ, 1996 წლის 05 დეკემბერს, კომისიის ექსპერტთა შედეგად შედგა თილისში, საქართველოს მხარის წარმომადგენლობის ხელმძღვანელობით როგორც კომისიის თავმჯდომარის მოადგილე, საკითხების განხილვისას, ექსპერტების დონეზე შეთანხმდა ის მონაცემები, რომლებზეც საქართველოს და აზერბაიჯანის მხარის პოზიციები ემთხვეოდა და შედეგ კომისიის შედეგების ამსახველი დოკუმენტი, რომელშიც გაიწერა როგორც შეთანხმებული ასევე შეუთანხმებელი მონაცემების მონაცემები. ამ ჩანაწერის თანახმად, საზღვრის იმ მონაცემებზე, რომელზეც მხარეების პოზიციები სრულ თანხვედრით იყო შედეგით, რომ მონაცემები შეთანხმდა, ხოლო იმ მონაცემებზე, რომელზეც მხარეები განმარტებული პოზიციები იყო შედეგით, რომ შეთანხმდა და დასაბუთებო თუ როგორც მხარის პოზიციით, მაგალითად N 1 ექვმონაცემები შეთანხმდა ქართული მხარის, ხოლო N 13 მონაცემები აზერბაიჯანის მხარის პოზიციის მიხედვით. აღვნიშნე, რომ აქვეა შეთანხმებულ მონაცემებზე საზღვრის ხაზი გადიოდა 1938 წლის, 1:500 000 მასშტაბის რუკაზე დატანილი, დამტკიცებული საზღვრის ხაზის შესაბამისად, იმ გარდაკლილი დამოძღვრების გათვალისწინებით რომელზეც გამოკითხვის დროს ზემოთ მოგახსენე და ამასთანავე იმ არსებული პრაქტიკის გათვალისწინებით, რომლის თანახმად საზღვარი არ სახელმწიფოს შორის ფიქტიურად იმის შეუთხვედრით მის თიერზე, შედარებულზე, მათ კლასიფიკა-

help of the staff of the Institute of Geodesy and Cartography. However, in the view of the members of the commission, the cartographic material, depicting all the agreed sections of the state border with the Republic of Azerbaijan, should have been in accordance with the graphic representation of the 1938 1: 500 000 scale map. No suspicious circumstances were found in the work process, nor did any member of the

commission attempt to independently check whether the prepared maps were in accordance with the 1938 1:500 000 scale map boundary line.

As for the conclusion of the examination (cited by the Prosecutor's Office), the conclusion of the National Bureau of Examinations on October 5 did not compare the examination of the borderline drawn on 1:500 000 scale map approved in 1938 and the 1:50 000 scale map exchanged with the Azerbaijan side by the state commission. Since, according to experts, 1:500,000 scale map was an administrative one, and could not be compared to 1:50,000 scale topographic map. The conclusion of the examination established that only with an administrative map of scale 1:500 000 it was impossible to carry out accurate cartometric measurements and delimitation works, therefore, the use of other cartographic material was necessary for the work process.

The conclusion of the examination⁸ also assessed the conformity of the line drawn on 1:100 000 scale maps used by Melashvili and Ilichova in the delimitation work process with the borderline drawn on 1:50 000 scale maps prepared by them and it was found that the maps of both periods coincided on the agreed or disagreed sections. However, after the examination, it was not assessed at all whether the borderline marked on 1:100 000 scale maps is following the borderline marked on 1:500 000 scale map approved in 1938. The assessment and determination of the mentioned circumstances are essential in the criminal case, since N.Ilichova, I.Melashvili point out that although they used mainly 1: 100 000 scale maps published in 1942, in the process of using them, they necessarily determined the compatibility of the material used with 1:500 000 scale maps approved in 1938. This is confirmed by the statements from other persons.

Therefore, without such an assessment, the prosecution's assertion that N.Ilichova and I.Melashvili drew the borderline on 1: 50 000 scale maps to the detriment of the historical border of Georgia is irrelevant.

