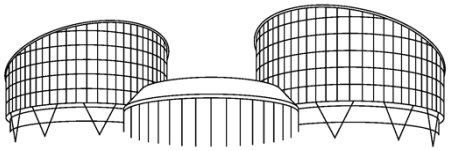

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF GEORGIA v. RUSSIA (I)

(Application no. 13255/07)

JUDGMENT
(Just satisfaction)

STRASBOURG

31 January 2019

This judgment is final but it may be subject to editorial revision.

In the case of Georgia v. Russia (I),

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Guido Raimondi, *President*,
Angelika Nußberger,
Linos-Alexandre Sicilianos,
Ganna Yudkivska,
Robert Spano,
Vincent A. De Gaetano,
André Potocki,
Dmitry Dedov,
Jon Fridrik Kjølbro,
Branko Lubarda,
Mārtiņš Mits,
Gabriele Kucsko-Stadlmayer,
Pauliine Koskelo,
Georgios A. Serghides,
Marko Bošnjak,
Lətif Hüseynov,
Lado Chanturia, *judges*,
and Lawrence Early, *jurisconsult*,

Having deliberated in private on 15 February and 7 November 2018,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 13255/07) against the Russian Federation lodged with the Court under Article 33 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Georgia on 26 March 2007. The Georgian Government ("the applicant Government") were represented before the Court by their Agent, Mr Beka Dzamashvili. They had previously been represented successively by their former Agents: Mr Besarion Bokhashvili, Mr David Tomadze and Mr Levan Meskhoradze. The Russian Government ("the respondent Government") were represented by their representative, Mr Mikhail Galperin. They had previously been represented successively by their former representatives: Mrs Veronika Milinchuk and Mr Georgy Matyushkin.

2. In a judgment of 3 July 2014 ("the principal judgment") 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 which amounted to an administrative practice for the purposes of Convention case-law. It 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 of the Convention taken in conjunction with Article 5 § 1 and with Article 3 of the Convention (see *Georgia v. Russia (I)* [GC], no. 13255/07, ECHR 2014 (extracts)).

3. As the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the applicant Government and the respondent Government to submit in writing, within twelve months, their observations on the matter and, in particular, to notify the Court of any agreement that they might reach (see paragraph 240, and point 17 of the operative provisions of the principal judgment).

4. As the parties did not reach an agreement, the applicant Government submitted their claims for just satisfaction under Article 41 on 1 July 2015, and the respondent Government submitted their initial observations in this regard on 2 July 2015.

5. On 8 July 2015 the parties were invited to submit their respective observations in reply, which they did on 9 October 2015.

6. On 6 November 2015 the President of the Grand Chamber, in accordance with Rule 60 § 2 of the Rules of Court, 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 (see *Georgia v. Russia (I)*, cited above, § 159). After an extension of the time-limit fixed for that purpose, the applicant Government filed an initial list of 345 alleged victims, together with annexes, on 1 April 2016.

7. On 25 April 2016 the President of the Grand Chamber, in accordance with Rule 60 § 2, invited the applicant Government to submit the final list of Georgian nationals who had been victims of that policy. The applicant Government filed a second list of 1,795 alleged victims (including the 345 alleged victims appearing in the first list), together with annexes, on 31 August and 1 September 2016.

8. On 25 April 2016 the President of the Grand Chamber, in accordance with Article 38 of the Convention and with Rule 58 § 1, also invited the respondent Government to submit all relevant information and documents (in particular the expulsion orders and court decisions) concerning the Georgian nationals who had been victims of the policy in question. He referred in particular to the Contracting States' duty to cooperate as laid down in Rule 44A and to the consequences of a failure to cooperate stipulated in Rule 44C. The respondent Government submitted their comments with regard to the first list produced by the applicant Government, together with annexes, on 1 September 2016.

9. On 13 September 2016 the President of the Grand Chamber invited the respondent Government to submit their comments on the final list (second list) of alleged victims filed by the applicant Government.

10. On 14 November 2016 the applicant Government filed a third list of 21 alleged victims, together with annexes. On 1 December 2016 the President of the Grand Chamber, in accordance with Rule 38 § 1, informed the parties that the additional list would not be included in the file, on the ground that it had been filed out of time.

11. After an extension of the time-limit fixed for that purpose, the respondent Government submitted their comments on the applicant Government's final list (second list), together with annexes, on 13 April 2017. After a further extension of the time-limit fixed for that purpose, they submitted a translation into English of the relevant documents on 30 June, 12 July and 15 August 2017.

12. The composition of the Grand Chamber was determined in accordance with Article 26 §§ 4 and 5 of the Convention and Rule 24.

THE LAW

13. 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."

14. The relevant part of Article 46 of the Convention provides:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

15. Rule 60 of the Rules of Court provides:

> "1. An applicant who wishes to obtain an award of just satisfaction under Article 41 of the Convention in the event of the Court finding a violation of his or her Convention rights must make a specific claim to that effect.
>
> 2. The applicant must submit itemised particulars of all claims, together with any relevant supporting documents, within the time-limit fixed for the submission of the applicant's observations on the merits unless the President of the Chamber directs otherwise.
>
> 3. If the applicant fails to comply with the requirements set out in the preceding paragraphs the Chamber may reject the claims in whole or in part.
>
> 4. The applicant's claims shall be transmitted to the respondent Contracting Party for comment."

