



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

THIRD SECTION

CASE OF BERDZENISHVILI AND OTHERS v. RUSSIA

(Applications nos. 14594/07 and 6 others - see appended list)

JUDGMENT
(Just satisfaction)

STRASBOURG

26 March 2019

FINAL

26/06/2019

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Berdzenishvili and Others v. Russia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Vincent A. De Gaetano, *President*,

Branko Lubarda,

Helen Keller,

Dmitry Dedov,

Pere Pastor Vilanova,

Alena Poláčková,

Georgios A. Serghides, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 5 March 2019,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in seven applications (nos. 14594/07, 14597/07, 14976/07, 14978/07, 15221/07, 16369/07 and 16706/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by 19 Georgian nationals (“the applicants”), whose names, dates of birth and places of residence are shown on the list appended to this judgment. The applications were lodged on 2 April 2007, 30 March 2007, 5 April 2007, 4 April 2007, 5 April 2007, 6 April 2007 and 10 April 2007 respectively.

2. In a judgment of 20 December 2016 (“the principal judgment”) (*Berdzenishvili and Others v. Russia*, nos. 14594/07 and 6 others, 20 December 2016), the Court found that several of the applicants had been in one way or another subjected to the administrative practice of arresting, detaining and expelling Georgian nationals, which was in place in the autumn of 2006 in Russia and which the Court had established in its judgment in the inter-State case *Georgia v. Russia (I)* ([GC], no. 13255/07, ECHR 2014 (extracts)). Based on the particular circumstances and complaints of each of the 19 applicants it held that there had been

- (a) a violation of Article 4 of Protocol No. 4 of the Convention in respect of Mr Berdzenishvili, Mr Kbilashvili, Mr Givishvili, Ms Chkaidze, Mr Jaoshvili, Ms Chokheli, Mr L. Kobaidze, Mr K. Kobaidze, Mr Latsbidze, Ms Kalandia, Mr Tsikhistavi, Mr Norakidze, Ms Dzadzamia and Ms Gigashvili;
- (b) a violation of Article 5 §§ 1 and 4 of the Convention in respect of Mr Berdzenishvili, Mr Kbilashvili, Mr Givishvili, Ms Nachkebia, Ms Chokheli, Mr L. Kobaidze,

Mr K. Kobaidze, Mr Latsbidze, Ms Kalandia, Mr Tsikhistavi, Mr Norakidze, Ms Dzadzamia and Ms Gigashvili;

- (c) a violation of Article 3 of the Convention (inhuman and degrading treatment) regarding the conditions of detention in respect of Mr Berdzenishvili, Mr Kbilashvili, Mr Givishvili, Ms Nachkebia, Ms Chokheli, Mr L. Kobaidze, Mr K. Kobaidze, Mr Latsbidze, Ms Kalandia, Mr Tsikhistavi, Mr Norakidze, Ms Dzadzamia and Ms Gigashvili;
- (d) a violation of Article 13 taken in conjunction with Article 3 of the Convention in respect of Mr Berdzenishvili, Mr Kbilashvili, Mr Givishvili, Ms Nachkebia, Ms Chokheli, Mr L. Kobaidze, Mr K. Kobaidze, Mr Latsbidze, Ms Kalandia, Mr Tsikhistavi, Mr Norakidze, Ms Dzadzamia and Ms Gigashvili.

The Court also decided to strike out of its list application no. 16369/07 insofar as it concerned Mr Gocha Khmaladze.

