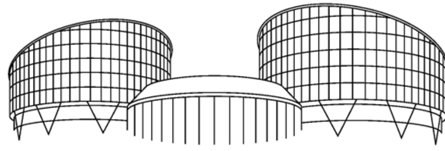

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF GEORGIA v. RUSSIA (II)

(Application no. 38263/08)

JUDGMENT
(Just satisfaction)

Art 41 • Just satisfaction • Award of non-pecuniary damages to applicant Government, for benefit of identified victims, based only on evidence submitted by it in view of respondent Government's failure to participate in proceedings • Jurisdiction of the Court as facts giving rise to breaches occurred prior to cessation of Russian Federation's Council of Europe membership • Respondent Government's failure to cooperate not an obstacle to examination of just satisfaction claims • Application of the methodology used in *Georgia v. Russia (I)* (just satisfaction) [GC] • Importance of Contracting States' duty to furnish all necessary facilities to the Court • Committee of Ministers' supervision of execution of Court's judgments against the Russian Federation continued • Setting up of an effective mechanism to distribute awarded sums to individual victims left to applicant Government

STRASBOURG

28 April 2023

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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

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

Síofra O'Leary, *President*,
Georges Ravarani,
Marko Bošnjak,
Gabriele Kucsko-Stadlmayer,
Pere Pastor Vilanova,
Arnfinn Bårdsen,
Krzysztof Wojtyczek,
Yonko Grozev,
Armen Harutyunyan,
Georgios A. Serghides,
Tim Eicke,
Jovan Ilievski,
Jolien Schukking,
Lado Chanturia,
Ivana Jelić,
Raffaele Sabato,
Lorraine Schembri Orland, *judges*,

and Johan Callewaert, *Deputy Grand Chamber Registrar*,

Having deliberated in private on 8 March 2023,

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

PROCEDURE

1. The case originated in an application (no. 38263/08) 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 11 August 2008.

2. In a judgment delivered on 21 January 2021 ("the principal judgment"), the Court held (see *Georgia v. Russia (II)* [GC], no. 38263/08:

(a) that there had been an administrative practice contrary to Articles 2 and 8 of the Convention and Article 1 of Protocol No. 1 as regards the killing of civilians and the torching and looting of houses in Georgian villages in South Ossetia[1] and in the "buffer zone" and that this administrative practice had also been contrary to Article 3 of the Convention having regard to the seriousness of the abuses committed, which could be classified as inhuman and degrading treatment owing to the feelings of anguish and distress suffered

[1] The term "South Ossetia" refers to a region of Georgia which is currently outside the *de facto* control of the Georgian Government, but under the "effective control" of the Russian Federation (see §§ 174-75 of the principal judgment).

by the victims, who, moreover, had been targeted as an ethnic group (ibid., § 220);

(b) that there had been an administrative practice contrary to Article 3 of the Convention as regards the conditions of detention of Georgian civilians detained by the South Ossetian forces in the basement of the "Ministry of Internal Affairs of South Ossetia" in Tskhinvali between approximately 10 and 27 August 2008 and the humiliating acts to which they had been exposed (ibid., §§ 238 and 250);

(c) that there had been an administrative practice contrary to Article 5 of the Convention as regards the arbitrary detention of Georgian civilians detained by the South Ossetian forces in the basement of the "Ministry of Internal Affairs of South Ossetia" in Tskhinvali between approximately 10 and 27 August 2008 (ibid., §§ 238 and 254);

(d) that there had been an administrative practice contrary to Article 3 of the Convention as regards the torture of Georgian prisoners of war detained by the South Ossetian forces in Tskhinvali between 8 and 17 August 2008 (ibid., §§ 268 and 279);

(e) that there had been an administrative practice contrary to Article 2 of Protocol No. 4 as regards the inability of Georgian nationals to return to their respective homes in South Ossetia and Abkhazia[2] (ibid., § 299);

(f) that the Russian Federation had failed to comply with its procedural obligation under Article 2 of the Convention to carry out an adequate and effective investigation into the events which had occurred after the cessation of hostilities (from the date of the ceasefire agreement of 12 August 2008) and during the active phase of the hostilities (8 to 12 August 2008) (ibid., § 336); and

(g) that the Russian Federation had failed to comply with its obligations under Article 38 of the Convention (ibid., § 346).

3. Since 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 (ibid., § 349, and point 16 of the operative provisions).

4. As the parties did not reach an agreement, the applicant Government submitted their claims for just satisfaction under Article 41 on 1 March 2022.

5. On 16 March 2022 the Committee of Ministers of the Council of Europe, in the context of a procedure launched under Article 8 of the Statute of the Council of Europe, adopted Resolution CM/Res(2022)2, by which the Russian Federation ceased to be a member of the Council of Europe as from 16 March 2022.

[2] The term "Abkhazia" refers to a region of Georgia which is currently outside the *de facto* control of the Georgian Government, but under the "effective control" of the Russian Federation (see §§ 174-75 of the principal judgment).

6. On 22 March 2022 the Court, sitting in plenary session in accordance with Rule 20 § 1, adopted the "Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights". It stated that the Russian Federation would cease to be a Party to the Convention on 16 September 2022.

7. On 23 March 2022 the Committee of Ministers adopted Resolution CM/Res(2022)3, pursuant to which the Committee of Ministers continues to supervise the execution of judgments against the Russian Federation, and the Russian Federation is required to implement them.