I. APPLICABILITY OF ARTICLE 41 OF THE CONVENTION TO THE PRESENT CASE

A. The parties' submissions

1. The applicant Government

16. After reiterating the violations found by the Court in the principal judgment, the applicant Government submitted at the outset that it was undisputed that Article 41 of the Convention applied to inter-State cases, and in particular to the present case. They referred, *inter alia*, to the judgment *Cyprus v. Turkey* (just satisfaction) ([GC], no. 25781/94, ECHR 2014).

2. The respondent Government

17. The respondent Government submitted as their principal argument that in the absence of adequate legal rules and established practice of the Court, and having regard to the particular circumstances of the case of *Georgia v. Russia (I)*, cited above, there was no basis for applying Article 41 of the Convention to the present inter-State case.

18. They submitted in particular that in the present case the victims were Georgian nationals, and not the applicant Government, party to the proceedings. Under Article 41 of the Convention, just satisfaction in respect of the violations established by the Court therefore had to be awarded not to the applicant Government, but to the individuals concerned, the vast majority of whom had not been individually identified (see paragraph 43 below). Furthermore, neither Article 33 of the Convention nor Rule 60 of the Rules of Court provided for an award of just satisfaction in inter-State applications. Lastly, the relevant rules of international law on diplomatic protection – in particular Article 19 of the United Nations International Law Commission Draft Articles – were incompatible with Article 41 of the Convention, the general objectives and principles of the Convention and the position of the Court according to which "just satisfaction is not sought with a view to compensating the State for a violation of its rights but for the benefit of individual victims" (they referred to *Cyprus v. Turkey* (just satisfaction), cited above, §§ 46 and 47).

B. The Court's assessment

19. The Court observes that this is the first time since the above-cited judgment of *Cyprus v. Turkey* (just satisfaction) that it is required to examine the question of just satisfaction in an inter-State case.

20. In that judgment the Court 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 on the subject before concluding that Article 41 of the Convention did, as such, apply to inter-State cases.

21. The relevant extract is worded as follows:

> "40. The Court further reiterates that the general logic of the just-satisfaction rule (Article 41, or former Article 50 of the Convention), as intended by its drafters, is directly derived from the principles of public international law relating to State liability, and has to be construed in this context. This is confirmed by the *travaux préparatoires* to the Convention, according to which,
>
> "... [t]his provision is in accordance with the actual international law relating to the violation of an obligation by a State. In this respect, jurisprudence of the European Court will never, therefore, introduce any new element or one contrary to existing international law ..." (Report presented by the committee of experts to the Committee of Ministers of the Council of Europe on 16 March 1950 (Doc. CM/WP 1(50)15)).
>
> 41. The most important principle of international law relating to the violation, by a State, of a treaty obligation is "that the breach of an engagement involves an obligation to make reparation in an adequate form" (see the judgment of the Permanent Court of International Justice in the case of the *Factory at Chorzów* (jurisdiction), Judgment No. 8, 1927, PCIJ, Series A, no. 9, p. 21). Despite the specific character of the Convention, the overall logic of Article 41 is not substantially different from the logic of reparations in public international law, according to which "[i]t is a well-established rule of international law that an injured State is entitled to obtain compensation from the State which has committed an internationally wrongful act for the damage caused by it" (see the judgment of the International Court of Justice in *Gabčíkovo-Nagymaros Project* (*Hungary v. Slovakia*), *ICJ Reports* 1997, p. 81, § 152). It is equally well-established that an international court or tribunal which has jurisdiction with respect to a claim of State responsibility has, as an aspect of that jurisdiction, the power to award compensation for damage suffered (see the judgment of the International Court of Justice in the *Fisheries Jurisdiction Case (Federal Republic of Germany v. Iceland)* (merits), *ICJ Reports* 1974, pp. 203-05, §§ 71-76).
>
> 42. In these circumstances, bearing in mind the specific nature of Article 41 as *lex specialis* in relation to the general rules and principles of international law, the Court cannot interpret this provision in such a narrow and restrictive way as to exclude inter-State applications from its scope. On the contrary, such an interpretation is confirmed by the wording of Article 41 which provides for "afford[ing] just satisfaction to the injured party" (in French – "à la partie lésée"); a "party" (with a lower-case "p") has to be understood as one of the actual parties to the proceedings before the Court. The respondent Government's reference to the current wording of Rule 60 § 1 of the Rules of Court (paragraphs 12 and 38 above) cannot be deemed convincing in this respect. In fact, this norm, of a lower hierarchical value compared to the Convention itself, only reflects the obvious reality that in practice all the awards made by the Court under this provision until now have been directly granted to individual applicants.
>
> 43. The Court therefore considers that Article 41 of the Convention does, as such, apply to inter-State cases. However, the question whether granting just satisfaction to an applicant State is justified has to be assessed and decided by the Court on a case-by-case basis, taking into account, *inter alia*, the type of complaint made by the applicant Government, whether the victims of violations can be identified, as well as the main purpose of bringing the proceedings in so far as this can be discerned from

the initial application to the Court. The Court acknowledges that an application brought before it under Article 33 of the Convention may contain different types of complaints pursuing different goals. In such cases each complaint has to be addressed separately in order to determine whether awarding just satisfaction in respect of it would be justified.