3. Under Article 41 of the Convention the applicants sought in respect of non-pecuniary damage:

- (i) Vaja Berdzenishvili (application no. 14594/07) 100,000 euros (EUR);
- (ii) Tengiz Kbilashvili (application no. 14597/07) EUR 100,000;
- (iii) Abram Givishvili (application no. 14976/07) EUR 100,000;
- (iv) Liana Nachkebia (application no. 14978/07) EUR 100,000;
- (v) Eka Chkaidze and David Jaoshvili (application no. 15221/07) EUR 100,000;
- (vi) Irina Chokheli (application no. 16369/07) EUR 25,000;
- (vii) Levan Kobaidze (application no. 16369/07) EUR 25,000;
- (viii) Koba Kobaidze (application no. 16369/07) EUR 25,000;
- (ix) Nato Shavshishvili (application no. 16369/07) EUR 25,000;
- (x) David Latsabidze (application no. 16369/07) EUR 25,000;
- (xi) Artur Sarkisian (application no. 16369/07) EUR 25,000;
- (xii) Andre Sarkisian (application no. 16369/07) EUR 25,000;
- (xiii) Irina Kalandia (application no. 16369/07) EUR 25,000;
- (xiv) Kakha Tsikhistavi(application no. 16369/07) EUR 25,000;
- (xv) Tato Norakidze, as the successor of Koba Norakidze, (application no. 16369/07) EUR 25,000;
- (xvi) Khatuna Dzadzamia (application no. 16369/07) EUR 25,000;
- (xvii) Inga Gigashvili (application no. 16706/07) EUR 100,000.

4. In addition Abram Givishvili (application no. 14976/07) claimed EUR 70,000 and Eka Chkaidze and David Jaoshvili (application no. 15221/07) claimed EUR 3,000 in respect of pecuniary damage.

5. The Government considered the amounts claimed to be clearly excessive and argued that the applicants did not submit sufficient documents regarding the pecuniary damage claimed. Moreover, the

Government submitted that due to the application of Article 41 in the inter-State case *Georgia v. Russia (I)* (cited above), in which the applicants were named as victims, the Court should take the damages already granted into account.

6. The Court reserved the question of the application of Article 41 of the Convention as far as the award of damages was concerned, since the question of the application of Article 41 in the inter-State case *Georgia v. Russia (I)* (cited above) was then still pending before the Grand Chamber.

7. In its judgment in the inter-State case concerning just satisfaction (*Georgia v. Russia (I)* (just satisfaction) [GC], no. 13255/07, 31 January 2019), the Court held that the Russian Federation had to pay the Georgian Government a lump-sum of EUR 10,000,000 in respect of non-pecuniary damage suffered by a group of at least 1,500 Georgian nationals (*ibid*, § 76). It further ordered the Georgian Government to distribute the amount received between the victims of the established administrative practice. The Court further elaborated that an amount of EUR 2,000 should be 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 the victims who were also victims of a violation of Article 5 § 1 and Article 3 of the Convention. In respect of the latter group, it held that account had to be taken of the length of their respective periods of detention (*ibid*, § 77). Lastly, the Court clarified that for the calculation of the awarded lump-sum it had excluded from the list of victims, *inter alia*, all individuals who had lodged individual applications against Russia concerning the application of the above-mentioned administrative practice in the autumn of 2006 (*ibid*, § 70).

THE LAW

8. 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.”

A. Damage

1. Pecuniary damage

9. The applicant Abram Givishvili (application no. 14976/07) claimed EUR 70,000 and Eka Chkaidze and David Jaoshvili (application no. 15221/07) claimed EUR 3,000 in respect of pecuniary damage. The

Government argued that the applicants did not submit sufficient documents regarding the pecuniary damage claimed.

10. The Court notes that in the principal judgment it declared the complaints under Article 8 of the Convention and Article 1 of Protocol No. 1 inadmissible, because the applicants had not sufficiently substantiated that they had had to abandon property or possessions in Russia when they had to leave the Russian Federation. Therefore, the Court sees no reason to award any pecuniary damage.

2. Non-pecuniary damage

11. In so far as the applicants sought non-pecuniary damage, the Court reiterates that in its judgment in the inter-State case *Georgia v. Russia (I)* (just satisfaction) (cited above), it considered non-pecuniary damage in the amount of EUR 2,000 adequate for victims of a violation of Article 4 of Protocol No. 4 only. It further considered an amount ranging from EUR 10,000 to EUR 15,000 adequate for victims 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 (see paragraph 7 above). The Court sees no reasons to deviate from these conclusions.

12. Concerning the applicants Eka Chkaidze and David Jaoshvili (application no. 15221/07) the Court found in its principal judgment only a violation of Article 4 or Protocol No. 4. It therefore awards them non-pecuniary damage in the amount of EUR 2,000.

