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Just satisfaction judgment in the case of Georgia v. Russia (I)

European Court of Human Rights (31.01.2019) - <https://bit.ly/2GfDscf> - In today's **Grand Chamber** judgment¹ in the case of **Georgia v. Russia (I)** (application no. 13255/07) the European Court of Human Rights held, by sixteen votes to one,

that **Russia had to pay Georgia 10,000,000 euros (EUR) in respect of non-pecuniary damage** suffered by a group of at least 1,500 Georgian nationals;

that that amount was to be distributed to the individual victims by paying EUR 2,000 to the Georgian nationals who had been victims only of a violation of Article 4 of Protocol No. 4 (collective expulsion), and EUR 10,000 to EUR 15,000 to those among them who had also been victims of a violation of Article 5 § 1 (unlawful deprivation of liberty) and Article 3 (inhuman and degrading conditions of detention) of the European Convention on Human Rights, taking into account the length of their respective periods of detention.

Principal facts

In a judgment on the merits, delivered on 3 July 2014, the Court held that in the autumn of 2006 a coordinated policy of arresting, detaining and expelling Georgian nationals had been put in place in the Russian Federation and had amounted to an administrative practice for the purposes of Convention case-law.

The Court also held that there had been a violation of, inter alia, Article 4 of Protocol No. 4, Article 5 §§ 1 and 4 and Article 3 of the Convention, and of Article 13 taken in conjunction with Article 5 § 1 and with Article 3.

As the question of the application of Article 41 of the Convention was not ready for decision, the Court had reserved it and invited the applicant Government and the respondent Government to submit their observations on the matter and, in particular, to notify the Court of any agreement that they might reach. As the parties had not reached an agreement, the applicant Government had submitted their claims for just satisfaction and the respondent Government had submitted their observations.

On 6 November 2015 the President of the Grand Chamber invited the applicant Government to submit a list of the Georgian nationals who had been victims of a "coordinated policy of arresting, detaining and expelling Georgian nationals" put in place in the Russian Federation in the autumn of 2006. The applicant Government filed a list of 1,795 alleged victims on 1 September 2016.

¹ Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

On 13 September 2016 the President of the Grand Chamber also asked the respondent Government to submit their comments on the list filed by the applicant Government, which the respondent Government did on 13 April 2017.

Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 26 March 2007 under Article 33 (Inter-State cases) of the Convention. Following a hearing on 16 April 2009, the application was declared admissible by a Chamber on 30 June 2009 and relinquished to the Grand Chamber on 15 December 2009. From 31 January to 4 February 2011 a witness hearing was held in Strasbourg. A Grand Chamber hearing took place in public in the Human Rights Building, Strasbourg, on 13 June 2012. A judgment on the merits was delivered on 3 July 2014.

Judgment on just satisfaction was given by the Grand Chamber of 17 judges, composed as follows:

Guido **Raimondi** (Italy), President,
Angelika **Nußberger** (Germany),
Linos-Alexandre **Sicilianos** (Greece),
Ganna **Yudkivska** (Ukraine),
Robert **Spano** (Iceland),
Vincent A. **De Gaetano** (Malta),
André **Potocki** (France),
Dmitry **Dedov** (Russia),
Jon Fridrik **Kjølbro** (Denmark),
Branko **Lubarda** (Serbia),
Mārtiņš **Mits** (Latvia),
Gabriele **Kucsko-Stadlmayer** (Austria),
Pauliine **Koskelo** (Finland),
Georgios A. **Serghides** (Cyprus),
Marko **Bošnjak** (Slovenia),
Lətif **Hüseynov** (Azerbaijan),
Lado **Chanturia** (Georgia),
and also Lawrence **Early**, Jurisconsult.

Decision of the Court

Just satisfaction (Article 41)

The Court observed that it was the first time since the just satisfaction judgment in *Cyprus v. Turkey* (just satisfaction) that it was required to examine the question of just satisfaction in an inter-State case. In that judgment the Court had referred, inter alia, to the principle of public international law relating to a State's obligation to make reparation for violation of a treaty obligation, and to the case-law of the International Court of Justice, before concluding that Article 41 of the Convention did, as such, apply to inter-State cases.

In that judgment the Court had also set out three criteria for establishing whether awarding just satisfaction was justified in an inter-State case: the type of complaint made by the applicant Government, which had to concern the violation of basic human rights of its nationals or other victims; whether the victims could be identified; and the main purpose of bringing the proceedings.

In the present case the Court noted that the applicant Government had submitted in their application that the respondent Government had permitted or caused to exist an administrative practice of arresting, detaining and collectively expelling Georgian

nationals from the Russian Federation in the autumn of 2006, resulting in a violation of Articles 3, 5, 8, 13, 14 and 18 of the Convention, and of Articles 1 and 2 of Protocol No. 1, Article 4 of Protocol No. 4 and Article 1 of Protocol No. 7. Following the adoption of the principal judgment, the applicant Government had submitted claims for just satisfaction in compensation for violations of the Convention committed with regard to Georgian nationals. At the Court's request, the applicant Government had also submitted a detailed list of 1,795 alleged and identifiable victims of the violations found in the principal judgment. Just satisfaction was thus sought with a view to compensating individual victims.

As the three criteria referred to above were satisfied in the present case, the Court found that the applicant Government were entitled to submit a claim under Article 41 and that an award of just satisfaction was justified in the present case.

After carrying out a preliminary examination of the list submitted by the applicant Government and of the comments in reply submitted by the respondent Government, the Court considered that it could in the present case base itself on a "sufficiently precise and objectively identifiable" group of at least 1,500 Georgian nationals who had been victims of a violation of Article 4 of Protocol No. 4 (collective expulsion). Among these, a certain number had also been victims of a violation of Article 5 § 1 (unlawful deprivation of liberty) and Article 3 (inhuman and degrading conditions of detention).

Having regard to all the relevant circumstances of the present case, the Court deemed it reasonable to award the applicant Government a lump sum of 10,000,000 euros (EUR) in respect of nonpecuniary damage suffered by that group of at least 1,500 Georgian nationals. The Court considered that this sum must be distributed by the applicant Government to the individual victims of the violations found in the principal judgment, with EUR 2,000 payable to the Georgian nationals who had been victims only of a violation of Article 4 of Protocol No. 4 and an amount ranging from EUR 10,000 to EUR 15,000 payable to those among them who had also been victims of a violation of Article 5 § 1 and Article 3 of the Convention.

The Court also considered that it must be left to the applicant Government to set up, under the supervision of the Committee of Ministers, an effective mechanism for distributing the sums in question to the individual victims of the violations found in the principal judgment, having regard to the indications given by the Court.

Separate opinions

Judges Yudkivska, Mits, Hüseyinov and Chanturia expressed a joint partly concurring opinion. Judge Dedov expressed a dissenting opinion. These opinions are annexed to the judgment.