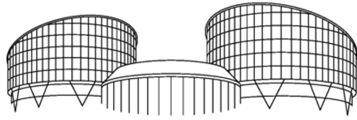

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
issued by the Registrar of the Court

ECHR 125 (2023)
28.04.2023

Grand Chamber judgment in the case of Georgia v. Russia (II) concerning just satisfaction

In today's **Grand Chamber** judgment[1] in the case of Georgia v. Russia (II) (application no. 38263/08) the European Court of Human Rights examined the question of **just satisfaction (Article 41).**

The case concerned allegations by the Georgian Government of administrative practices on the part of the Russian Federation entailing various breaches of the Convention, in connection with the armed conflict between Georgia and the Russian Federation in August 2008.

In today's Grand Chamber judgment concerning the question of just satisfaction, the Court held, unanimously:

- that it had 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 did not present an obstacle to their examination;

- that Article 41 of the Convention was applicable 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 had occurred during the active phase of the hostilities or after the cessation of hostilities;

- that the respondent State was 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 50 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;

- that the respondent State was 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 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;

- that the respondent State was 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

1. Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

least 16 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;

- that the respondent State was 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; and

- that the respondent State was 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 had occurred during the active phase of the hostilities.

The Court also dismissed, by nine votes to eight, the remainder of the applicant Government's claims for just satisfaction.

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

Principal facts

The principal judgment in the present case was delivered on 21 January 2021. 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 their observations on the matter.

In its Georgia v. Russia (II) Grand Chamber judgment, delivered on 21 January 2021, the Court held:

(a) that there had been an administrative practice contrary to Articles 2 (right to life) and 8 (right to respect for private and family life) of the Convention and Article 1 of Protocol No. 1 (protection of property) as regards the killing of civilians and the torching and looting of houses in Georgian villages in South Ossetia and in the "buffer zone" and that this administrative practice had also been contrary to Article 3 of the Convention (prohibition of torture and inhuman and degrading treatment) 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 by the victims, who, moreover, had been targeted as an ethnic group;

(b) that there had been an administrative practice contrary to Article 3 as regards the conditions in which Georgian civilians had been 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;

(c) that there had been an administrative practice contrary to Article 5 (right to liberty and security) as regards the arbitrary detention of Georgian civilians 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;

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

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

(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); and

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

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 11 August 2008 and declared partly admissible on 13 December 2011. On 3 April 2012 the Chamber relinquished jurisdiction in favour of the Grand Chamber. A hearing was held on 23 May 2018. The principal judgment was delivered by the Grand Chamber on 21 January 2021.

The judgment concerning just satisfaction was given by the Grand Chamber of 17 judges, composed as follows:

Síofra **O'Leary** (Ireland), *President*,
Georges **Ravarani** (Luxembourg),
Marko **Bošnjak** (Slovenia),
Gabriele **Kucsko-Stadlmayer** (Austria),
Pere **Pastor Vilanova** (Andorra),
Arnfinn **Bårdsen** (Norway),
Krzysztof **Wojtyczek** (Poland),
Yonko **Grozev** (Bulgaria),
Armen **Harutyunyan** (Armenia),
Georgios A. **Serghides** (Cyprus),
Tim **Eicke** (the United Kingdom),
Jovan **Ilievski** (North Macedonia),
Jolien **Schukking** (the Netherlands),
Lado **Chanturia** (Georgia),
Ivana **Jelić** (Montenegro),
Raffaele **Sabato** (Italy),
Lorraine **Schembri Orland** (Malta),

and also Johan **Callewaert**, *Deputy Grand Chamber Registrar.*

Decision of the Court

As to the Court's jurisdiction to deal with the case, the Court observed that the respondent State had ceased to be a member of the Council of Europe on 16 March 2022 and had also ceased to be a Party to the Convention on 16 September 2022.

It was apparent from the wording of Article 58 (denunciation) of the Convention (in particular the second and third paragraphs) that a State which ceased to be a Party to the Convention by virtue of the fact that it had ceased to be a member of the Council of Europe was not released from its obligations under the Convention in respect of any act performed before the date on which it had ceased to be a Party to the Convention. In the present case, the facts giving rise to the violations found in the principal judgment had occurred before 16 September 2022. The Court therefore had jurisdiction to deal with the claims for just satisfaction under Article 41 of the Convention in this case.