It should be emphasized that the historical Georgian-Azerbaijan border has not been established yet and it is unclear which historical border was damaged by Ilichova and Melashvili.

1.2.3. 1:200,000 scale map of 1937-1938 and its impact on the delimitation process

General Prosecutor's Office of Georgia, to prove I.Melashvili and N.Ilichova's guilt, claims that the defendants obtained a 1:200,000 scale map of 1937-1938, in the work process, which better represented Georgia's position from a territorial point of view. *Despite this, according to the*

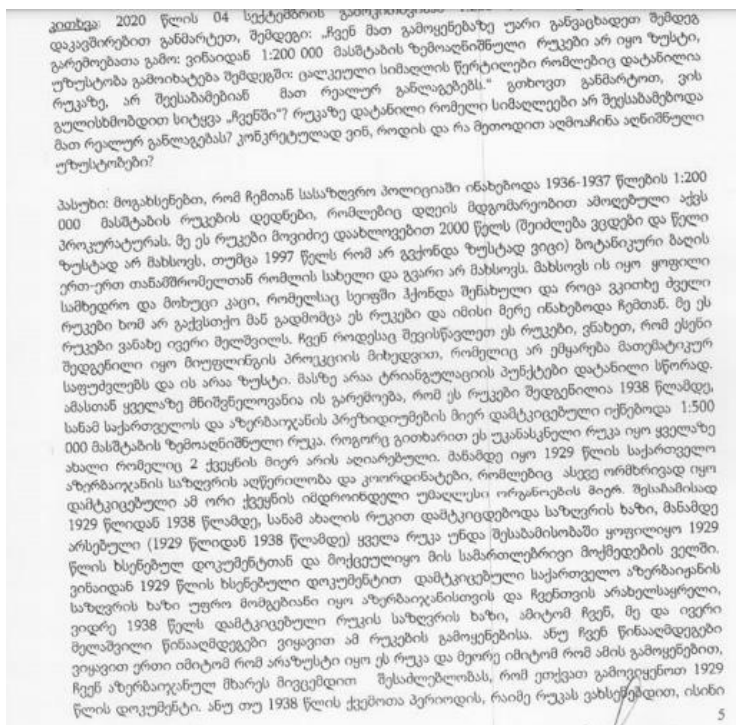
⁸October 5 Examination Report, Volume 4 Interview protocol of Zaza Oniani, Vol.4

prosecution, the defendants hid the existence of the map from other members of the commission and did not use it in the work process. The 1:200,000 scale map became available in April-July 2020, when Davit Khidasheli, a citizen of Georgia, submitted a map to the Ministry of Defence of Georgia on his initiative. Contrary to the assertion of the Prosecution, the materials of the criminal case establish the following:

The issue of 1: 200,000 scale mapping became relevant in 2013 when Archimandrite Father Kirion⁹ (Zaza Oniani) of the Davit Gareji Monastery Complex met with Defence Minister Irakli Alasania and shared his position on the Georgian-Azerbaijan border guidelines. On the instructions of Alasania, the employees of the Cartography-Geodesy Department of the Ministry of Defence Nodar Khorbaladze, Tedo Gorgodze, and Archimandrite started searching 1:200 000 scale maps in various state archives without any official appeals.

Statements by Nodar Khorbaladze, Tedo Gorgodze, and Zaza Oniani show that they could not find the required map in the state archives, received a negative answer from Ilichova about the existence of the map and only in 2014 an employee of the Crisis Management Council handed them 1937-1938 1:200 000 scale map.

