

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

1959 · 50 · 2009

FIFTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 13255/07
by GEORGIA
against RUSSIA

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

Peer Lorenzen, *President,*
Rait Maruste,
Karel Jungwiert,
Anatoly Kovler,
Renate Jaeger,
Mark Villiger,
Nona Tsotsoria, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 16 April and 30 June 2009,

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

PROCEDURE

1. The case originates in an application (no. 13255/07) against the Russian Federation lodged with the Court under Article 33 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Georgia on 26 March 2007. The Georgian Government ("the applicant Government") are represented before the Court

by their Agent, Mr Levan Meskhoradze. They were previously represented successively by their former Agents, Mr Besarion Bokhashvili and Mr David Tomadze.

2. The Russian Government ("the respondent Government") are represented by their Representative, Mr Georgy Matyushkin. They were previously represented by their former Representative, Ms Veronika Milinchuk.

3. The applicant Government alleged that the respondent State had permitted or caused the existence of an administrative practice involving, in particular, the arrest, detention and collective expulsion of Georgian nationals from the Russian Federation in the autumn of 2006, entailing a violation of Articles 3, 5, 8, 13 and 18 of the Convention and of Articles 1 and 2 of Protocol No. 1, Article 4 of Protocol No. 4 and Article 1 of Protocol No. 7.

4. On 13 April 2007 the President of the Chamber decided to communicate the application to the respondent Government, which were invited to submit observations on the admissibility of the complaints.

After an extension of the time-limit fixed for that purpose, the respondent Government submitted their observations, with annexes, on 26 December 2007.

5. On 4 January 2008 the applicant Government were invited to submit their observations in reply. After an extension of the time-limit fixed for that purpose, they submitted their observations, with annexes, on 5 May 2008.

6. The respondent Government submitted further observations on 23 September 2008.

7. The Court considered the state of proceedings on 25 November 2008 and decided to obtain the parties' oral submissions on the admissibility of the application. It also decided to invite the parties to respond in writing to a list of questions prior to the date of the hearing.

8. On 18 March 2009 the parties filed their written observations on the questions posed by the Court.

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 16 April 2009 (Rule 59 § 3).

There appeared before the Court:

– *for the applicant Government*
Ms T. BURJALIANI, First Deputy Minister of Justice,
Mr L. MESKHORADZE, *Agent,*
Ms S. MEZURNISHVILI,
Ms T. TOMASHVILI, *Advisers*;

– *for the respondent Government*
Mr G. MATYUSHKIN, Deputy Minister of Justice, *Representative,*
Ms N.Y ZYABKINA, *First Deputy to the Representative,*
Ms I.S. KOGANOVA,
Mr E.A. SHIPITSYN,
Ms Y.Y. ZIMBALOVA,
Mr V.K. ERMAKOV,
Ms I.V. VOLKHONSKAYA,
Mr A.Y. RODIN,
Mr D.P. DEMIDENKO, *Advisers.*

The Court heard addresses by Mr Matyushkin and Ms Burjaliani.

FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The general context

10. In spite of the historical, cultural and economic ties between Georgia and the Russian Federation, tensions between the two States amount to a long-standing political problem that has various sources.

11. The present application concerns events[1] following the arrest on 27 September 2006 in Tbilisi (Georgia) of four Russian officers on suspicion of espionage. On 4 October 2006 these officers were released by an act of clemency of the applicant Government. Eleven Georgian citizens were arrested on the same charges.

On 3 October 2006 the Russian Federation suspended all aerial, road, maritime, railway, postal and financial links with Georgia. These links were ultimately re-established from 21 April 2008.

[1] In its report of 22 January 2007 entitled "Current tensions between Georgia and Russia", the Monitoring Committee of the Parliamentary Assembly of the Council of Europe also considered these events - see Annex 3.

B. The instant application

12. The applicant Government considered that the respondent Government's reaction to the arrest of the Russian officers in Georgia had amounted to an administrative practice on the part of the official authorities, beginning on 27 September 2006, which entailed specific and continuing violations of the following provisions of the Convention and its Protocols: Article 3 (prohibition of inhuman or degrading treatment or punishment), Article 5 (right to liberty), Article 8 (right to respect for private and family life), Article 13 (right to an effective remedy), Article 14 (prohibition of discrimination), Article 18 (limitation on use of restrictions on rights) of the Convention; Articles 1 (protection of property) and 2 (right to education) of Protocol No. 1; Article 4 (prohibition of collective expulsion of foreigners) of Protocol No. 4, and Article 1 (procedural safeguards relating to expulsion of aliens) of Protocol No. 7.