8. On 25 March 2022 the claims for just satisfaction were sent to the respondent Government for comments by 10 June 2022. The respondent Government did not submit any comments. On 11 July 2022 the Court, of its own motion, set an additional time-limit for any comments on the claims for just satisfaction at 15 August 2022. The letter read as follows:

> "It has been noted that the period allowed for your Government's comments on the applicant Government's claims for just satisfaction under Article 41 of the Convention in the above-named application expired on 10 June 2022 and that no extension of the time-limit was requested.
>
> In this connection, I should draw your attention to Rule 44C of the Rules of Court, according to which where a party fails to adduce evidence or provide information requested by the Court or to divulge relevant information of its own motion or otherwise fails to participate effectively in the proceedings, the Court may draw such inferences as it deems appropriate. Failure or refusal by a respondent Contracting Party to participate effectively in the proceedings shall not, in itself, be a reason for the Court to discontinue the examination of the application.
>
> Consequently, the President of the Grand Chamber has decided that failing any comments by your Government on the applicant Government's claims for just satisfaction by 15 August 2022, the Court will decide on the application of Article 41 on the basis of the file as it currently stands."

The respondent Government again failed to reply.

9. On 5 September 2022 the Plenary Court took formal notice of the fact that the office of judge with respect to the Russian Federation would cease to exist after 16 September 2022. This, as a consequence, meant that there was no longer a valid list of *ad hoc* judges who would be eligible to take part in the consideration of the cases where the Russian Federation was the respondent State.

10. By letter of 8 November 2022, the respondent Government were informed that the Court intended to appoint one of its sitting judges to act as an *ad hoc* judge for the examination of applications against the Russian Federation that the Court remained competent to deal with (applying by analogy Rule 29 § 2 of the Rules of Court). They were invited to comment on that arrangement by 22 November 2022 but did not submit any comments, then or since.

11. Accordingly, the President of the Grand Chamber decided to appoint an *ad hoc* judge from among the members of the composition, applying by analogy Rule 29 § 2 (b).

THE LAW

I. LEGAL FRAMEWORK

12. Article 38 of the Convention provides:

> "The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities."

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 reads:

> "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. The relevant part of Article 58 of the Convention reads:

> "1. A High Contracting Party may denounce the ... Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.
>
> 2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under [the] Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.
>
> 3. Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions."

16. The relevant part of Rule 44A of the Rules of Court provides:

> "The parties have a duty to cooperate fully in the conduct of the proceedings and, in particular, to take such action within their power as the Court considers necessary for the proper administration of justice."

17. Rule 44C reads as follows:

> "1. Where a party fails to adduce evidence or provide information requested by the Court or to divulge relevant information of its own motion or otherwise fails to participate effectively in the proceedings, the Court may draw such inferences as it deems appropriate.

2. Failure or refusal by a respondent Contracting Party to participate effectively in the proceedings shall not, in itself, be a reason for the Chamber to discontinue the examination of the application."

18. Rule 60 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."

II. PRELIMINARY ISSUES

A. Whether the Court has jurisdiction to deal with the case

19. The Court observes that the respondent State ceased to be a member of the Council of Europe on 16 March 2022 (see paragraph 5 above) and that it also ceased to be a Party to the Convention on 16 September 2022 (see paragraph 6 above).

20. In those circumstances, the Court is called upon to determine whether it has jurisdiction to deal with the present case, although its jurisdiction has not been disputed in the context of the present proceedings by the respondent State. Since the scope of the Court's jurisdiction is determined by the Convention itself, in particular by Article 32, and not by the parties' submissions in a particular case, the mere absence of a plea cannot extend that jurisdiction (see *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III). The Court must satisfy itself that it has jurisdiction in any case brought before it, and is therefore obliged to examine the question of its jurisdiction at every stage of the proceedings, of its own motion where necessary (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 201, ECHR 2014 (extracts)).

21. It appears from the wording of Article 58 of the Convention, and more specifically the second and third paragraphs, that a State which ceases to be a Party to the Convention by virtue of the fact that it has ceased to be a member of the Council of Europe is not released from its obligations under the Convention in respect of any act performed before the date on which that State ceases to be a Party to the Convention.

22. This reading of Article 58 of the Convention was confirmed by the Court, sitting in plenary session (in accordance with Rule 20 § 1 of the Rules

of Court), in its "Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights", adopted on 22 March 2022. The Court stated that it "remain[ed] competent to deal with applications directed against the Russian Federation in relation to acts or omissions capable of constituting a violation of the Convention provided that they occurred until 16 September 2022" (see paragraph 2 of the Resolution; see also, *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, § 72, 17 January 2023, and *Ukraine and the Netherlands v. Russia* (dec.) [GC], nos. 8019/16 and 2 others, §§ 36 and 389, 25 January 2023).

23. In the present case, the facts giving rise to the violations found in the principal judgment took place before 16 September 2022. The Court thus has jurisdiction to deal with the claims for just satisfaction under Article 41 of the Convention in this case (*Fedotova and Others*, cited above, § 73).

24. In view of the Court's continuing jurisdiction under Article 58 of the Convention, Articles 38, 41 and 46, as well as the corresponding provisions of the Rules of Court, continue to be applicable after 17 September 2022.

