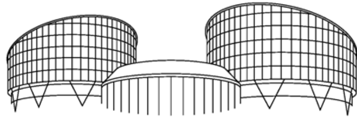

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
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ECHR 120 (2023)
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Inter-State case Georgia v. Russia (IV) declared admissible

In its decision in the inter-State case **Georgia v. Russia (IV)** (application no. 39611/18) the European Court of Human Rights has unanimously declared the application admissible. The decision is final and will be followed by a judgment on the merits at a later stage.

The case concerns the alleged deterioration of the human-rights situation along the administrative boundary lines between Georgian-controlled territory and Abkhazia and South Ossetia[1]. It was lodged by the Government of Georgia on 22 August 2018. It is the fourth *Georgia v. Russia* inter-State application.

The President of the Court assigned the case to the Second Section and the Russian Government ("the respondent Government") was given notice of the application on 18 June 2019.

On 10 September 2019, at the request of the respondent Government, the Chamber decided to adjourn the case until the adoption of a judgment on the merits in the case *Georgia v. Russia (II)* (no. 38263/08). After the delivery of the judgment on the merits in that case on 21 January 2021, the proceedings in the present case were resumed on 25 May 2021. The parties submitted their observations on 15 December 2021 and on 25 February 2022.

There have been three other applications lodged by Georgia against Russia before the Court. There are also almost 250 individual applications before the Court against Georgia, against Russia or against both States concerning the armed conflict in 2008 or the process of "borderisation" which started in 2009. For further information, see the Questions and Answers on Inter-State Applications and the table of Interstate Applications.

A legal summary of this case will be available in the Court's database HUDOC (link).

Principal facts

The case concerns the alleged deterioration of the human-rights situation along the administrative boundary lines between Georgian-controlled territory and Abkhazia and South Ossetia.

Following the armed conflict between Georgia and Russia in August 2008, Russia recognised Abkhazia and South Ossetia as independent States. It established military bases in each of the two regions and stationed Russian soldiers there. It also set up a joint military command between Russia and Abkhazia and incorporated the South Ossetian "military" into the Russian armed forces. Russian border guards (under the Federal Security Service of the Russian Federation) patrol the administrative boundary line between the two regions and the territory controlled by the Georgian Government. Since 2009, physical barriers and other measures have gradually been established to block people from crossing the administrative boundary line freely. This process – often called "borderisation" – includes three main elements: (1) the establishment of physical infrastructure, such as fencing, barbed wire, guard towers, signs informing people that they are approaching the "borders" and advanced surveillance equipment, to force commuters, vehicles and goods to use controlled crossing points established at the administrative boundary line; (2) surveillance and patrolling by either Russian border guards or security guards from the breakaway regions who monitor the situation and detain people if they are in violation of established rules; and (3) a

[1] The terms "Abkhazia" and "South Ossetia" refer to regions of Georgia which are currently outside the *de facto* control of the Georgian Government.

crossing regime requiring commuters to have specific documents and only use "official" crossing points.

Uncontrolled crossings are frequent, with people bypassing the controlled crossing points as they do not have the required documents. Others simply find travelling to the crossing points too inconvenient. Also, only parts of the administrative boundary line have been marked, so it is not always clear where it lies.

Georgia and the overwhelming majority of the international community consider the process of "borderisation" illegal under international law. The Georgian authorities refer to the administrative boundary line as the occupation line. In contrast, the Russian and the *de facto* Abkhaz and South Ossetian authorities treat the administrative boundary line as an international border on the grounds that Russia has recognised the two breakaway entities as independent States.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 22 August 2018.

The Georgian Government alleges, in particular: (a) that Russia has engaged (and continues to engage) in an administrative practice of harassing, unlawfully arresting and detaining, assaulting, torturing, murdering and intimidating ethnic Georgians attempting to cross, or living next to, the administrative boundary lines that now separate Georgian-controlled territory from Abkhazia and South Ossetia; (b) that Russia has engaged (and continues to engage) in an administrative practice of failing to conduct Convention-compliant investigations in this connection; (c) that Archil Tatunashvili – a Georgian civilian who was abducted while trying to enter South Ossetia – was unlawfully deprived of his liberty, tortured and murdered by persons for whom Russia bears responsibility; and (d) that Russia has failed to conduct a Convention-compliant investigation into his unlawful arrest and murder and into the unlawful arrests and murders of Davit Basharuli and Giga Otkhozoria, two ethnic Georgians arrested in separate circumstances by the *de facto* authorities and killed.