The questioning of the mentioned persons shows that the issue of using the map, in the delimitation process, after finding the map was discussed with the members of the Commission, and in 2014, the issue was discussed at the meeting of the Crisis Management Council. According to them, I.Melashvili and N.Ilichova gave vague answers to the questions asked; noting that 1: 200,000 scale maps could not be used because the maps were not presented in their original form. The position of the respondents differs from this position by N. Ilichova and I.Melashvili. According to the case materials, it is established that N.Ilichova was able to find a 1: 200,000 scale map independently in 2000. She presented the map to Iveri Melashvili, but **after a detailed study and comparison with other cartographic material, it was found that the map was compiled by Müffling projection, not based on mathematical principles, was not exact, and could not be used in the process. According to her, the map was kept in her office and the members of the commission would have the opportunity to get acquainted with the map if they asked.** Here, Ilichova notes that in 2019, her authority as a member of the commission was terminated, and her colleague Irma Gabunia was appointed as a member of the commission, and she handed over all available working materials, including a 1: 200,000 scale map, which



2019 წლის მაისის თვეში ზუსტ თარიღს ვერ ვიხსენებ ჩემს სამსახურმა წარმადგინა საქართველო-რუსეთის სახელმწიფო საზღვრის დელიმიტაციისა და დემარკაციის, საქართველო-აზერბაიჯანის სახელმწიფო საზღვრის დელიმიტაციისა და დემარკაციის, საქართველო-სომხეთის საზღვრის დელიმიტაცია-დემარკაციის, აგრეთვე საქართველოსა და რუსეთის ფედერაციას შორის შავ ზღვაზე ტერიტორიული ზღვის, განსაკუთრებული ეკონომიკური ზონისა და კონტინენტური შეღვის დელიმიტაციის სახელმწიფო კომისიის წევრად, აღნიშნულ კომისიაში მე ჩაეანაცვლე ნატალია ილიჩოვა, რომელიც თუ არ ვცდები კომისიის დარსებიდან 2019 წლის მაისის თვემდე იყო კომისიის წევრი. მას შემდეგ რაც მოხდა კომისიაში ნატალია ილიჩოვას ჩემით ჩანაცვლება, მან გადმომცა საქართველო-აზერბაიჯანის დელიმიტაცია-დემარკაციისთან დაკავშირებული დოკუმენტაცია და რუკები, აღნიშნულთან დაკავშირებით რაიმე სახის მიღება-ჩაბარების ან სხვა რაიმე წერილობითი აქტი არ შედგენილა, უზრალოდ მითხრა რომ ეს იყო მის ხელთ არსებული მასალები და ვინაიდან ვიცავი კომისიის წევრი მქონოდა მე, გადმოცემული მასალები შევიხსენე მე სამუშაო ოთახში განთავსებულ რკინის სეიფში, რომელსაც ვიყენებთ მე და ნატალია ილიჩოვა.

კითხვა მოწმე ირმა გაბუნია: წარმოგიდგინე 2020 წლის 9 სექტემბერს საქართველოს შინაგან საქმეთა სამინისტროს სახელმწიფო საქვეუწყებო დაწესებულება - საქართველოს სასაზღვრო პოლიციის სასაზღვრო წარმომადგენლობისა და სადელიმეტაციო-სადემარკაციო სამმართველოდან, თქვენი სამუშაო ოთახიდან ამოღებულ 1:200 000 მასშტაბის რუკებს ნომენკლატურით K-38-XXVIII - 1 ცალი 1937 წლის გამოცემა დედანი; ნომენკლატურით K-38-

⁹Interview protocol of Zaza Oniani, vol 4. Interview protocol of Nodar Khorbaladze, Vol.1

the investigation obtained from Irma Gabunia.

XXIX – 1 ცალი 1938 წლის გამოცემა და გამოცემა დედანი; ნომენკლატურით 1 უპასუხოთ სად და ვინ გადმოგვით აღწერს არ აქვს დედანი და დადებითი პასუხი