B. Consequences of the respondent Government's failure to participate in the proceedings

25. The Court notes that, by failing to submit written observations when requested to do so (see paragraph 8 above), the respondent Government demonstrated their intention to abstain from further participation in the examination of the present application. However, the Convention imposes an obligation on the States to furnish all necessary facilities to make possible a proper and effective examination of applications (see, for a summary of the relevant principles in the context of Articles 34 and 38 of the Convention, *Georgia v. Russia (I)* [GC], no. 13255/07, § 99, ECHR 2014 (extracts), and *Carter v. Russia*, no. 20914/07, §§ 92-94, 21 September 2021). Rule 44A of the Rules of Court provides that the parties have a duty to cooperate with the Court.

26. In assessing evidence, the Court has adopted the standard of proof "beyond reasonable doubt", its conclusions supported by free evaluation of all the evidence; the distribution of the burden of proof remains intrinsically linked to the specificity of the facts, the nature of the allegations made and the Convention right at stake, as well as the conduct of the parties (see, for general principles, *Georgia v. Russia (II)*, cited above, § 59, referring to *Georgia v. Russia (I)*, cited above, §§ 93-95 and 138; see also *Abu Zubaydah v. Lithuania*, no. 46454/11, §§ 480-83, 31 May 2018). Pursuant to Rule 44C § 2 of the Rules of Court, "[f]ailure or refusal by a respondent Contracting Party to participate effectively in the proceedings shall not, in itself, be a reason for the Chamber to discontinue the examination of an application".

This provision acts as an enabling clause for the Court, making it impossible for a party unilaterally to delay or obstruct the conduct of proceedings. A situation where a State did not participate in at least some stages of the proceedings has not prevented the Court from conducting the examination of an application in the past. The Court considered in those cases that the respondent Government's failure to submit their memorials or participate in a hearing in the absence of sufficient cause could be considered a waiver of their right to participate. It was satisfied that proceeding with the examination of the case in the face of such a waiver was consistent with the proper administration of justice (see *Cyprus v. Turkey* [GC], no. 25781/94, §§ 10-12, ECHR 2001-IV; see also *Denmark, Norway and Sweden v. Greece*, no. 4448/70, Commission (Plenary) decision of 16 July 1970). The Court may draw such inferences as it deems appropriate from a party's failure or refusal to participate effectively in the proceedings (see Rule 44C § 1). At the same time, the failure of the respondent State to participate effectively in the proceedings should not automatically lead to acceptance of the applicants' claims. The Court must be satisfied on the basis of the available evidence that the claim is well founded in fact and in law (see *Svetova and Others v. Russia*, no. 54714/17, § 30, 24 January 2023).

27. The cessation of a Contracting Party's membership of the Council of Europe does not release it from its duty to cooperate with the Convention bodies (see paragraph 21 above). This duty continues for as long as the Court remains competent to deal with applications arising out of acts or omissions capable of constituting a violation of the Convention, provided that they took place prior to the date on which the respondent State ceased to be a Contracting Party to the Convention.

III. CLAIMS FOR JUST SATISFACTION

A. The parties' submissions

1. *The applicant Government*

28. The applicant Government submitted claims for just satisfaction for the following individuals in respect of non-pecuniary damage:

(a) 116 alleged victims of the administrative practice of killing of civilians in Georgian villages in South Ossetia and in the "buffer zone" (120,000 euros (EUR) per victim);

(b) 26 alleged victims of rape or other forms of inhuman or degrading treatment (EUR 70,000 or EUR 30,000 per victim, respectively);

(c) 1,408 alleged victims of the administrative practice of torching and looting of houses in the "buffer zone" (EUR 40,000 per victim);

(d) 552 individuals who had allegedly lost their property "as a result of the armed conflict and subsequent occupation of Georgian territory" by

undefined acts, not as a result of torching and looting (EUR 45,000 per victim);

(e) 179 alleged victims of the administrative practice of inhuman and degrading treatment and arbitrary detention of Georgian civilians detained by the South Ossetian forces in the basement of the "Ministry of Internal Affairs of South Ossetia" in Tskhinvali between approximately 10 and 27 August 2008 (EUR 30,000 per victim);

(f) 91 alleged victims of inhuman or degrading treatment and arbitrary detention detained in other places of detention (EUR 26,000 per victim);

(g) 44 alleged victims of the administrative practice of torture of Georgian prisoners of war detained by the South Ossetian forces in Tskhinvali between 8 and 17 August 2008 (EUR 100,000 or EUR 180,000 per victim, depending on whether they had survived their detention or not);

(h) 31,105 alleged victims of the administrative practice of preventing the return of Georgian nationals to their respective homes in South Ossetia and Abkhazia (between EUR 10,000 and EUR 35,000 per victim, depending on whether their homes had been destroyed during the armed conflict or not); and

(i) 723 alleged victims of the respondent State's failure to comply with its procedural obligation to carry out an adequate and effective investigation into the deaths which had taken place during the active phase of the hostilities or after the cessation of hostilities (EUR 35,000 per victim).

2. *The respondent Government*

29. As mentioned above (see paragraph 8), the respondent Government did not submit any comments.

B. The Court's assessment

1. *General principles*

30. The Court had to deal with just-satisfaction claims in an inter-State case for the first time in *Cyprus v. Turkey* (just satisfaction) ([GC], no. 25781/94, ECHR 2014). 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. The relevant extract reads as follows:

> "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).