13. These violations were said to derive from the alleged harassment of the Georgian population in the Russian Federation, particularly through widespread arrests and detention, which amounted to a generalised threat to the security of those persons and multiple interferences with the right to liberty on arbitrary grounds. The applicant Government also complained of the "abject conditions of detention in which at least 2,380 Georgian nationals were held". They further claimed that the collective expulsion of many of those persons from the Russian Federation was in systematic and arbitrary violation of their legitimate right to remain in that State, as attested by valid documents, and of the requirements of due process and access to statutory remedies. The very nature of these violations prevented any effective appeal in the Russian Federation, which ruled out use of the domestic remedies referred to in Article 35 of the Convention; this implied that each complaint also entailed a violation of Article 13 of the Convention, taken alone or in conjunction with Articles 14 and 18 of the Convention. As a subsidiary argument, the applicant Government alleged that the remedies available under Russian law were in practice unavailable to the Georgian nationals or had proved to be ineffective, and that Russian officials had effectively prevented them from exercising such remedies. In addition, the closure of the land, aerial and maritime borders between the Russian Federation and Georgia, which interrupted all postal communication, had also deprived those Georgian nationals who had been rapidly deported to Georgia of access to such remedies.

14. The respondent Government contested the applicant Government's allegations. They stated that the events surrounding the arrest in Tbilisi of four Russian officers and their subsequent release had no relation, either chronologically or in substance, with the events described by the applicant Government in their application. The Russian authorities had not adopted reprisal measures against Georgian nationals, but had merely continued to

apply the ordinary law aimed at preventing illegal immigration, in compliance with the requirements of the Convention and the Russian Federation's international obligations. In particular, the end of 2006 had not been marked by an increase in the number of administrative expulsions of Georgian nationals who had breached the regulations governing residence on Russian territory. The respondent Government also claimed that the applicant Government had abused the right of application before the Court by submitting insufficient and erroneous information and by relying on inaccurate data and entirely fabricated evidence, which represented a deliberate attempt to mislead the Court.

15. The respondent Government further considered that the application did not meet the requirements set out in Rule 46 of the Rules of Court for inter-State applications, in so far, *inter alia*, that it was abstract (largely based on anonymous witness statements), essentially private and, above all, inadmissible on account of failure to exhaust domestic remedies. Indeed, with the exception of one Georgian national, Ms Manana Jabelia, who subsequently died (see paragraph 21 below), none of the victims of the alleged violations of the Convention had applied to the competent authorities or courts for an order quashing an administrative arrest warrant or an administrative expulsion order. In addition, the applicant Government had submitted no evidence that such remedies had been sought in practice or that the Russian authorities had obstructed them. Yet these domestic remedies had been available and easily accessible (see paragraph 28 below). The respondent Government added that, under the Convention of the Community of Independent States (CIS) on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, of 22 January 1993, and the Treaty on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, of 15 September 1995, concluded between the Russian Federation and Georgia, nationals of those two States were entitled to approach freely the competent authorities and courts of each of these States and to receive free legal aid. Failing this, the Georgian consular authorities could have represented the Georgian nationals before the Russian authorities or courts, or made arrangements for that purpose.

16. In the Court's opinion, the applicant Government's complaints fall into four main categories: the arrest and detention of Georgian nationals in alleged violation of Article 5 of the Convention; those nationals' conditions of detention in violation of Article 3 of the Convention; the expulsion measures taken against them, in breach of Article 4 of Protocol No. 4 and of Article 1 of Protocol No. 7; and finally, the other measures which were allegedly in violation of the rights guaranteed by the Convention. Each of these Articles is invoked alone and in combination with Articles 13, 14 and 18 of the Convention.

17. The Court considers that it is appropriate at this stage to summarise the main arguments put forward by the two parties as to the various allegations of violations of the Convention made by the applicant Government, together with the documents and other evidence submitted by each of them.

C. The parties' arguments as to the various allegations of violations of the Convention made by the applicant Government

1. The arrest and detention of Georgian nationals, allegedly in breach of Article 5 of the Convention, taken alone and in combination with each of Articles 13, 14 and 18 of the Convention

18. The applicant Government alleged that the Georgian nationals residing in the Russian Federation had been the target of a deliberate policy of harassment on the part of the Russian authorities, as reflected, in particular, in the arrest and arbitrary detention of many of their number.

The applicant Government referred, in particular, to the instructions issued by the Heads of the Russian Directorate of Internal Affairs in September/October 2006 to certain schools and universities, for the purpose of identifying Georgian pupils and students, and to a letter sent in reply by the director of one of those establishments on 4 October 2006, indicating that the children had not been registered on the basis of their ethnic origin[2]. On the basis of the information thus obtained, police officers had apprehended the parents of the pupils in question, as well as students. In addition, many individuals were subjected to identity checks in markets, on the street, in churches, in the schools or kindergartens attended by their children and in their homes or workplaces, merely on account of their ethnic origin. In many cases, they were searched, taken to a police station and detained. Special forces and Russian police officers were responsible for carrying out these arrests, without any legal basis. The applicant Government referred in this connection to order no. 0215 of 30 September 2006 of the main directorate of internal affairs in Saint Petersburg, requiring local police units to submit daily reports to the Directorate's staff on the number of Georgian nationals detained, and to circular no. 849 of the Ministry of the Interior, requiring the immigration authorities to implement specific measures so as to facilitate the effective identification of Georgian nationals and their expulsion[3]. Some of those

[2] See Annex 1, I.A, documents 14, 15 and 16.