გამოკითხვის ოქმი
სწიხა რ კანჭი ხე

Natalia Ilichova and Iveri Melashvili's explanation of the irrelevance of 1:200 000 scale maps is somewhat supported by other materials of the criminal case. The statement former

members of the commission¹⁰ and Malkhaz Mikeladze, the current deputy chairman of the commission, confirm that Commission considered the use of 1: 200 000 scale maps before 2004 and rejected it, as the Georgian side demanded more territory in the Davit Gareji section than 1:200 000 scale line established. In particular, before announcing the information on 1:200 000 scale map, the Georgian side raised the issue at official meetings with Azerbaijan in such a way that the monastery complex, including the Bertubani Monastery, was completely on Georgian territory; Georgia's position on the requested territories is softened/weakened by 1:200,000 scale map. Besides, the respondents¹¹ indicate that they also discussed the issue of accuracy of 1:200,000 scale map, in particular, during the meeting with Foreign Minister Mikheil Janelidze in 2018, N. Khorbaladze was instructed to compare the 1:500 000 scale and 1:200 000 maps with each other, and based on the comparison, it became clear that there were errors concerning the different sections, so it was decided not to submit the issue of using this map to the Prime Minister.

Given the above, the prosecution's indication that N. Ilichova and I.Melashvili hid 1:200 000 maps, or refused to use them in the delimitation process, for personal purposes, it is doubtful and invalidated by the information provided by the respondents for the investigation. Also, the prosecutor's reference to the territory of Davit Gareji is questionable as the territory of Davit Gareji has not been agreed upon so far and the circumstances of the case prove that the Georgian side requested the monastery complex in the territory of Georgia even without the use of 1:200 000 scale maps.

1.2.4 Other suspicious circumstances not studied by the prosecution at this stage

Concerning some factual circumstances in the criminal case file, critical questions arise, which are important to be examined through appropriate investigative/procedural actions.

ფიქსირებული. თუ სხვა რაიმე მოტივით იყო კონკრეტული რეგისტრაციის არქივებიდან ჩემთვის ცნობილი არ არის. ჩემთვის ცნობილია, რომ ამ რუკების დიდებში საქართველოს არქივებიდან იყო მოპოვებული, თუმცა რადგან ამ რუკებით არ ხელმძღვანელობდა კომისიაში არ ინახებოდა. აღნიშნული რუკების გამოყენების საკითხი განხილულ იქნა, როგორც მახსოვს 2018 წელს, გაზაფხულზე, ზუსტ თვეს და რიცხვს ვერ ვიხსენებ, საქართველოს იმდროინდელ საგარეო მინისტრთან

მიხილ ჯანელიძესთან შეხვედრაზე, სადაც კომისიის კარტოგრაფებს კერძოდ კი ნოდარ ხორბალაძეს დაევალა შედარებინა 1938 წლის 1:500 000 რუკაზე ცენტრალური აღმასრულებელი კომიტეტების პრეზიდიუმების მიერ დამტკიცებული და ვიზირებული საზღვარი 1932-1936 წლების 1:200 000 მასშტაბის რუკებზე არსებულ საზღვრის ხაზთან. მინისტრთან შეხვედრაზე ნოდარ ხორბალაძემ წარმოადგინა ამ ორი საზღვრის ხაზის შედარების ელექტრონული ვერსია და ნათლად წარმოჩინდა, რომ ეს ხაზები მთლიანობაში თანხვედრაში არ იყო. მართალია იყო ისეთი მონაკვეთები რომლებიც ერთმანეთს ემთხვეოდა, მაგრამ ასევე საზღვრის ხაზებს შორის იყო ცდომილებები. ამ შეხვედრაზე გადაწყდა, რომ საგარეო საქმეთა მინისტრი ამ საკითხს პრემიერ მინისტრთან განსახილველად არ წარადგინდა. რამდენადაც მახსოვს, 2019 წელს ექსპერტთა დონეზე მოხდა ადგილზე გასვლითი შეხვედრები, რომელსაც არ დაესწრებივარ, თუმცა ჩემთვის ცნობილია, რომ დავით გარეჯის სამონასტრო კომპლექსის მიმდებარე ტერიტორიაზე აზერბაიჯანის მხარეს ქედის ქანობთან გეოდეზიური აზომეგების საშუალება აზერბაიჯანის მხარეს საქართველოს გეოდეზიტებს არ მისცა, რაც იმით ახსნეს, რომ მათ საკუთარი ხელმძღვანელებისგან ჰქონდათ მიღებული ასეთი ბრძანება. აღნიშნავ წინა შეთანხმებით, ორივე მხარეს დაუბრკოლებლად უნდა მიეცა შესაძლებლობა, რომ მოსაზღვრე ტერიტორიაზე გადასულიყვნენ და აზომეგები ჩატარებინათ.