44. Thus, for example, an applicant Contracting Party may complain about general issues (systemic problems and shortcomings, administrative practices, etc.) in another Contracting Party. In such cases the primary goal of the applicant Government is that of vindicating the public order of Europe within the framework of collective responsibility under the Convention. In these circumstances it may not be appropriate to make an award of just satisfaction under Article 41 even if the applicant Government were to make such a claim.

45. There is also another category of inter-State complaint where the applicant State denounces violations by another Contracting Party of the basic human rights of its nationals (or other victims). In fact such claims are substantially similar not only to those made in an individual application under Article 34 of the Convention, but also to claims filed in the context of diplomatic protection, that is, "invocation by a State, through diplomatic action or other means of peaceful settlement, of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that is a national of the former State with a view to the implementation of such responsibility" (Article 1 of the International Law Commission Draft Articles on Diplomatic Protection, 2006, see *Official Records of the General Assembly*, Sixty-first Session, *Supplement No. 10* (A/61/10), as well as the judgment of the International Court of Justice in the case of *Diallo (Guinea v. Democratic Republic of the Congo)* (preliminary objections), *ICJ Reports* 2007, p. 599, § 39). If the Court upholds this type of complaint and finds a violation of the Convention, an award of just satisfaction may be appropriate having regard to the particular circumstances of the case and the criteria set out in paragraph 43 above.

46. However, it must always be kept in mind that, according to the very nature of the Convention, it is the individual, and not the State, who is directly or indirectly harmed and primarily "injured" by a violation of one or several Convention rights. Therefore, if just satisfaction is afforded in an inter-State case, it should always be done for the benefit of individual victims. In this respect, the Court notes that Article 19 of the above-mentioned Articles on Diplomatic Protection recommends "transfer[ring] to the injured person any compensation obtained for the injury from the responsible State subject to any reasonable deductions". Moreover, in the above-mentioned *Diallo* case the International Court of Justice expressly indicated that "the sum awarded to [the applicant State] in the exercise of diplomatic protection of Mr Diallo is intended to provide reparation for the latter's injury" (see *Diallo (Guinea v. Democratic Republic of the Congo)* (compensation), *ICJ Reports* 2012, p. 344, § 57)."

22. In that judgment (§§ 43 to 45, see paragraph 21 above) the Court also set out three criteria for establishing whether awarding just satisfaction was justified in an inter-State case:

(i) 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);

(ii) whether the victims could be identified; and

(iii) the main purpose of bringing the proceedings.

23. In the present case the Court notes that the applicant Government submitted in their application, lodged under Article 33 of the Convention, 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. They also asked the Court to find that they were entitled "to just satisfaction for these violations requiring the remedial measures and compensation to the injured party" and asked it "to award just satisfaction under Article 41, namely, compensation, reparation, *restitutio in integrum*, costs, expenses and further and other relief to be specified for all the pecuniary and non-pecuniary damage suffered or incurred by the injured parties as a result of the violations and the pursuit of these proceedings" (see *Georgia v. Russia* (I), cited above, § 78 *in fine*, and §§ 79 and 239).

24. Following the adoption of the principal judgment, the applicant Government submitted claims for just satisfaction in compensation for violations of the Convention committed with regard to 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 (see *Georgia v. Russia (I)*, cited above, § 159).

25. At the Court's request, the applicant Government also submitted a detailed list of 1,795 alleged and identifiable victims of the violations found in the principal judgment (see paragraph 7 above).

26. Just satisfaction is not therefore sought with a view to compensating the State for a violation of its rights but for the benefit of individual victims (see *Cyprus v. Turkey* (just satisfaction), cited above, § 45, paragraph 21 above).

27. As the three criteria referred to above are satisfied in the present case, the Court considers that the applicant Government are entitled to submit a claim under Article 41 of the Convention and that an award of just satisfaction is justified in the present case (see, *mutatis mutandis*, *Cyprus v. Turkey* (just satisfaction), cited above, § 47).

28. It is now necessary to determine the "sufficiently precise and objectively identifiable" group of people (see *Cyprus v. Turkey* (just satisfaction), cited above, § 47) on which the Court will actually base itself for the purposes of awarding just satisfaction in respect of the violations found, and the criteria to be applied for an award of just satisfaction for non-pecuniary damage.

II. THE APPLICANT GOVERNMENT'S CLAIMS IN RESPECT OF JUST SATISFACTION

A. The parties' submissions

1. The applicant Government

29. Referring to paragraph 135 of the principal judgment, the applicant Government submitted claims for just satisfaction for 4,634 Georgian nationals, of whom 2,380 had allegedly been detained and forcibly expelled.

30. Having regard to all the circumstances of the case and in accordance with equitable principles, they claimed a lump sum of EUR 70,320,000 (seventy million three hundred and twenty thousand euros) in respect of non-pecuniary damage suffered by the Georgian nationals, plus any tax that may be chargeable on that amount. Referring to the Court's case-law, they stated that that amount included compensation of EUR 20,000 for anyone detained and forcibly expelled and EUR 10,000 for anyone who had left the Russian Federation by their own means.

31. The applicant Government also claimed EUR 50,000 (fifty thousand euros) in respect of the death of each of the following individuals – Mrs Manana Jabelia, Mr Tengiz Togonidze and Mr Muzashvili – and EUR 30,000 (thirty thousand euros) for Mrs Nato Shavshishvili,[1] who had allegedly lost the use of her left hand on account of a failure to provide appropriate medical assistance.