13. Regarding the applicants concerning whom the Court found in its principal judgment violations also of Articles 5 § 1 and Article 3 of the Convention, it will therefore award an amount ranging from EUR 10,000 to EUR 15,000 and take into account the length of their respective periods of period in detention. In the principal judgment, the Court established the following facts concerning the arrests and detention of the applicants in question (*Berdzenishvili and Others*, cited above, §§ 8-29, 56-59, 67-70):

(a) Vaja BERDZENISHVILI (application no. 14594/07)

14. On 4 October 2006 immigration officers stopped the applicant on the street, checked his identity documents and took him to the Department of the Interior in the Vykhino District of Moscow, where he was detained. On 5 October 2006 the Kuzminskiy District Court of Moscow fined the applicant for failure to observe the applicable registration procedure and ordered his administrative expulsion from the Russian Federation. He was subsequently released, around midday.

(b) Tengiz KBILASHVILI (application no. 14597/07)

15. On 1 October 2006 the applicant was detained in the Cheremushkinskiy militia department. On 3 October 2006 the

Cheremushkinskiy District Court of Moscow fined the applicant and ordered his administrative expulsion from the Russian Federation. He was subsequently transferred to Kankova militia department, where he was detained until the next day. On 4 October 2006 he was transferred to the Centre for Temporary Detention of Aliens no.1, where he remained until his deportation. On 6 October 2006 the applicant was taken to a military airport and was flown to Georgia on a cargo plane.

(c) Abram GIVISHVILI (application no. 14976/07)

16. On 10 October 2006 the applicant was arrested by police officers during an identity check operation in the area of his residence. Later that same day the Arkadaskiy District Court of the Saratov Region fined the applicant, and ordered his detention and his expulsion. The applicant was transferred to a detention centre for aliens. On 12 October 2006 the applicant was released.

(d) Liana NACHKEBIA (application no. 14978/07)

17. On 4 October 2006 a special police unit arrested the applicant. The applicant was taken to the Department of the Interior in the Southern Orekhovo-Borisovo District of Moscow. On 5 October 2006 the Nagatinskiy District Court of Moscow fined the applicant and ordered her detention and expulsion. Subsequently the applicant was transferred to the Centre for Temporary Detention of Aliens no. 2. On 17 October 2006 the applicant was taken to a military airport and flown to Georgia on a cargo plane.

(e) Irina CHOKHELI (application no. 16369/07)

18. On 11 October 2006 the applicant was apprehended by police officers for an inspection of her identity documents and was taken to Vykhino police station in Moscow, where she was subsequently detained. On 12 October 2006 the Kuzminskiy District Court of Moscow fined the applicant and ordered her detention and expulsion. On 13 October 2006 the applicant was transferred to the Centre for Temporary Detention of Aliens no. 2, where she was detained until her expulsion. On 17 October 2006 she was taken by bus to Domodedovo airport and was flown to Georgia.

(f) Levan KOBALDZE and Koba KOBALDZE (application no. 16369/07)

19. On 11 October 2006 the applicants were apprehended by police officers for an inspection of their documents and taken to Vykhino police station in Moscow, where they were subsequently detained. On 12 October 2006 the Kuzminskiy District Court of Moscow fined the applicants and ordered their detention and expulsion. On 12 October 2006 the applicants were transferred to the Centre for Temporary Detention of Aliens no. 1,

where they were detained until their expulsion. On 28 October 2006 the applicants were taken by bus to Domodedovo airport and were flown to Georgia.

(g) David LATSABIDZE (application no. 16369/07)

20. On 13 October 2006 the applicant was arrested and taken to Leninskiy police station, where he was held for one and a half hours. Subsequently the applicant was brought before the Vidnoye Town Court, which fined the applicant and ordered his detention and expulsion. The applicant was then detained until 17 October 2006 at the Serpukhov Reception Centre. On 17 October the applicant was taken by bus to Domodedovo airport and was flown, by cargo plane, to Georgia.