In this regard, the Georgian Government relies on Articles 2 (right to life), 3 (prohibition of torture and inhuman or degrading treatment), 5 (right to liberty and security), 8 (right to respect for private and family life), 13 (right to an effective remedy), 14 (prohibition of discrimination) and 18 (limitation on use of restrictions on rights) of the Convention, Articles 1 (protection of property) and 2 (right to education) of Protocol No. 1 and Article 2 (freedom of movement) of Protocol No. 4.

The Court's procedure for processing of applications against Russia can be found here.

The decision on admissibility was given by a Chamber of seven judges, composed as follows:

Arnfinn **Bårdsen** (Norway), *President*,
Jovan **Ilievski** (North Macedonia),
Egidijus **Kūris** (Lithuania),
Pauliine **Koskelo** (Finland),
Lado **Chanturia** (Georgia),
Lorraine **Schembri Orland** (Malta),
Davor **Derenčinović** (Croatia),

and also Hasan **Bakırcı**, *Section Registrar.*

Decision of the Court

The Court established that it had jurisdiction to deal with the case, as the facts giving rise to the alleged violations of the Convention took place before 16 September 2022, the date on which Russia ceased to be a Party to the European Convention.

Although the Georgian government had asked the Court to consider the cases of Davit Basharuli, Giga Otkhozoria and Archil Tatunashvili not only as illustrations of the administrative practices alleged, but also as individual violations of the Convention, the Court noted that those cases were also the subject of three pending individual applications (nos. 44677/21, 3963/18 and 41776/18). It therefore decided that, in this inter-State case, it would only examine the allegations of administrative practices and would consider the three individual cases as alleged illustrations of such practices. Moreover, the Court agreed that no events which had occurred before 2009 – that is to say before the process of "borderisation" – should be taken into consideration.

Alleged lack of a genuine application

In response to the Russian Government's objection that the application had been brought to seek a decision on issues of general international law rather than on issues related to the protection of human rights under the Convention, the Court considered that the case concerned rights and freedoms defined in the Convention and, although those issues had political aspects to them, the Court could not refuse to treat a case merely because it had political implications. It considered that there was no basis for the application to be rejected as lacking the requirements of a genuine application, and it dismissed the objection.

Jurisdiction

The Court noted that in *Georgia v. Russia (II)* the Court had held that the strong Russian presence and the dependency of the *de facto* Abkhazian and South Ossetian authorities on the Russian Federation, on whom their survival depended, indicated that Russia had had continued "effective control" over those two breakaway regions until at least 23 May 2018. Given the absence of any relevant new information to the contrary, the Court considered that that conclusion continued to be valid. It followed that the victims of the alleged violations of the Convention in this case fell within the jurisdiction of the Russian Federation.

Exhaustion of domestic remedies

The Court reiterated that the rule of exhaustion of domestic remedies did not apply to inter-State cases in which the applicant State complained of administrative practices of violations of the Convention and where the Court was not being asked to decide individually on each of the cases put forward as proof or illustrations of those practices. Therefore, as the Court would be examining the allegations of administrative practices only in this inter-State case, it found that the exhaustion rule did not apply.

Alleged existence of administrative practices incompatible with the Convention

As outlined in *Georgia v. Russia (I)*, within the meaning of the Court's case-law an "administrative practice" of human-rights violations comprises an element of "repetition of acts incompatible with the Convention" and an element of "official tolerance" by the State. Substantial evidence of the two elements must be provided at the admissibility stage of the proceedings. If such evidence is missing, the complaint of an administrative practice cannot be viewed as admissible and warranting examination by the Court.

The Court rejected the Russian Government's argument that, to be admissible, an allegation of administrative practice must be supported by direct evidence from the alleged victims. The Court reiterated that it was entitled to refer to evidence of every kind, while being conscious of the need to treat all statements and material with a degree of caution. The reliability of reports, as well as the relative probative value of all available evidence, would be considered not only on the basis of whether they corroborated each other, but also in the light of the fact that human-rights monitoring bodies had not had unhindered access to the two breakaway regions since August 2008. The Court drew a parallel between a State restricting access of independent human-rights-monitoring bodies

to an area in which it exercised jurisdiction and the non-disclosure of crucial documents to prevent or hinder the Court from establishing the facts. As in previous inter-State cases, relevant inferences might be drawn from the Russian Government's conduct in this connection.