32. They added that the just satisfaction should be awarded by the Court to the applicant Government, which should then distribute the amounts awarded to the individual victims of the violations found in the principal judgment. Subsequently, they would put an effective mechanism in place for distribution of the above-mentioned sums to the individual victims under the supervision of the Committee of Ministers.

33. The applicant Government also pointed out that in the judgment *Cyprus v. Turkey* (just satisfaction), cited above, the Court had awarded substantial amounts to the applicant Government without the precise number of beneficiaries being determined, and despite the objections raised by the Turkish Government in that regard.

34. In response to the Court's request, the applicant Government submitted an initial list of 345 alleged victims. With a view to preserving the rights of the victims, they considered it essential that the respondent Government also submit all the relevant information and documents in their possession (in particular expulsion orders, court decisions and the list of detained persons).

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1. The Court has delivered individual decisions in respect of Mrs Manana Jabelia, Mr Tengiz Togonidze and Mrs Nato Shavshishvili (see footnote no. 3 below).

35. Subsequently, again in response to the Court's request, the applicant Government submitted a second list of 1,795 alleged victims (including the 345 alleged victims appearing in the first list), specifying that in reality the number of victims was much higher and that many were still contacting the applicant Government on a daily basis. Attached to that list were court decisions on the administrative expulsions, and letters from various ministries and authorities of the Russian Federation.

36. The applicant Government concluded their submissions by referring again to paragraph 135 of the principal judgment and emphasising the need to obtain from the respondent Government all the necessary information from which to identify the complete list of victims.

2. The respondent Government

37. In the alternative, and if the Court were to declare Article 41 applicable to the present case, the respondent Government submitted that, contrary to the applicant Government's allegations, the wording of paragraph 135 of the principal judgment showed that the Court had not yet established the exact number of victims, which was essential, however, for determining the amount of compensation to be awarded.

38. The respondent Government referred to the judgment *Cyprus v. Turkey* (just satisfaction), cited above, in which the Court had based itself on a detailed list of victims, namely, "two sufficiently precise and objectively identifiable groups of people", and submitted that the Court should follow the same approach in the present case.

39. In accordance with the rules of evidence, it was for the applicant Government, as claimant, to submit a list of the persons concerned (with an indication of their full name, place of birth and the region in which the violation had occurred and the type of violation). That was all the more necessary because in the Russian Federation – as in other Contracting States – there was no register of arrested persons against whom an order had been made by an administrative court and who had been placed in detention facilities based on their ethnic origin. Subsequently, the respondent Government would be ready to verify all the information submitted and to send the Court all the requisite documents such as court decisions and so on.

40. The respondent Government also submitted that compensation could only be paid to individual victims of the violations found by the Court and who had been identified by it in its judgment on just satisfaction.

41. Failing that, compensation could conceivably not be awarded at all, and the respondent Government thus not be obliged to pay the award to the applicant Government pending subsequent identification of the victims and distribution to them of the sum in question, even under the supervision of the Committee of Ministers.

42. In the respondent Government's submission, identification of the victims of violations of the Convention was a fact-finding exercise and fell

within the exclusive power of the Court. Assigning that function to the applicant Government (even under the supervision of the Committee of Ministers) or directly to the Committee of Ministers, in the absence of adversarial proceedings before the Court, amounted to a flagrant breach of the principle of a fair trial and equality of arms.

43. The requirement to identify the victims in the present case was also a matter of genuine and reasonable concern for the respondent Government, who feared that without identification compensation would be paid to individuals who had not been victims of violations of the Convention in the Russian Federation at the relevant time, which was totally unacceptable and contrary to the purpose and spirit of the Convention.

44. The respondent Government then submitted that the successive extensions of the time-limit granted to the applicant Government to produce information about the alleged victims amounted to a serious breach of the respondent Government's rights as a party to the proceedings. This was particularly true on account of the limited period for keeping documents concerning the arrest and placement in temporary detention of foreign nationals, judicial procedures and so on.

45. Furthermore, more than ten years after the events in question, document searches were extremely fastidious and had to be done manually, as the majority of the national courts had not been equipped with an electronic system at the relevant time.

46. The respondent Government also maintained, referring to a certain number of judgments delivered by the Court against the Russian Federation, that the applicant Government's calculation of the compensation award was excessive and unjustified on the basis of the violations found.

47. Lastly, they disputed the amounts claimed in respect of the persons named by the applicant Government (see paragraph 31 above), some of whom had lodged individual applications with the Court.

B. The Court's assessment

1. Determination of a "sufficiently precise and objectively identifiable" group of people

(a) Preliminary considerations

48. Paragraph 135 of the principal judgment is worded as follows:

> "Accordingly, it considers that there is nothing enabling it to establish that the applicant Government's allegations as to the number of nationals expelled during the period in question and their sharp increase as compared with the period preceding October 2006 are not credible. In its examination of the present case it therefore assumes that during the period in question more than 4,600 expulsion orders were issued against Georgian nationals, of whom approximately 2,380 were detained and forcibly expelled."

49. Referring to that paragraph, the applicant Government submitted that 4,634 Georgian nationals, of whom 2,380 had been detained and forcibly expelled, represented "sufficiently precise and objectively identifiable" groups of people which the Court should use as a basis on which to award just satisfaction.

50. The respondent Government, for their part, submitted that the wording of paragraph 135 of the principal judgment showed that the Court had not yet established the exact number of victims, which was essential, however, for determining the amount of compensation to be awarded.