Regarding the consequences of the respondent Government's failure to participate in the proceedings, the Court observed that the cessation of a Contracting Party's membership of the Council of Europe did not release it from its duty to cooperate with the Convention bodies; this duty

continued for as long as the Court remained competent to deal with applications arising out of acts or omissions capable of constituting a violation of the Convention, provided that they had taken place prior to the date on which the respondent State had ceased to be a Contracting Party to the Convention.

Just satisfaction (Article 41)

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" (EUR 120,000 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" through 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 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 (EUR 30,000 per victim);

(f) 91 alleged victims of inhuman or degrading treatment and arbitrary detention 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).

The Court first noted that the applicant Government's just-satisfaction claims under points (b), (d) and (f) above did not relate to any of the violations found in the principal judgment. Whereas the Court had 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 had amounted to "inhuman and degrading treatment" contrary to Article 3 of the Convention, it had not found 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 had referred in their claim under point (b). As regards the claim under point (d), the Court had not found 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 involving destruction of property other than the torching and looting of houses after the cessation of hostilities. Lastly, as regards the claim under point (f), the Court had not found 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 were concerned, the applicant Government were not entitled to make a claim under Article 41 of the Convention.

By contrast, the claims under points (a), (c), (e), (g), (h) and (i) related to the operative part of the principal judgment

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

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" (see point (a) above), that practice had been described in the principal judgment as 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 had been South Ossetian forces, including an array of irregular militias, who had followed the Russian forces' advance. It appeared from the evidence submitted by the applicant Government that only 50 of the 116 persons listed had been killed in such circumstances. The remaining 66 persons had 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. For the purposes of just satisfaction, the Court considered that at least 50 Georgian nationals had been victims of this administrative practice, for which the Russian Federation had been found to be responsible. The Court had also found in the principal judgment 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. Making its assessment on an equitable basis, the Court deemed 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 any non-pecuniary damage sustained by this category of victims.

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" (see point (c) above). In the present case, the Court noted that the material submitted by the applicant Government did not permit it 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. As the Court had already indicated in Georgia v. Russia (I) (just satisfaction) (§§ 55 and 57), the application of Article 41 of the Convention required the identification of the individual victims concerned and the provision by the applicant Government of all relevant information.

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 (see point (e) above), the Court considered, for the purposes of just satisfaction, that at least 166 Georgian nationals had been victims of this administrative practice, for which the Russian Federation had been found to be responsible. Ruling on an equitable basis, it deemed 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.

As regards the 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 (see point (g) above), the Court considered, for the purposes of just satisfaction, that at least 16 Georgian

nationals had been victims of this administrative practice, for which the Russian Federation had been found to be responsible. Making its assessment on an equitable basis, the Court deemed 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.

Turning 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 (see point (h) above), the Court noted that, for the purposes of just satisfaction, at least 23,000 Georgian nationals had been victims of this administrative practice, for which the Russian Federation had been found to be responsible. The Court, making its assessment on an equitable basis, deemed 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.

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 (see point (i) above), the Court considered that at least 412 Georgian nationals had been victims of this administrative practice, for which the Russian Federation had been found to be responsible. The Court, making its assessment on an equitable basis, deemed 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.

Article 46

The Court noted that Article 46 required the Committee of Ministers to put in place an effective mechanism for the implementation of the Court's judgments, including in cases against a State which had ceased to be a Party to the Convention. It observed in that connection that the Committee of Ministers continued to supervise the execution of the Court's judgments against the Russian Federation, and that the Russian Federation was required, pursuant to Article 46 § 1 of the Convention, to implement them, despite the cessation of its membership of the Council of Europe.

Separate opinions

Judges **Bošnjak**, **Pastor Vilanova**, **Wojtyczek, Serghides, Chanturia, Jelić**, **Sabato** and **Schembri Orland** expressed a joint partly dissenting opinion, which is annexed to the judgment.

The judgment is available in English and French.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter @ECHR_CEDH.

Press contacts
echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

We would encourage journalists to send their enquiries via email.

Denis Lambert (tel.: + 33 3 90 21 41 09)
Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)
Inci Ertekin (tel.: + 33 3 90 21 55 30)
Neil Connolly (tel.: + 33 3 90 21 48 05)
Jane Swift (tel.: + 33 3 88 41 29 04)

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.