(h) Irina KALANDIA (application no. 16369/07)

21. On 6 October 2006 the Simonovskiy Court of Moscow found the applicant guilty of working without the required work permit and fined her. In addition the court ordered her detention and subsequent expulsion. After the court hearing, the applicant was detained and taken to the Centre for Temporary Detention of Aliens no. 2, where she was detained until her expulsion. On 10 October 2006 the applicant was taken to Domodedovo airport and was flown to Georgia.

(i) Kakha TSIHISTAVI (application no. 16369/07)

22. On 3 October 2006 the applicant was apprehended by officers of the Department of the Interior of the Mozhayskiy district of Moscow and taken to their station, where he was detained. On the same day the Kuntsevskiy District Court of Moscow fined the applicant and ordered his detention and expulsion. The applicant was taken to the Centre for Temporary Detention of Aliens no. 1, where he was detained until his expulsion. On 11 October 2006 he was taken to the airport and released.

(j) Koba NORAKIDZE (application no. 16369/07)

23. On 22 October 2006 the applicant was apprehended by officers of the Department of the Interior of the Kuzminski district of Moscow and was brought before the Kuzminskiy District Court on 23 October 2006. The court fined the applicant for not observing the applicable registration procedure and ordered the applicant's expulsion.

(k) Khatuna DZADZAMIA (application no. 16369/07)

24. The applicant was arrested on 4 October 2006 by officers of the Federal Migration Service of the Presnenskiy District Division and detained until the next day. On 5 October 2006 the Presnensky District Court of Moscow fined the applicant and ordered her expulsion and detention. From

5 until 10 October 2006 the applicant was detained at the Centre for Temporary Detention of Aliens no. 2.

(I) Inga GIGASHVILI (application no. 16706/07)

25. On 11 October 2006 the applicant was arrested and brought before the Tverskoy District Court of Moscow. The court fined the applicant and ordered her detention and expulsion. Subsequently she was transferred to the Centre for Temporary Detention of Aliens no. 2, where she was held until her expulsion. On 17 October 2006 the applicant was taken to a military airport and was flown to Georgia on a cargo plane.

26. Based on the circumstances of the applicants' detention, the Court considers it appropriate to make the following distinction. A first group of applicants was detained between their arrest and the subsequent court proceedings. Therefore, the Court finds it adequate to award all applicants who were detained for up to 48 hours the minimum amount considered adequate in its judgment in the inter-State case (*Georgia v. Russia (I)*) (just satisfaction), cited above, see paragraph 7 above). Moreover, the Court considers it appropriate to differentiate between periods of detention that lasted between 2 and 10 days and periods that lasted over 10 days. It will therefore award applicants who were detained between 2 and 10 days EUR 12,500 and applicants who had been detained for longer than 10 days, EUR 15,000.

27. Applying these principles to the present case, the Court awards EUR 10,000 each to Mr Berdzenishvili, Mr Givishvili and Mr T. Norakidze (as the successor of Mr K. Norakidze); EUR 12,500 each to Mr Kbilashvili, Ms Chokheli, Mr Latsbidze, Ms Kalandia, Mr Tsikhistavi, Ms Dzadzamia and Ms Gigashvili; and lastly EUR 15,000 each to Ms Nachkebia, Mr L. Kobaidze and Mr K. Kobaidze.

C. Default interest

28. The Court considers it further 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, UNANIMOUSLY,

1. Holds

- (a) that the respondent State is to pay the following applicants, within three months from the date on which the judgment becomes final in

accordance with Article 44 § 2 of the Convention, the following amounts plus any tax that may be chargeable, in respect of non-pecuniary damage:

- (i) Vaja Berdzenishvili (application no. 14594/07) EUR 10,000 (ten thousand euros);
- (ii) Tengiz Kbilashvili (application no. 14597/07) EUR 12,500 (twelve thousand five hundred euros);
- (iii) Abram Givishvili (application no. 14976/07) EUR 10,000 (ten thousand euros);
- (iv) Liana Nachkebia (application no. 14978/07) EUR 15,000 (fifteen thousand euros);
- (v) Eka Chkaidze and David Jaoshvili (application no. 15221/07) EUR 2,000 (two thousand euros);
- (vi) Irina Chokheli (application no. 16369/07) EUR 12,500 (twelve thousand five hundred euros);
- (vii) Levan Kobaidze (application no. 16369/07) EUR 15,000 (fifteen thousand euros);
- (viii) Koba Kobaidze (application no. 16369/07) EUR 15,000 (fifteen thousand euros);
- (ix) David Latsabidze (application no. 16369/07) EUR 12,500 (twelve thousand five hundred euros);
- (x) Irina Kalandia (application no. 16369/07) EUR 12,500 (twelve thousand five hundred euros);
- (xi) Kakha Tsikhistavi (application no. 16369/07) EUR 12,500 (twelve thousand five hundred euros);
- (xii) Tato Norakidze, as the successor of Koba Norakidze, (application no. 16369/07) EUR 10,000 (ten thousand euros);
- (xiii) Khatuna Dzadzamia (application no. 16369/07) EUR 12,500 (twelve thousand five hundred euros);
- (xiv) Inga Gigashvili (application no. 16706/07) EUR 12,500 (twelve thousand five hundred euros);
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

2. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 26 March 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Vincent A. De Gaetano
President

APPENDIX

List of cases

	Application no.	Case name
1.	14594/07	Berdzenishvili and Others v. Russia
2.	14597/07	Kbilashvili v. Russia
3.	14976/07	Givishvili v. Russia
4.	14978/07	Nachkebia v. Russia
5.	15221/07	Chkaidze and Jaoshvili v. Russia
6.	16369/07	Chokheli and 11 Others v. Russia
7.	16706/07	Gigashvili v. Russia

List of applicants

No.	Application no.	Lodged on	Applicant Date of birth Place of residence	Represented by
1.	14594/07	02/04/2007	Vaja BERDZENISHVILI 28/07/1976 Kareli	Nikoloz LEGASHVILI
2.	14597/07	30/03/2007	Tengiz KBILASHVILI 11/11/1964 Bagdady	Nikoloz LEGASHVILI
3.	14976/07	05/04/2007	Abram GIVISHVILI 02/01/1964 Tbilisi	Nikoloz LEGASHVILI
4.	14978/07	04/04/2007	Liana NACHKEBIA 24/07/1948 Tbilisi	Nikoloz LEGASHVILI
5.	15221/07	05/04/2007	Eka CHKAIDZE 01/12/1979 Tbilisi David JAOSHVILI 12/02/1975 Tbilisi	Nikoloz LEGASHVILI
6.	16369/07	06/04/2007	a) Irina CHOKHELI 29/08/1967 Tblisi b) Levan KOBALDZE	Tamar ABAZADZE, Nino JOMARJIDZE, Ketevan

No.	Application no.	Lodged on	Applicant Date of birth Place of residence	Represented by
			08/04/1986 Tbilisi Koba KOBALIDZE 07/10/1988 Tbilisi c) Nato SHAVSHISHVILI 18/03/1956 Tbilisi d) David LATSABIDZE 15/03/1961 Rustavi e) Artur SARKISIAN 23/02/1981 Tbilisi Andrei SARKISIAN 12/11/1982 Tbilisi f) Gocha KHMALADZE 17/12/1968 Tbilisi g) Irina KALANDIA 18/01/1980 Zugdidi h) Kakha TSIKHISTAVI 24/02/1983 Telavi i) (Koba NORAKIDZE 17/04/1969 – 01/05/2012) Tato NORAKIDZE 03/09/1991 Tbilisi	SHUBASHVILI, Tamar DEKANOSIDZE (Georgian Young Lawyer's Association) and Philip LEACH, Kate LEVINE, Jessica GAVRON, Vahe GRIGORYAN, Joanna EVANS (European Human Rights Advocacy Centre)

No.	Application no.	Lodged on	Applicant Date of birth Place of residence	Represented by
			j) Khatuna DZADZAMIA 27/01/1983 Tbilisi	
7.	16706/07	10/04/2007	Inga GIGASHVILI 29/09/1969 Bagdady	Nikoloz LEGASHVILI