51. The Court reiterates that in the principal judgment it 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 "which amounted to an administrative practice for the purposes of Convention case-law" (see *Georgia v. Russia (I),* cited above, § 159).

52. Subsequently, failing communication by the respondent Government of monthly statistics on the number of Georgian nationals expelled from the Russian Federation in 2006 and 2007, the Court based itself on the figures adduced by the applicant Government as one of the elements of proof of the existence of that administrative practice (see *Georgia v. Russia (I),* cited above, § 129). The wording used by the Court in its reasoning in paragraph 135 of the principal judgment, and which appears in the "Law" part, is cautious: whilst, in the first sentence, it considers that "there is nothing enabling it to establish" that the applicant Government's allegations are not credible, it does not, however, affirm that they are proved "beyond reasonable doubt", which is the criterion of proof established by the Court in its case-law (see *Georgia v. Russia (I),* cited above, § 93). In the second sentence of that paragraph the Court confines itself to indicating that it "therefore assumes" (in French: "*part donc du principe*") that more than 4,600 expulsion orders were issued against Georgian nationals, of whom approximately 2,380 were detained and forcibly expelled. It thus bases itself on an approximate number of expulsion and detention orders when examining whether there was an administrative practice, which is very different from establishing the identity of individual victims.

53. Moreover, a distinction has to be made between these indications, which define a general numerical framework in the context of the examination of the case on the merits, and the question of the application of Article 41 of the Convention which the Court reserved in the principal judgment, considering that it was not ready for decision (see paragraph 3 above).

54. Furthermore, the general logic of the just-satisfaction rule is directly derived from the principles of public international law relating to State liability (see *Cyprus v. Turkey* (just satisfaction), cited above, §§ 40 and 41, paragraph 21 above). Those principles include both the obligation on the State responsible for the internationally wrongful act "to cease that act, if it

is continuing" and the obligation to "make full reparation for the injury caused by the internationally wrongful act", as laid down in Articles 30 and 31 respectively of the Articles on Responsibility of States for Internationally Wrongful Acts (Yearbook of the Commission of International Law, Volume II, Second Part, pp. 94 and 97, A/CN.4/SER.A/2001/Add.1 (Part 2)).

55. Lastly, and this is an essential factor, the application of Article 41 of the Convention requires identification of the individual victims concerned (see *Cyprus v. Turkey* (just satisfaction), cited above, § 46, see paragraph 21 above).

56. In that connection it can be observed that the case of *Cyprus v. Turkey* and the present case concern different factual contexts. While the former concerned multiple violations of the Convention following the military operations carried out by Turkey in northern Cyprus during the summer of 1974 and which were not based on individual decisions, in the instant case the finding of the existence of an administrative practice contrary to the Convention was based on individual administrative decisions expelling Georgian nationals from the Russian Federation during the autumn of 2006.

57. Accordingly, the Court considers that the parties must be in a position to identify the Georgian nationals concerned and to furnish it with the relevant information.

58. That is the reason why, in accordance with Rule 60 § 2 of the Rules of Court, it invited the applicant Government to submit a list of Georgian nationals who had been victims of the "coordinated policy of arresting, detaining and expelling Georgian nationals" put in place in the Russian Federation in the autumn of 2006 (see paragraphs 6 and 7 above). It also asked the respondent Government to submit all relevant information and documents (in particular the expulsion orders and court decisions) concerning Georgian nationals who had been victims of that policy during the period in question.

59. The Court reiterates in this regard the duty to cooperate of the High Contracting Parties set forth in Article 38 of the Convention and Rule 44A of the Rules of Court. Indeed, "it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications. This obligation requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications" (see, *mutatis mutandis*, *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, § 202, ECHR 2013).

60. This duty to cooperate, which also applies in inter-State cases (see *Georgia v. Russia (I),* cited above, §§ 99-110), is particularly important for

the proper administration of justice where the Court awards just satisfaction under Article 41 of the Convention in this type of case. It applies to both Contracting Parties: the applicant Government, who, in accordance with Rule 60 of the Rules of Court, must substantiate their claims, and also the respondent Government, in respect of whom the existence of an administrative practice in breach of the Convention has been found in the principal judgment.

61. In the present case the respondent Government therefore also had a duty to produce all relevant information and documents in their possession despite the difficulties associated with the passage of time and gathering a substantial quantity of data. Moreover, like the applicant Government, the respondent Government benefitted from a number of extensions of the time-limit for submitting those documents and having them translated into one of the Court's two official languages.

62. Following repeated requests by the Court, the applicant Government submitted a list of 1,795 individual victims, together with annexes, and the respondent Government sent the Court their comments, also together with annexes, in that regard. In the present case the Court has carried out a preliminary examination of that list (see paragraphs 68 to 72 below), even though the respondent Government have not submitted all the relevant information and documents (in particular the expulsion orders and court decisions) concerning the Georgian nationals who were victims of the coordinated policy of arresting, detaining and expelling Georgian nationals put in place in the Russian Federation in the autumn of 2006.

63. The respondent Government also asked the Court to identify each of the individual victims of the violations found by it in adversarial proceedings, on the ground that the task of establishing the facts fell within the exclusive power of the Court.

64. In that connection the Court notes first of all that in the present case the parties have exchanged observations on the question of just satisfaction in compliance with the adversarial principle, as was the case in *Cyprus v. Turkey* (just satisfaction), cited above.