47. In the present case the Court finds that the Cypriot Government has submitted just-satisfaction claims in respect of violations of the Convention rights of two sufficiently precise and objectively identifiable groups of people, that is, 1,456 missing persons and the enclaved Greek-Cypriot residents of the Karpas peninsula. In other words, 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, as described in paragraph 45 above. In these circumstances, and in so far as the missing persons and the Karpas residents are concerned, the Court considers that the applicant Government are entitled to make a claim under Article 41 of the Convention, and that granting just satisfaction in the present case would be justified."

31. The Court stated in *Georgia v. Russia (I)* (just satisfaction) ([GC], no. 13255/07, 29 January 2019) as follows:

"(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).

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 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."

32. According to this methodology, which is specific to just satisfaction claims in inter-State cases, 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 could

be identified, as well as the main purpose of bringing the proceedings (see *Cyprus v. Turkey* (just satisfaction), cited above, § 43; see paragraph 30 above). The key point of this assessment is that the Court must satisfy itself that the applicant State has submitted just-satisfaction claims in respect of violations of the Convention rights of "sufficiently precise and objectively identifiable" groups of people who were victims of those violations (see *Georgia v. Russia (I)* (just satisfaction), cited above, § 28). The applicant Government's factual submissions must be plausible and their claims must be sufficiently substantiated (ibid., § 70).

33. The Court would also reiterate the general statement which it made in *Varnava and Others v. Turkey* ([GC], nos. 16064/90 and 8 others, ECHR 2009) and which is also pertinent to any award in respect of damage in an inter-State case (see also *Georgia v. Russia (I)* (just satisfaction), cited above, § 73):

> "224. The Court would observe that there is no express provision for non-pecuniary or moral damage. Evolving case by case, the Court's approach in awarding just satisfaction has distinguished 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 ... and those situations where the public vindication of the wrong suffered by the applicant, in a judgment binding on the Contracting State, is a powerful form of redress in itself. In many cases where a law, procedure or practice has been found to fall short of Convention standards this is enough to put matters right ... In some 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 moral 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; they are not, nor should they be, intended to give financial comfort or sympathetic enrichment at the expense of the Contracting Party concerned."

2. Application of the above principles to the facts of the present case

34. The Court first notes that the applicant Government's just-satisfaction claims under (b), (d) and (f) in paragraph 28 above do not relate to any of the violations found in the principal judgment. Whereas the Court held in the principal judgment that the feelings of anguish and distress suffered by the victims of the killing of civilians and the torching and looting of houses in Georgian villages in South Ossetia and the "buffer zone" after the cessation of hostilities amounted to "inhuman and degrading treatment" contrary to Article 3 of the Convention (see paragraph 2 above), it did not find that there had been an administrative practice contrary to Article 3 as regards any of the

alleged acts of rape or other ill-treatment of civilians in those villages to which the applicant Government referred in their claim under (b). As regards the claim under (d), the Court did not find in the principal judgment that there had been an administrative practice contrary to Article 8 of the Convention and/or Article 1 of Protocol No. 1 as regards any acts of the destruction of property other than the torching and looting of houses after the cessation of hostilities. Thus, even insofar as the claim may have related to a period which had fallen within the jurisdiction of the Russian Federation (see *Georgia v. Russia (II)*, cited above, §§ 144 and 175), it does not correspond to any of the violations found in the principal judgment. Lastly, as regards the claim under (f), the Court did not find that there had been an administrative practice contrary to Articles 3 and/or 5 of the Convention as to the detention of civilians in any places other than the basement of the “Ministry of Internal Affairs of South Ossetia” in Tskhinvali between approximately 10 and 27 August 2008. Accordingly, in so far as those alleged victims are concerned, the applicant Government are not entitled to make a claim under Article 41 of the Convention (see, *mutatis mutandis*, *Chiragov and Others v. Armenia* (just satisfaction) [GC], no. 13216/05, § 60, 12 December 2017).

35. By contrast, the claims under (a), (c), (e), (g), (h) and (i) (see paragraph 28 above) relate to the operative part of the principal judgment (see points 3, 5, 6, 8, 10, 12 and 13).

36. Indeed, the applicant Government submitted a detailed list of alleged victims of the violations found in the principal judgment, namely 116 alleged victims of the administrative practice of killing of civilians in Georgian villages in South Ossetia and in the “buffer zone” (the claim under (a)); 1,408 alleged victims of the administrative practice of torching and looting of houses in the “buffer zone” (the claim under (c)); 179 alleged victims of the administrative practice of inhuman and degrading treatment and arbitrary detention of Georgian civilians detained by the South Ossetian forces in the basement of the “Ministry of Internal Affairs of South Ossetia” between approximately 10 and 27 August 2008 (the claim under (e)); 44 alleged victims of the administrative practice of torture of Georgian prisoners of war detained by the South Ossetian forces in Tskhinvali between 8 and 17 August 2008 (the claim under (g)); 31,105 alleged victims of the administrative practice of preventing the return of Georgian nationals to their respective homes in South Ossetia and Abkhazia (the claim under (h)); and 723 alleged victims of the respondent State’s failure to comply with its procedural obligation to carry out an adequate and effective investigation into the deaths which had taken place during the active phase of the hostilities – 8 to 12 August 2008 – or after the cessation of hostilities (the claim under (i)) (see paragraph 28 above). Just satisfaction has thus not been sought with a view to compensating the State for a violation of its rights but for the benefit of individual victims. That being the case, and in so far as those alleged victims are concerned, the Court considers that the applicant Government are entitled

to make a claim under Article 41 of the Convention, and that granting just satisfaction in the present case would be justified.