¹⁰ Tamar Chachibaia's interview protocol
¹¹Statements by Malkhaz Mikeladze and Tamar Chachibaia

As can be seen from the above, it is important in the criminal case under consideration, to **determine the accuracy of 1:200,000 scale map (drawn by the *Müffling* projection) and the possibility of using it in the delimitation-demarcation process.** It should be noted that the Prosecutor's Office has appointed a cartographic examination and the conclusion of the National Bureau of Examination of September 22, 2020¹² states that a map of 1:200 000 scale does not correspond to a map of 1:500 000 scale, and in sections not agreed and the area of the territories of Georgia included in the territorial space of Azerbaijan is 3483 ha. **Despite this, the conclusion of the examination does not assess the quality of the 1:200 000 scale map and the possibility of using it in the delimitation process.**

According to the criminal case file, the issue of using 1:200 000 scale map was discussed at the level of the Commission, the Ministry of Foreign Affairs, and the Crisis Management Council, and a decision was made not to use it. Nevertheless, the case does not contain the statements of the relevant persons and the decisions on non-use of 1:200 000 scale map.

In addition to these circumstances, the issue of obtaining a map by David Khidasheli in April-July 2020 is a dubious circumstance. According to the case materials, it is established that Davit Khidasheli was approached by his friend Bezhan Maisuradze and asked to find the maps published in 1932-1937, which he successfully managed to find in the archives of the Russian Federation and handed over to the Ministry of Defence of Georgia free of charge. In contrast to the above, in a [TV interview](#), he said that Bidzina Ivanishvili asked him to find the map. Therefore, it is unclear at whose initiative the map was found and for what purpose.

It should be emphasized that within the framework of the criminal case, at this stage, no protocol of Bezhan Maisuradze's interrogation is obtainable, which would be able to confirm from whom and how the initiative to find the map came.

In terms of finding a map, the statement by the Minister of Defence of Georgia I. Gharibashvili's for Imedi TV program "Real Numbers"¹³, should also be considered, where he indicated that he had instructed Mindia Janelidze, during his term as Prime Minister (2013-2015), and that he had brought, from one of the foreign countries, a copy of the map with a scale of 1:200,000 published in 1937-1938. Such inconsistencies once again point to the political instrumentalization of the cartographers' case.

2. Legal Assessment of the Case

As mentioned above, N.Ilichova and I.Melashvili were accused by the Prosecutor's Office of committing an act under Article 308, Part 1 of the Criminal Code of Georgia. According to Part 1 of Article 308, it is punishable to commit an act against Georgia, which is aimed at transferring the entire territory of Georgia, or a part of it, to a foreign country, or separating a part of it from the territory of Georgia. The action provided for in Part 1 of the article belongs to so-called formal offenses and is not required to stand for a specific outcome. A crime can be committed in the form of an intentional crime. Therefore, to determine the commission of an offense under Article 308 (1), on the one hand, a specific action must be taken by a specific person/persons aimed at transferring the entire territory of Georgia, its part to a foreign state, separating its part from the territory of Georgia, and on the other hand, the mentioned persons should understand that their action is contrary to the legislation of Georgia, provided that this action leads to a violation of the territorial integrity of Georgia and want to achieve such a

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¹³https://www.youtube.com/watch?v=syPIKd-h2uk&ab_channel=TVIMEDI

result¹⁴. To constitute a crime, both of the indicated circumstances should be present.

In N.Ilichova and I.Melashvili's case, the Prosecutor's Office considers that ignoring, hiding by the accused of the 1:200 000 scale map during the delimitation-demarcation of the border with the Republic of Azerbaijan issued in 1937-1938 is an act aimed at separating part of it from the territory of Georgia, which is why they committed an act under Article 308 of the Criminal Code.