65. The Court observes next that it has emphasised on several occasions, and particularly in cases concerning systematic violations of the Convention, that it is not a court of first instance; it does not have the capacity, nor is it appropriate to its function as an international court, to adjudicate on large numbers of cases which require the finding of specific facts or the calculation of monetary compensation – both of which should, as a matter of principle and effective practice, be the domain of domestic jurisdictions (see, *inter alia*, *mutatis mutandis*, *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99 and 7 others, § 69, ECHR 2010; *Burmych and Others v. Ukraine* (striking out) [GC], nos. 46852/13 et al., § 159 *in fine*, 12 October 2017; *Sargsyan v. Azerbaijan* (just satisfaction)

[GC], no. 40167/06, § 32, 12 December 2017; and *Chiragov and Others v. Armenia* (just satisfaction) [GC], no. 13216/05, § 50, 12 December 2017).

66. This is particularly true of requests for just satisfaction submitted in an inter-State case, which is inherently distinguishable from a case containing a group of several individual applications in which the circumstances specific to each application are set forth in the judgment (see, among many other authorities, *Berdzenishvili and Others v. Russia*[2], nos. 14594/07 and 6 others, 20 December 2016, concerning 7 applications, introduced by nineteen applicants and related to the case of *Georgia v. Russia (I)*).

67. Lastly, States Parties have a duty under Article 46 § 1 of the Convention to "abide by the final judgment of the Court", the supervisory role and responsibility in that respect being entrusted to the Committee of Ministers by virtue of Article 46 § 2 (see, *mutatis mutandis*, *Burmych and Others,* cited above, § 185).

(b) Methodology applied by the Court

68. In the present case the Court has carried out a preliminary examination of the list of 1,795 alleged victims submitted by the applicant Government, and of the comments in reply submitted by the respondent Government, in order to determine the list of Georgian nationals who can be considered victims of a violation of the Convention.

69. Having regard to the general numerical framework on which the Court relied in its principal judgment to conclude that there had been violations of the Convention (see paragraph 48 above), it proceeds on the assumption that the people named in the applicant Government's list can be considered victims of violations of the Convention for which the respondent Government have been held responsible. Having regard to the fact that the findings of a violation of Articles 3 and 5 § 1 of the Convention and of Article 4 of Protocol No. 4 concern individual victims and are based on events which occurred on the territory of the respondent Government, the Court considers that in the particular circumstances of the present case the burden of proof is on the respondent Government to convincingly show that the individuals appearing in the applicant Government's list do not have victim status. Accordingly, where the preliminary examination has enabled the Court to satisfactorily conclude that a person has been the victim of one or more violations of the Convention, and the respondent Government have failed to show that the person in question did not have victim status, that person will be included in the final internal list for the purposes of determining the total sum to be awarded in just satisfaction (see paragraph 71 below).

2. See footnote no. 3 below.

70. In the context of this preliminary examination the Court has based itself on the documents submitted to it by the parties and on the fact that the respondent Government themselves recognised that a certain number of the Georgian nationals appearing in the list submitted by the applicant Government could be regarded as victims. However, 290 persons named in that list cannot be regarded as such for, *inter alia*, the following reasons, rightly advanced by the respondent Government: they appear more than once on that list; they have lodged individual applications[3] before the Court; they have either acquired Russian nationality or from the outset possessed a nationality other than Georgian nationality; expulsion orders were issued against them either before or after the period in question; they have successfully used available remedies; it has not been possible to identify them or their complaints have not been sufficiently substantiated owing to insufficient information submitted by the applicant Government (see, *mutatis mutandis*, *Lisnyy v. Ukraine and Russia*, nos. 5355/15, 44913/15 and 50852/15, 5 July 2016, regarding the applicants' duty to substantiate their allegations before the Court).

71. Accordingly, for the purposes of awarding just satisfaction, the Court considers that it can base itself on a "sufficiently precise and objectively identifiable" group of at least 1,500 Georgian nationals who were victims of a violation of Article 4 of Protocol No. 4 (collective expulsion) in the context of the "coordinated policy of arresting, detaining and expelling Georgian nationals" put in place in the Russian Federation in the autumn of 2006.

72. Among these a certain number were also victims of a violation of Article 5 § 1 (unlawful deprivation of liberty) and Article 3 (inhuman and degrading conditions of detention) of the Convention.

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3. 23 applicants lodged 10 individual applications related to the case of *Georgia v. Russia* (I) before the Court, which ruled as follows:
- In a judgment of 3 May 2016 the Court struck out of the list the application lodged by Mr Shakhi Kvaratskhelia and Mr Shakhi Kvaratskhelia (no. 14985/07), the father and son respectively of Mrs Manana Jabelia, following a friendly settlement reached between the applicants and the respondent Government;
- In a judgment of 20 December 2016 the Court held that there had been a violation of Articles 2 and 3 of the Convention, and of Article 13 taken in conjunction with Article 3, and awarded 40,000 euros in just satisfaction concerning the application lodged by Mrs Nino Dzidzava (no. 16363/07), wife of Mr Tengiz Togonidze.
- With regard to the other applications, the Court grouped them together and delivered a judgment on the merits (*Berdzenishvili and Others*, no. 14594/07) on 20 December 2016. In that judgment it held that there had been no violation of the Articles of the Convention relied on by Mrs Nato Shavshishvili on the ground that her complaints had not been sufficiently substantiated. With regard to the applications in respect of which the Court found a violation of the Convention, it reserved the question of the application of Article 41 pending the adoption of the present just satisfaction judgment.