37. As regards those claims, the Court reiterates the duty of the High Contracting Parties to cooperate as 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). The Court has held that this duty to cooperate is particularly important for the proper administration of justice where it awards just satisfaction under Article 41 of the Convention in inter-State cases (see *Georgia v. Russia (I)*, (just satisfaction), cited above, § 60). It applies to both parties to the proceedings: 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.

38. In accordance with those principles and the methodology applied in *Georgia v. Russia (I)* (just satisfaction) (cited above, §§ 68-71), the Court has examined the lists of alleged victims of the violations found in the principal judgment mentioned in paragraph 36 above in order to satisfy itself that the applicant Government's factual submissions are plausible and that their claims are sufficiently substantiated. In the context of this examination the Court has based its findings on the documents submitted to it by the applicant Government only, the content of which is to be considered unchallenged in the absence of any documents or comments submitted in response by the respondent Government (contrast *Georgia v. Russia (I)* (just satisfaction), cited above).

39. The Court has thus drawn inferences from the respondent Government's failure to participate in the proceedings (see *Ukraine and the Netherlands v. Russia*, cited above, §§ 435-39, and the authorities cited therein; see also Rule 44C).

40. As regards the list of 116 alleged victims of the administrative practice of killing of civilians in Georgian villages in South Ossetia and in the "buffer zone" (the claim under (a) in paragraph 28 above), that practice was described in the principal judgment (§§ 205-19) as follows: a consistent pattern of deliberate killing of civilians (mainly ethnic Georgian) in Georgian villages in South Ossetia and in the "buffer zone" in the weeks following the cessation of active hostilities on 12 August 2008. The main perpetrators were South Ossetian forces, including an array of irregular militias, who followed the

Russian forces' advance. It transpires from the evidence submitted by the applicant Government (notably, the death certificates and witness statements) that only 50 of the 116 persons listed were killed in such circumstances. The remaining sixty-six persons on the list died in aerial or artillery attacks by Russian forces during the five-day armed conflict (8-12 August 2008), or from landmines after the cessation of hostilities. Therefore, for the purposes of awarding just satisfaction, the Court considers that at least fifty Georgian nationals were victims of this administrative practice, for which the Russian Federation was found to be responsible (see paragraph 222 of the principal judgment). The Court further found in the principal judgment (see paragraph 336) that the Russian Federation had failed to comply with its procedural obligation under Article 2 of the Convention to carry out an adequate and effective investigation into those killings. The Court, making its assessment on an equitable basis, deems it reasonable to award the applicant Government a lump sum of EUR 3,250,000 (three million two hundred and fifty thousand euros) in respect of non-pecuniary damage sustained by this category of victims.

41. The applicant Government also sought just satisfaction with a view to compensating 1,408 alleged victims of the administrative practice of torching and looting of houses in the "buffer zone" (the claim under (c) in paragraph 28 above). The Court's case-law has developed a flexible approach regarding the evidence to be provided by applicants who claim to have lost their property and home in situations of international or internal armed conflict; however, if an applicant does not produce any evidence of title to property or of residence, his or her complaints are bound to fail (see *Chiragov and Others v. Armenia* [GC], no. 13216/05, §§ 128-36, ECHR 2015; *Sargsyan v. Azerbaijan* [GC], no. 40167/06, §§ 176-84, ECHR 2015; and the authorities cited therein). In the present case, the available case materials submitted by the applicant Government do not permit the Court to establish that the houses allegedly torched or looted belonged to the persons on the list or constituted their home or dwelling within the meaning of Article 8 (compare *Lisnyy and Others v. Ukraine and Russia* (dec.), nos. 5355/15, 44913/15 and 50853/15, § 30, 5 July 2016, and *Kudukhova v. Georgia*, nos. 8274/09 and 8275/09, § 33, 20 November 2018). Provision was made of a list of surnames, names, dates of birth and identity numbers. However, other evidence available to the applicant Government was not presented. As the Court has already indicated in *Georgia v. Russia (I)* (just satisfaction), cited above, §§ 55 and 57, the application of Article 41 of the Convention requires the identification of the individual victims concerned and the provision by the applicant Government of all relevant information. This requires plausible factual submissions and claims which are sufficiently substantiated to the effect that the listed persons were victims of the respective violations (see paragraph 32 above). In addition, the Court has distinguished between indications by the Court when defining 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, which was considered in the principal judgment as not ready for decision (ibid, § 53). Accordingly, on the basis of the evidence made available, the Court is not in a position to make an award in this respect.