Contrary to the above-mentioned indication of the Prosecution, at this time, based on the materials of the criminal case against I.Melashvili and N.Ilichova, there are reasonable suspicions that the accusation is not properly substantiated and there is an arbitrary use of criminal prosecution

2.1. How the state border of Georgia is being changed and whether the accused could have had a significant impact on the border change

Pursuant to paragraph 2 of Article 1 of the Constitution of Georgia, the territory of the State of Georgia is defined as of December 21, 1991. The state border can be changed only by mutual agreement with the neighbouring state. Besides, Article 47 stipulates that international agreements are ratified by the Parliament of Georgia, including those that deal with the issue of changing the territorial integrity or state border of Georgia. Therefore, the state border with the Republic of Azerbaijan can be established only with the consent of the Parliament. Procedural work on the issue can be carried out according to the following scheme: a State Commission is established, which negotiates with the neighbouring state, carries out the relevant work, agrees on specific territories, prepares the relevant agreement, which is submitted to the Parliament of Georgia for ratification. If the Parliament of Georgia refuses to ratify the agreement, despite the desire of the State Commission, it will be impossible to change the border with the neighbouring state.

Any natural person can commit a crime under Article 308 of the Criminal Code of Georgia; however, they must have some connection with the issue and the authority to take such actions that have a substantial impact on the change of the state border of Georgia. **Given this, the question is - did I.Melashvili and N.Ilichova have the authority to carry out actions against Georgia's interests?** As it is known, within the framework of the State Commission, I.Melashvili and N. Ilichova were involved as experts and to some extent, along with other individuals, had the authority to search for relevant documentation in the border agreement process with the Republic of Azerbaijan, examine all the circumstances and present the results to the Commission, which would then use them in the work process. In this regard, I.Melashvili and N.Ilichova had the opportunity to perform certain actions, including deciding which map to use in the work process. However, this issue should have been the subject of discussion of the commission, in any case, and a decision should have been made after the issue was agreed with the relevant officials. Also, whether the decisions made by Ilichova and Melashvili in the working process were an action against Georgia, in order to give a legal answer to this question, it is necessary to assess, on the one hand, what action they took and on the other hand, what was the intention of this action.

2.2. Did N.Ilichova and I.Melashvili ignore 1:200,000 scale map, in the course of the work, to separate its part from the territory of Georgia?

¹⁴Pursuant to Part 2 of Article 9 of the Criminal Code of Georgia, a crime is committed in the form of direct intent if the person was aware of the illegality of his action, considered the possibility of an unlawful outcome and wanted that outcome, or considered the inevitability of such an outcome.

The public positioning of the General Prosecutor's Office creates the impression that I.Melashvili and N.Ilichova allegedly hid a map with a scale of 1:200,000, and in the course of the work, ignored it with the intention of separating its part from the territory of Georgia. **It should be clearly stated that the materials of the criminal case at this stage do not confirm the fact of hiding or ignoring the map.**

The case materials, including the protocols of the interrogation of the current employees of the Ministry of Foreign Affairs of Georgia and the Ministry of Internal Affairs, confirm that N.Ilichova was able to independently find 1:200,000 scale map published in 1937-1938 and submit it to the head of the expert group, I.Melashvili. Later, in May 2019, when N.Ilichova was terminated as a commission member, she handed over documents related to her activities, including the indicated map, to another employee. Malkhaz Mikeladze, another member of the commission, confirmed to the investigation that the map was known to the Commission and during the meeting held at the Ministry of Foreign Affairs in 2018, the possibility of using the map in the working process was discussed, however, due to significant errors detected after comparison with 1:500 000 scale map, its use was eventually refused. Accordingly, the prosecution's allegation that the defendants hid the map is incorrect.