In assessing the evidence available to it, the Court noted that the Georgian Government had submitted, in support of their complaints, a detailed list set up by the State Security Service of Georgia referring to many incidents and alleged victims. Except for the three illustrative cases already mentioned, they had not provided statements from the alleged victims or witnesses in the list. Nor had they submitted forensic or any other evidence. That being said, it appeared from the material originating from international organisations and independent international human-rights-protection associations submitted by the Georgian Government and those obtained by the Court itself that many human-rights incidents had indeed taken place since the onset of the process of "borderisation" in 2009. By way of example, the hotline set up by the EU Monitoring Mission in Georgia had been contacted 2,741 times in respect of detentions for administrative-boundary-line crossings between 2011 and September 2018.

Therefore, the Court found that the available material was sufficient to amount to prima facie evidence of the "repetition of acts" which were sufficiently numerous and interconnected to amount to a "pattern or system" in breach of Articles of the Convention. At the merits stage, it would be for the Court to decide whether the material provided was sufficient to overcome the "beyond reasonable doubt" threshold when confronted with any evidence supplied by the respondent State.

As regards the "official tolerance" element of the administrative practice, the Court noted that pursuant to agreements on "joint efforts in protecting the border", Russian border guards (under the Federal Security Service of the Russian Federation) manned the administrative boundary line between the territory controlled by the Georgian government and the breakaway regions. The Court further noted the regulatory nature of some of the measures (notably, restrictions on freedom of movement into and out of Abkhazia and South Ossetia resulting from the *de facto* transformation of the administrative boundary line into State borders) and their general application to all people concerned. The existence of those measures was not denied by the Russian Government and was confirmed by the international materials submitted by the Georgian Government and those obtained by the Court itself.

At this stage of the proceedings, the available evidence was sufficient to satisfy the Court that the "official tolerance" element was present, and it dismissed the Russian Government's objection in that regard. The Court further noted that the case was not inadmissible on any other grounds listed in Article 35 §§ 1 and 4 of the Convention.

Conclusion

The Court declared the application admissible, without prejudging the merits of the case.

Other cases

In total, since 2007 there have been three other Georgia v. Russia inter-State applications:

- *Georgia v. Russia* (I) (application no. 13255/07) was lodged on 26 March 2007 in connection with the arrest, detention and expulsion from the Russian Federation of Georgian nationals in the autumn of 2006. In a judgment of 3 July 2014 the Court held that there had been a violation, in particular, of Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens) to the Convention and Articles 3 (prohibition of torture and inhuman or degrading treatment), 5 (right to liberty and security) and 13 (right to an effective remedy) of the Convention. In a judgment of 31 January 2019, the Court decided on the application of Article 41 (just satisfaction) of the Convention in the case.
- *Georgia v. Russia* (II) (application no. 38263/08) was lodged on 11 August 2008. It related to the 2008 armed conflict between Georgia and the Russian Federation and its aftermath. On

12 August 2008 the Court adopted an interim measure inviting both Governments to respect their obligations under the Convention. That measure was extended several times. A hearing was held on 22 September 2011. The application was declared admissible by a Chamber on 13 December 2011 and relinquished to the Grand Chamber on 3 April 2012. After several exchanges of observations between the parties, a witness hearing was held from 6-17 June 2016 and a hearing on the merits was held on 23 May 2018. In a judgment of 21 January 2021 the Court held that there had been a violation of Articles 2 (right to life), 3 (prohibition of torture and inhuman or degrading treatment), 5 (right to liberty and security) and 8 (right to respect for private and family life) of the Convention and Article 1 of Protocol No. 1 (protection of property) and Article 2 of Protocol No. 4 (freedom of movement) to the Convention. The question of the application of Article 41 (just satisfaction) of the Convention is currently still pending before the Court.

- *Georgia v. Russia* (III) (application no. 61186/09) was lodged on 16 November 2009 in connection with the detention of four Georgian minors by the *de facto* authorities of South Ossetia. Following a visit to South Ossetia by the Human Rights Commissioner of the Council of Europe, the four minors and a further one who had been previously detained were released from detention. On 29 January 2010 the Georgian Government informed the Court that they no longer wished to maintain the case. Therefore, on 16 March 2010 a Chamber decided to strike the application out of its list of cases (Article 37 § 1 (a) of the Convention).

In addition to the inter-State cases, there are almost 250 individual applications against Georgia, against Russia or against both States concerning the armed conflict in 2008 or the process of "borderisation" which started in 2009.

The decision is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.