42. As regards the list of 179 alleged victims of the administrative practice of inhuman and degrading treatment and arbitrary detention of Georgian civilians held by the South Ossetian forces in the basement of the "Ministry of Internal Affairs of South Ossetia" in Tskhinvali between approximately 10 and 27 August 2008 (the claim under (e) in paragraph 28 above), it appears from the evidence submitted by the applicant Government (notably, records of the exchange of civilian detainees) that only 166 of them were indeed detained at those premises. There is no proof that the remaining thirteen persons were also held there. Accordingly, for the purposes of awarding just satisfaction, the Court considers that at least 166 Georgian nationals were victims of this administrative practice, for which the Russian Federation was found to be responsible (see paragraphs 252 and 256 of the principal judgment). Ruling on an equitable basis, the Court deems it reasonable to award the applicant Government a lump sum of EUR 2,697,500 (two million six hundred and ninety-seven thousand five hundred euros) in respect of non-pecuniary damage sustained by this category of victims.

43. As regards the forty-four alleged victims of the administrative practice of torture of Georgian prisoners of war detained by the South Ossetian forces in Tskhinvali between 8 and 17 August 2008 (the claim under (g) in paragraph 28 above), the Court first notes that only thirteen of them were mentioned in the record of the exchange of prisoners of war submitted by the applicant Government. It further appears from the evidence submitted by the applicant Government that another three persons died in custody. There is no proof that the remaining twenty-eight persons on the list were indeed detained by the South Ossetian forces in Tskhinvali. It should be emphasised in this connection that the Court did not find that there had been an administrative practice contrary to Article 3 of the Convention as regards the torture of Georgian prisoners of war held by the Abkhazian forces (see paragraph 270 of the principal judgment). For the purposes of awarding just satisfaction, the Court therefore considers that at least sixteen Georgian nationals were victims of this administrative practice, for which the Russian Federation was found to be responsible (see paragraph 281 of the principal judgment). The Court, making its assessment on an equitable basis, deems it reasonable to award the applicant Government a lump sum of EUR 640,000 (six hundred and forty thousand euros) in respect of non-pecuniary damage sustained by this category of victims.

44. Turning now to the list of 31,105 alleged victims of the administrative practice of preventing the return of Georgian nationals to their respective homes in South Ossetia and Abkhazia (the claim under (h) in paragraph 28 above), the Court notes that the applicant Government initially submitted that

the Russian and the *de facto* South Ossetian and Abkhazian authorities had prevented the return to those regions of some 23,000 forcibly displaced Georgians – around 20,000 from South Ossetia and around 3,000 from Abkhazia (see paragraphs 283-84 of the principal judgment). Representatives of the *de facto* authorities of South Ossetia also stated, during the witness hearing held in Strasbourg from 6 to 17 June 2016, that 20,000 ethnic Georgians had not been able to return to South Ossetia (see paragraph 289 of the principal judgment). That figure was also accepted by other international organisations (see, for example, Parliamentary Assembly of the Council of Europe Resolution 1648 (2009) on humanitarian consequences of the war between Georgia and Russia, and the report by the Office for Democratic Institutions and Human Rights of the OSCE of 27 November 2008, "Human Rights in the war-affected areas following the conflict in Georgia", p. 6). Accordingly, for the purposes of awarding just satisfaction, the Court considers that at least 23,000 Georgian nationals were victims of this administrative practice, for which the Russian Federation was found to be responsible (see paragraph 301 of the principal judgment). The Court, making its assessment on an equitable basis, deems it reasonable to award the applicant Government a lump sum of EUR 115,000,000 (one hundred and fifteen million euros) in respect of non-pecuniary damage sustained by this category of victims.

45. Lastly, as regards the list of 723 alleged victims of the respondent State's failure to comply with its procedural obligation to carry out an adequate and effective investigation into the deaths which had taken place during the active phase or after the cessation of the hostilities (the claim under (i) in paragraph 28 above), the Court first notes that the victims of the procedural obligation to carry out an adequate and effective investigation into the deaths which occurred after the cessation of hostilities have been dealt with in paragraph 40 above. Turning to the deaths which occurred during the active phase of the hostilities, the Court notes that, according to the official figures presented shortly after the end of the armed conflict, the Georgian side lost 412 persons in total – 170 servicemen, fourteen policemen and 228 civilians (see paragraph 32 of the principal judgment). The respondent Government did not challenge these estimates in the course of the proceedings on the merits. For the purposes of awarding just satisfaction, the Court therefore considers that at least 412 Georgian nationals were victims of this administrative practice, for which the Russian Federation was found to be responsible (see paragraph 336 of the principal judgment). The Court, making its assessment on an equitable basis, deems it reasonable to award the applicant Government a lump sum of EUR 8,240,000 (eight million two hundred and forty thousand euros) in respect of non-pecuniary damage sustained by this category of victims.

46. In accordance with Article 46 § 2 of the Convention, it falls to the Committee of Ministers to supervise the execution of the Court's judgments.

In this context, the Court notes that Article 46 requires that the Committee of Ministers sets forth an effective mechanism for the implementation of the Court's judgments also in cases against a State which has ceased to be party to the Convention. The Court observes in this connection that the Committee of Ministers continues to supervise the execution of the Court's judgments against the Russian Federation, and the Russian Federation is required, pursuant to Article 46 § 1 of the Convention, to implement them, despite the cessation of its membership of the Council of Europe (see paragraph 7 above; see also Interim Resolution CM/ResDH(2022)254 of the Committee of Ministers of the Council of Europe, adopted on 22 September 2022, on the execution of the Court's judgment in *Georgia v. Russia (I)*).