The case materials also do not prove that the accused did not use 1:200 000 maps in the work process with the intention of separating a part of it from the territory of Georgia. The materials show that the experts refused to use the 1:200,000 scale map because of two main arguments: 1) The 1:200,000 scale map is created with the so-called *Müffling* projection and is not based on mathematical calculations, which is why maps compiled by this method are considered inaccurate and are not used in the work process; 2) If Georgian side used the documents from before 1938, the Republic of Azerbaijan would also have the opportunity to follow the borderline agreed between the governments of the two countries in 1929, which would essentially put Georgia in a difficult position and risk a border agreement to the detriment of Georgia. It should be emphasized that these circumstances are confirmed in the case by other people besides I.Melashvili and N.Ilichova.

Consequently, the main reason for not using the map was scientific, historical arguments and not the intention to separate part of it from the territory of Georgia. Given the above, non-use of a 1:200,000 scale map by I.Melashvili and N.Ilichova in the work process cannot be considered as an action aimed at separating a part of it from the territory of Georgia.

2.3. 1:200 000 scale map quality and usability it in the work process

For a legal assessment of I.Melashvili and N.Ilichova's action, it is important to determine the possibility of using a 1:200,000 scale map in the work process, thus it should be determined with relevant examination whether the 1:200,000 scale map was drawn by the *Müffling* method, whether the map drawn by this method is accurate, and whether it can be used to in the process of demarcation-delimitation of the border. The assessment of these issues is of great importance in this criminal case, as it is necessary to determine based on their results whether the significance of this map was correctly assessed by experts as well as non-usage.

While conducting such an examination of 1:200,000 scale map is crucial, the case file shows that the prosecution did not prescribe appropriate procedural action and, without assessing the quality and accuracy of 1:200,000 scale map, sought to create a public perception that the map contradicted cartographic material, prepared by I.Melashvili and N.Ilichova during the work process, and exchanged with the Azerbaijan side. Consequently, such a superficial attitude of

the prosecution towards the important details of the case may indicate that the investigation itself is aware of the problems related to the use of 1:200 000 scale map and avoids conducting procedural actions.

2.4. Intent to commit a crime

The criminal act provided for in Part 1 of Article 308 of the Criminal Code is possible only with direct intent. This means that all the actions by the accused, in the working process of the Georgian-Azerbaijan state border agreement, should be assessed according to the following approach: whether the defendants carried out a specific action with the intention of separating part of it from the territory of Georgia despite the lack of a proper basis. It is important to establish I.Melashvili and N.Ilichova's intention not to use 1:200 000 scale map. The issue of intentional non-use of case materials at this stage is due to map inaccuracy and the inability to use the cartographic material before 1938. Accordingly, it is essential to establish and assess the intent of the accused. Without establishing such intent, the accused could not have violated the territorial integrity of Georgia.

Request

The case materials described above and the legal assessment of important details of the case show that the charges against Iveri Melashvili and Natalia Ilichova are substantially weak and unfounded. The Prosecutor's Office has not carried out significant investigative/procedural actions and the case file, at this stage, does not set a reasonable standard for the accused to have committed a crime. That is why EMC demands to stop the persecution of Iveri Melashvili and Natalia Ilichova.

It should be noted that the above assessment will be shared by the Center for Human Rights Education and Monitoring (EMC) with the court hearing the case, in the format of a court friend's opinion, within timeframe set by law.

Photo Captions

Photo 2. Demilitarization and demarcation of the state border with the Republic of Azerbaijan and the Republic of Armenia, as well as the delimitation of the territorial sea, the Special Economic Zone and the Continental Shelf on the Black Sea; Procedural requirements for delimitation and demarcation of the state border with Russia, Azerbaijan and Armenia, as well as delimitation of the territorial sea, special economic zone and continental shelf were defined, and within these requirements the protocols of the meeting and other documents were signed:

C) prepare drafts of relevant agreements with the Russian Federation, the Republic of Azerbaijan and the Republic of Armenia on delimitation and demarcation of the state border, as well as the delimitation of the territorial sea, special economic zone and continental shelf on the Black Sea with the Russian Federation;

D) Agree in advance on principle issues and a report on the activities carried out has been periodically submitted to the Ministry of Foreign Affairs of Georgia;

Photo 3. Experts Conclusion. Text is illegable

Photo 4. Illegable.