2. Criteria to be applied for an award of just satisfaction for non-pecuniary damage

73. The Court reiterates that there is no express provision for awards in respect of non-pecuniary damage in the Convention. In *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 224, ECHR 2009, *Cyprus v. Turkey* (just satisfaction), § 56, and *Sargsyan* and *Chiragov* (§§ 39 and 57 respectively), cited above, the Court confirmed the following principles which had been gradually developed in its case-law. Situations where the applicant has suffered evident trauma, whether physical or psychological, pain and suffering, distress, anxiety, frustration, feelings of injustice or humiliation, prolonged uncertainty, disruption to life, or real loss of opportunity can be distinguished from those situations where the public vindication of the wrong suffered by the applicant, in a judgment binding on the Contracting State, is an appropriate form of redress in itself. In some situations, where a law, procedure or practice has been found to fall short of Convention standards this is enough to put matters right. In other situations, however, the impact of the violation may be regarded as being of a nature and degree as to have impinged so significantly on the moral well-being of the applicant as to require something further. Such elements do not lend themselves to a process of calculation or precise quantification. Nor is it the Court's role to function akin to a domestic tort mechanism court in apportioning fault and compensatory damages between civil parties. Its guiding principle is equity, which above all involves flexibility and an objective consideration of what is just, fair and reasonable in all the circumstances of the case, including not only the position of the applicant but the overall context in which the breach occurred. Its non-pecuniary awards serve to give recognition to the fact that non-pecuniary damage occurred as a result of a breach of a fundamental human right and reflect in the broadest of terms the severity of the damage.

74. In the present case there is no doubt that the group of at least 1,500 Georgian nationals who were victims of a violation of Article 4 of Protocol No. 4, and those among them who were also victims of a violation of Article 5 § 1 and Article 3 of the Convention, in the context of the "coordinated policy of arresting, detaining and expelling Georgian nationals" put in place in the Russian Federation in the autumn of 2006, suffered trauma and experienced feelings of distress, anxiety and humiliation during that period.

75. Accordingly, despite the large number of imponderable factors – due, among other things, to the passage of time – that come into play here, compensation for non-pecuniary damage can be awarded. With regard to calculating the level of just satisfaction to be awarded, the Court has a discretion having regard to what it finds equitable (see, *mutatis mutandis*, *Sargsyan* and *Chiragov,* cited above, §§ 56 and 79). The Court reiterates in this regard that it has in the past always declined to make any awards of

punitive or exemplary damages even where such claims are made by individual victims of an administrative practice (see, as the most recent authority, *Greens and M.T. v. the United Kingdom*, nos. 60041/08 and 60054/08, § 97, ECHR 2010 (extracts), which summarises the Court's case-law on this point).

76. Having regard to all the relevant circumstances of the present case, the Court, ruling on an equitable basis, deems it reasonable to award the applicant Government a lump sum of EUR 10,000,000 (ten million euros) in respect of non-pecuniary damage sustained by this group of at least 1,500 Georgian nationals.

77. In accordance with its case-law, the Court considers 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 were 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 of them who were also victims of a violation of Article 5 § 1 and Article 3 of the Convention. In respect of the latter group, account must be taken of the length of their respective periods of detention, in accordance with the Court's case-law (see, *inter alia*, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 142, 10 January 2012, and *Idalov v. Russia* [GC], no. 5826/03, § 94, 22 May 2012).

78. The Court reiterates, further, that it falls to the respondent Government to satisfy their legal obligations, under Article 46 of the Convention, as interpreted in the light of Article 1, in conformity with the judgment of the Court and the specific measures taken by the Committee of Ministers in execution of this judgment (see, *inter alia*, *mutatis mutandis*, *Varnava and Others,* cited above, § 222; *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 142, ECHR 2014; and *Burmych and Others*, cited above, §§ 185-92).

79. In the particular circumstances of the instant case it also considers that it must be left to the applicant Government to set up an effective mechanism for distributing the above-mentioned sums to the individual victims of the violations found in the principal judgment while having regard to the aforementioned indications given by the Court (see paragraph 77), and excluding the individuals who cannot be classified as victims according to the above-mentioned criteria (see paragraph 70). This mechanism must be put in place under the supervision of the Committee of Ministers and in accordance with any practical arrangements determined by it in order to facilitate execution of the judgment. This distribution must be carried out within eighteen months from the date of the payment by the respondent Government or within any other period considered appropriate by the Committee of Ministers (see, *mutatis mutandis*, *Cyprus v. Turkey* (just satisfaction), cited above, § 59).

80. Lastly, the Court considers it appropriate that the default interest rate 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

1. *Holds*, by sixteen votes to one, that Article 41 of the Convention is applicable in the present case;

2. *Holds*, by sixteen votes to one,
   (a) that the respondent State is to pay the applicant Government, within three months, EUR 10,000,000 (ten million euros) in respect of non-pecuniary damage suffered by a group of at least 1,500 Georgian nationals;

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

   (c) that this amount shall be distributed by the applicant Government to the individual victims, by paying EUR 2,000 to the Georgian nationals who were victims only of a violation of Article 4 of Protocol No. 4, and EUR 10,000 to EUR 15,000 to those of them who were also victims of a violation of Article 5 § 1 and Article 3 of the Convention, taking into account the length of their respective periods of detention;

   (d) that this distribution shall be carried out under the supervision of the Committee of Ministers, within eighteen months from the date of the payment or within any other time-limit considered appropriate by the Committee of Ministers and in accordance with any practical arrangements determined by it in order to facilitate execution of the judgment.