47. In accordance with the Court's case-law, the above-mentioned sums are to be distributed by the applicant Government to the individual victims (see *Cyprus v. Turkey* (just satisfaction), cited above, § 58, and *Georgia v. Russia (I)*, (just satisfaction), cited above, § 77). As in *Cyprus v. Turkey* (just satisfaction) and *Georgia v. Russia (I)* (just satisfaction), the Court considers that it must be left to the applicant Government, under the supervision of the Committee of Ministers, to set up an effective mechanism to distribute the above-mentioned sums to the individual victims while having regard to the indications given by the Court (see paragraphs 34-36 and 40-45 above). This distribution must be carried out within eighteen months from the date of the payment by the respondent Government or within any other period deemed appropriate by the Committee of Ministers.

48. 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*, unanimously, that it has jurisdiction under Article 58 of the Convention to deal with the applicant Government's claims for just satisfaction under Article 41 of the Convention notwithstanding the cessation of the Russian Federation's membership of the Council of Europe and that the respondent Government's failure to cooperate does not present an obstacle to their examination;

2. *Holds*, unanimously, that Article 41 of the Convention applies to the present case in respect of the victims of the administrative practice of killing of civilians in Georgian villages in South Ossetia and in the "buffer zone", the victims of the administrative practice of torching and looting of houses in the "buffer zone", the victims of the administrative practice of inhuman and degrading treatment and arbitrary detention of Georgian civilians held by the South Ossetian forces in the basement of the "Ministry of Internal Affairs of South Ossetia" in Tskhinvali between

approximately 10 and 27 August 2008, the victims of the administrative practice of torture of Georgian prisoners of war detained by the South Ossetian forces in Tskhinvali between 8 and 17 August 2008, the victims of the administrative practice of preventing the return of Georgian nationals to their respective homes in South Ossetia and Abkhazia, and the victims of the respondent Government's failure to comply with their procedural obligation to carry out an adequate and effective investigation into the deaths which occurred during the active phase of the hostilities or after the cessation of hostilities;

3. *Holds*, unanimously, that the respondent State is to pay the applicant Government, within three months, EUR 3,250,000 (three million two hundred and fifty thousand euros) in respect of non-pecuniary damage suffered by a group of at least fifty victims of the administrative practice of killing of civilians in Georgian villages in South Ossetia and in the "buffer zone" and of the respondent Government's failure to comply with their procedural obligation to carry out an adequate and effective investigation into those killings;

4. *Holds*, unanimously, that the respondent State is to pay the applicant Government, within three months, EUR 2,697,500 (two million six hundred and ninety-seven thousand five hundred euros) in respect of non-pecuniary damage suffered by a group of at least 166 victims of the administrative practice of inhuman and degrading treatment and arbitrary detention of Georgian civilians detained by the South Ossetian forces in the basement of the "Ministry of Internal Affairs of South Ossetia" in Tskhinvali between approximately 10 and 27 August 2008;

5. *Holds*, unanimously, that the respondent State is to pay the applicant Government, within three months, EUR 640,000 (six hundred and forty thousand euros) in respect of non-pecuniary damage suffered by a group of at least sixteen victims of the administrative practice of torture of Georgian prisoners of war detained by the South Ossetian forces in Tskhinvali between 8 and 17 August 2008;

6. *Holds*, unanimously, that the respondent State is to pay the applicant Government, within three months, EUR 115,000,000 (one hundred and fifteen million euros) in respect of non-pecuniary damage suffered by a group of at least 23,000 victims of the administrative practice of preventing the return of Georgian nationals to their respective homes in South Ossetia and Abkhazia;

7. *Holds*, unanimously, that the respondent State is to pay the applicant Government, within three months, EUR 8,240,000 (eight million two

hundred and forty thousand euros) in respect of non-pecuniary damage suffered by a group of at least 412 victims of the respondent Government's failure to comply with their procedural obligation to carry out an adequate and effective investigation into the deaths which occurred during the active phase of the hostilities;

8. *Holds*, unanimously, 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;

9. *Holds*, unanimously, that the above amounts shall be distributed by the applicant Government to the individual victims under the supervision of the Committee of Ministers within eighteen months from the date of the payment or within any other period considered appropriate by the Committee of Ministers;

10. *Dismisses*, by nine votes to eight, the remainder of the applicant Government's claims for just satisfaction.

Done in English and in French, and notified in writing on 28 April 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Johan Callewaert Deputy to the Registrar	Síofra O'Leary President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint separate opinion of Judges Bošnjak, Pastor Vilanova, Wojtyczek, Serghides, Chanturia, Jelić, Sabato and Schembri Orland is annexed to this judgment.

S.O.L.
J.C.

JOINT PARTLY DISSENTING OPINION OF JUDGES BOŠNJAK, PASTOR VILANOVA, WOJTYCZEK, SERGHIDES, CHANTURIA, JELIĆ, SABATO AND SCHEMBRI ORLAND

1. We voted with the majority as regards points 1-9 of the operative part of the judgment.

2. The majority's views and ours differ in relation to point 10 of the operative part of the judgment, where the majority decided to dismiss the applicant Government's request concerning the award of just satisfaction with respect to the 1,408 alleged victims of the administrative practice of torching and looting of houses in the "buffer zone". We disagree with this finding for the following reasons.