Photo 5. Question: In relation to the 2020 questioning [...] explain the following: “We have refused to use them due to the following circumstances: As the above 1:200,000 scale maps were not accurate, the inaccuracy is as follows: certain heights did not correspond to their actual layouts.” Please explain, who did you mean by “us”? Which heights on the map did not correspond to their actual layout? Who, in particular, when and by what method discovered these inaccuracies?

Answer: I would like to inform you that the originals of the 1: 200 000 scale maps of 1937-1938 were kept with me at the Border Police, which have been extracted by the Prosecutor's Office as of today. I found these maps around 2000 (I may be wrong and I do not remember the exact year, however, we did not have them in 1997, I know for sure) from one of the employees of the Botanical Garden, whose name I do not remember. I remember he was a former military man and an old man, who had kept them in a safe, and when I asked him if he had any old maps, he handed me these maps and then kept them with me. I showed these maps to Iveri Melashvili. When we studied these maps, we saw that they were derived according to the Muffling projection, which is not based on mathematical foundations and it is not accurate. It does not have triangulation points written on it correctly. Most important of all is the fact that these maps were compiled before 1938, before the above-mentioned 1: 500 000 scale map was approved by Presidium of Georgia and Azerbaijan. Prior to that, there was a description and coordinates of the 1929 Georgia-Azerbaijan border, which were also mutually approved by the then higher authorities of the two countries. Accordingly, from 1929 to 1938, before the new map approved the boundary line, all existing maps (from 1929 to 1938) were in conformity with the said document of 1929 and came under its legal scope. Since the mentioned document approved Georgia-Azerbaijan border line was more profitable for Azerbaijan and unfavorable for us, than the border line approved in 1938, Iveri Melashvili and I were against the use of these maps, that is, we were one because this map was inaccurate and the other Because by using this we would give the Azerbaijani side the opportunity to say, use the document of 1929, that is, if we were to open any map of the period before 1938, they ...

Photo 5. In May 2019, I can not remember the exact date, my office presented me as a member of Delimitation and Demarcation of the Georgian-Russian State Border, Delimitation and Demarcation of the Georgian-Azerbaijan State Border, Delimitation and Demarcation of the Georgian-Armenian State Border, as well as for the Delimitation of the Territorial Sea on the Black Sea between Georgia and the Russian Federation, and Special Economic Zone and the Continental Shelf State Commission. I replaced Natalia Ilyichova in the mentioned commission, who, if I am not mistaken, was a member of the commission from the establishment of the commission until May 2019. After Natalia Ilyichova was replaced by me in the commission, she provided me with documents and maps related to the delimitation-demarcation of Georgia-Azerbaijan. In connection with this, no of acceptance or other written act was drawn up, she just told me that these were the materials in her possession and since I was a member of the commission I should had them. I stored the materials in an iron safe in the office, which is used by me and Natalia Ilyichova.

Question to Witness Irma Gabunia: On September 9, 2020, the State Sub-Department of the Ministry of Internal Affairs of Georgia - 1:200 000 scale maps taken from your office from the Border Police Representation and Delimitation-Demarcation Division with nomenclature K-38-XXVII - 1 piece, 1937 edition original...

Photo 6. Illegable.

Photo 7. XXIX - 1 piece 1938 edition,original: with nomenclature K-38-XXII - 1 piece 1937 edition, original; Nomenclature K-38-XXII - 1 piece 1937 edition, copy. Please answer where and who gave you the mentioned maps, does the map presented in the form of a copy have a original and in case of a

positive answer where and with whom can it be found?

Answer: I will answer the question that the original maps, after May 2019, I can not remember the exact date, were given to me by Natalia Ilyichova, at work, in our office, and as for the 1937 edition, a copy of the map with nomenclature K-38-XXII - I do not know whether Natalia Ilychova gave it to me or I received at an exchange as a commission member from another commission member, I do not know if he or she has the original nor do I know who might know about it.

The statement is written at my dictation, I read it, it is correct and I sign it – signature [handwritten]

Photos 8 and 9. Illegable.