Done in English and French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 31 January 2019.

Lawrence Early
Jurisconsult

Guido Raimondi
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) partly concurring opinion of Judges Yudkivska, Mits, Hüseynov and Chanturia;

(b) dissenting opinion of Judge Dedov.

G.R.
T.L.E.

PARTLY CONCURRING OPINION OF JUDGES YUDKIVSKA, MITS, HÜSEYNOV AND CHANTURIA

1. We agree in principle with all the major findings of the Grand Chamber. In particular, we fully agree with the majority as regards the applicability of Article 41 to the proceedings in question (point 1 of the operative part) and concur with them as regards the establishment of the number of individual victims constituting the relevant group and the consequent calculation of the award (point 2 of the operative part).

2. In particular, the Grand Chamber rightly noted in paragraphs 71 and 76, and in point 2 of the operative part of the present judgment, that "*at least* 1,500 Georgian nationals" were victims of the various violations under the Convention (emphasis added). However, we would have preferred the Grand Chamber to have expressed itself in clearer terms in that respect and to have closely followed what it had itself established previously in paragraph 135 of the principal judgment (the judgment of 3 July 2014 on the merits).

3. Let us reiterate the relevant part of paragraph 135 of the Court's principal judgment in the present case, which reads as follows:

> "135. ... In its examination of the present case [the Grand Chamber] therefore assumes that during the period in question more than 4,600 expulsion orders were issued against Georgian nationals, of whom approximately 2,380 were detained and forcibly expelled."

4. In our view, when calculating the amount of the award under Article 41 of the Convention, the Court should have taken into account the numerical framework appearing in paragraph 135 of the principal judgment. That numerical framework already gave us, pursuant to the criteria developed by the Court in the case of *Cyprus v. Turkey* (just satisfaction judgment), no. 25781/94, § 47, 12 May 2014), two separate groups of "*sufficiently precise*" and "*objectively identifiable*" people (emphasis added).

5. The two groups were "*sufficiently precise*", according to the criteria used in the *Cyprus v. Turkey* case, because in the principal judgment the Court gave very precise figures for the groups appearing in two overlapping, but still distinct, factual situations. Of significant relevance for considering these two groups to be "*sufficiently precise*" is the fact that the respondent Government had themselves conceded before the Court, during the examination on the merits, that more than 4,000 administrative expulsion orders had been issued against Georgian nationals in 2006 (see paragraph 132 of the principal judgment).

6. Those two groups were moreover "*objectively identifiable*", according to the criteria used in the *Cyprus v. Turkey* case, because the facts of

expulsion and detention were, as the Grand Chamber had itself found in the principal judgment, confirmed by the physical existence of expulsion and detention orders issued by the relevant administrative agency and/or the domestic courts. Since the Court acknowledged the existence of those court orders, we do not think it would be reasonable to assume that the Russian authorities had issued those orders out of thin air, in respect of non-existent, anonymous "phantom" people. On the contrary, such orders obviously contained the names, dates of birth and other identification data of all the people concerned.

7. It is true that, when examining the question of the application of Article 41 of the Convention, the Court did not have at its disposal a copy of all the expulsion and detention orders mentioned in paragraph 135 of the principal judgment. However, and it is important to emphasise this, the lack of information in the case file was caused by the respondent Government's own failure to cooperate duly with the Court and provide it with the relevant documents (see the findings made in paragraphs 100 to 110 of the principal judgment). Indeed, since the expulsion and detention of 4,600 and 2,380 people respectively took place in Russia, on the basis of administrative and court orders issued in that country, it was reasonable to assume that all the legal traces of those expulsions and detentions could only be found in the archives of the Russian Federation (and not, for instance, in Georgia). As the respondent Government continued withholding the requisite documents from the Court even at the just-satisfaction stage of the proceedings (see paragraph 62 of the present judgment), the list of victims submitted by the applicant Government during the current stage of the proceedings (see paragraph 68 of the present judgment) should have been treated as an open-ended, illustrative list only.

8. It is for these reasons that we believe that the sufficiently precise numerical framework established by the Court in paragraph 135 of the principal judgment should have been taken as the basis for calculating an award under Article 41 of the Convention.

DISSENTING OPINION OF JUDGE DEDOV

I am in the minority in the present case because I voted against the findings of violations in the principal judgment. As regards the issue of just satisfaction, the present judgment represents, to some extent, a progressive development of the case-law providing guidance for the implementation of the principal judgment. However, the main problem remains unresolved. I regret that the Court did not allow the amount awarded in compensation to be distributed directly by the respondent Government in cooperation with the applicant Government, as should happen in the context of international relations between sovereign States. On the contrary, the Court left it exclusively to the applicant Government to create an effective mechanism for the distribution of compensation after, and not before, payment of the amount by the respondent Government. This algorithm excludes the respondent Government from any participation in the distribution and undermines the status of the Russian Federation as a member State of the Council of Europe, rendering it comparable to the status of an offender who pays a penalty to be further distributed at the discretion of the State. The national and international implementation procedure should indeed be different.