3. In the principal judgment the Court concluded that it had "**sufficient evidence** in its possession to enable it to conclude **beyond reasonable doubt** that there was **an administrative practice** contrary to Articles 2 and 8 of the Convention and Article 1 of Protocol No. 1 as regards the killing of civilians and **the torching and looting of houses in Georgian villages in South Ossetia and in the 'buffer zone'**" (see *Georgia v. Russia (II)* [GC], no. 38263/08, § 220, 21 January 2021, emphasis added). The Court considered that this administrative practice was also **contrary to Article 3 of the Convention** (ibid.).

4. The Court came to that conclusion having observed that "the information appearing in the various reports by international organisations and the EU Fact-Finding Mission, and in the decision of the International Criminal Court is consistent as regards the existence, after the cessation of active hostilities, of a systematic campaign of burning and looting of homes in Georgian villages in South Ossetia and in the 'buffer zone'. Such information also corresponds to the satellite images appearing in the AAAS report, which show that the houses in question had been burnt" (ibid., § 205).

5. The only obligation for the applicant Government, since the principal judgment had established the violations of Articles 3 and 8 of the Convention and Article 1 of Protocol No. 1, was to submit a list of the persons identified as victims of these violations.

6. Within the just satisfaction proceedings the applicant Government submitted to the Court a list of 1,960 individual victims of the following categories: *first*, individual victims of violations of Article 3 and 8 of the Convention and Article 1 of Protocol No. 1 in the 'buffer zone' (1,408 persons); and *second*, individual victims of violations of Article 8 and Article 1 of Protocol No. 1 who did not hold the status of internally displaced persons (552 persons). The list contains surnames, names, dates of birth, identity numbers, as well as an indication of the Convention rights that had

been violated (Articles 3 and 8 of the Convention and Article 1 of Protocol No. 1). Additionally, the applicant Government submitted numerous statements of witnesses, who confirmed the facts of torching and looting of the houses of some of the persons on the list.

7. In *Georgia v. Russia (I)* ((just satisfaction) [GC], no. 13255/07, 29 January 2019) the Court proceeded on the assumption that the people named in the applicant Government's list could be considered victims of the violations of the Convention for which the respondent Government had been held responsible. Furthermore, the Court considered that in the particular circumstances of that case the burden of proof was on the respondent Government to convincingly show that the individuals appearing in the applicant Government's list did not have victim status (ibid., § 69).

8. Of further significance is the fact that the circumstances of the present case are similar to those of the case of *Cyprus v. Turkey* ((just satisfaction) [GC], no. 25781/94, ECHR 2014), as both concern violations of the Convention which resulted from military operations conducted by foreign occupying powers. It is to be recalled in this connection that whenever the origin of human rights violations lies in the fact of the military occupation as such, the Court normally accepts the list of residents of the relevant occupied regions as a sufficient basis for awarding just satisfaction, including with respect to violations of property rights under Article 1 of Protocol No. 1, even without seeking any additional evidence from the parties (compare *Cyprus v. Turkey*, cited above, §§ 46-47, 51 and 57-59, and *Georgia v. Russia (I)*, cited above, §§ 56 and 69).

9. In the present case, in the absence of an objection from the respondent Government to the list of victims presented by the applicant Government, the persons appearing in the list should have been considered a "sufficiently precise and objectively identifiable" group of people for the purpose of awarding compensation for the non-pecuniary damage suffered. While the majority accepted this approach concerning the list of 23,000 forcibly displaced Georgian nationals and awarded a lump sum in respect of non-pecuniary damage (see paragraph 44 of the judgment), the same approach was found to be inapplicable to the list of victims of torching and looting of houses (see paragraph 41). We regret that the majority's decision worked to the advantage of the respondent Government despite the fact that the latter have fallen short of their obligation to furnish all necessary facilities to the Court, as required under Article 38 of the Convention. This obstructive attitude should not benefit the party which voluntarily withdraws from the adversarial debate.

10. The approach of the majority results in over-penalising the victims, because if the respondent Government had formally challenged the applicant Government's evidence (or lack of it), the applicant Government would have had the opportunity to reply. In the present case, the applicant Government were not even given the opportunity to challenge the alleged lack of evidence.

Therefore, it is the Grand Chamber which firstly, of its own motion, asserts the absence of evidence and secondly, does not give the applicant Government any opportunity to prove their claims, despite the fact that in paragraph 15 of their observations, the applicant Government stated:

> "Thus, the Government of Georgia ask the Court to request the Russian Federation to fully furnish any and all relevant information/material at their disposal and respectfully reserve the right to update/clarify the tables of victims as well as the evidence after analysing the position ... by the Russian Federation, in the course of written proceedings on just satisfaction."

It should also be borne in mind that if the respondent Government had pleaded the case but without discussing the question of the victims' ownership of the destroyed houses, the Court would probably not have become involved in examining the issue of proof of ownership of the same houses. To conclude, it is sad and unusual that victims are penalised more in a default procedure than in an ordinary adversarial procedure.

11. Lastly, we would argue that, regrettably, it seems to have escaped the attention of the majority that the right of the 1,408 victims to respect for their home under Article 8 of the Convention, as well as their right to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the Convention, would not be practical and effective but only theoretical and illusory if they were not granted just satisfaction. In any event, it would not be fair and equitable for the victims if the respondent State were to be able to benefit from the administrative practice of torching and looting their houses and from any possible consequential difficulty or uncertainty of proof, by not being ordered to pay any award of just satisfaction to the victims.