[3] See Annex 1, documents 25, 26 and 27, including in particular the instructions issued at the beginning of October 2006 of the heads of Saint Petersburg police departments and an information note of 18 October 2006 from the Federal Migration Service, based on those circulars.

arrested in this way were accused of having obtained their papers fraudulently, while others had their identity papers torn up in front of them[4].

19. The respondent Government emphasised that the applicant Government had not submitted any evidence in support of their allegations. In addition, the description of the content of these circulars by the applicant Government was inexact and the documents allegedly based on these circulars and submitted by the applicant Government had been fabricated[5]. Finally, although requests for information had been sent to various schools, the officials responsible had been duly penalised[6]. Further, the applicant Government's allegations were general in nature and were frequently based on anonymous witness statements. In particular, neither the names of the Georgian children questioned or of their schools, nor the names of the person who had carried out this questioning and those of the arrested parents of pupils had been clearly indicated. Equally, the names of the persons who had been searched and the names of the police stations where they had been detained were also missing. The rights set out in Article 5 were individual rather than collective rights, and the absence of information from the applicant Government with regard to the alleged victims and the circumstances of their arrest and detention ruled out any examination of the merits by the Court. In addition, the persons concerned had failed to apply to the competent authorities seeking judicial review of the lawfulness of their detention. The onus was on the applicant Government to provide at least some examples illustrating the failure of the competent Russian federal authorities to accept and examine the complaints about the unlawfulness of their detention submitted by the Georgian nationals, or the lack of access to domestic remedies.

2. The conditions of detention of the Georgian nationals, allegedly in breach of Article 3 of the Convention, taken alone and in combination with each of Articles 13, 14 and 18 of the Convention

20. The applicant Government alleged that, following their arrest, the Georgian nationals were held for one or two days in police custody in local police stations, before being transferred to temporary detention centres with a view to their expulsion. The length of detention in these centres varied between five and fifty-six days. According to the applicant Government, the cells were over-crowded, the bedding was insufficient and of poor quality, the sanitary conditions were intolerable, there was insufficient food and drinking water, and, finally, appropriate medical care was not provided.

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[4] See Annex 1, section I.C, a summary of the statements made by Georgian nationals.

[5] See Annex 2, I., documents 7 and 12.

[6] Thus, in October 2006 six officials from the internal affairs departments had been subjected to disciplinary procedures – see Annex 2, I., documents 9 and 12.

In this connection, they relied on numerous witness statements by Georgian nationals[7].

The applicant Government referred, in particular, to the case of three individuals who had died and one individual whose health had seriously deteriorated as a result of the conditions of detention and lack of sufficient medical care. The first was Mr Teniz Togonidze, aged 58, who had been held in the Saint Petersburg detention centre and who suffered from chronic asthma. During his transfer by bus to Moscow with other Georgian nationals on 16 October 2006 for expulsion, the passengers had unsuccessfully requested the Russian police officers to open the windows, and had even been attacked by those officers. On arrival at the airport in Moscow on 17 October 2006, Mr Togonidze, whose condition had worsened, died as a result of an asthma attack[8]. Although Mr Togonidze had got off the bus at the request of the Georgian Consul, his death was clearly due to the conditions of detention and transportation. In addition, the applicant Government contested the post-mortem report submitted by the respondent Government. The second individual was Ms Manana Jabelia, who, in spite of the decision of 30 November 2006 of the Moscow Court of Appeal ordering her release, had been held in detention for a further two days before dying on the third day, no explanation being provided by the Russian authorities. The third person was Mr Zurab Muzashvili, who had been expelled from Russia and instructed to purchase a plane ticket from Moscow to Georgia. He died on 25 January 2007, on the eve of his flight; however, the serious health problems from which he suffered ought to have led the detention centre authorities to provide appropriate medical treatment. The fourth person was Ms Nato Shavshishvili – contrary to the submissions of the respondent Government, she had possessed a valid visa and had been the subject of administrative proceedings – who suffered an attack affecting the left side of her body in the morning while held in a detention centre, and who, in spite of the seriousness of her condition, received no medical assistance prior to her release that same evening.

21. The respondent Government emphasised that, in this respect also, the applicant Government had submitted no evidence in support of their allegations. There was no indication of the exact location at which the Georgian nationals had been held, of the approximate size of the cells or of the number of detainees sharing a cell. Yet the conditions of detention in temporary detention centres for foreigners on Russian territory - which were different to those existing in penitentiary establishments - complied fully with the Russian legislation. In particular, the applicant Government had not submitted statements by the other individuals detained with the alleged

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[7] See Annex 1, I.C., summary of statements by Georgian nationals, submitted by the applicant Government.

[8] See Annex 1, I.C., statements by Gerasim Gegushadze, Temur Tkhilaishvili and Demur Todua, and I.A., document 29.

victims, or produced official documents such as reports by state officials of the Russian Federation or international committees, as had been done, for example, in the case of *Maltabar and Maltabar v. Russia ((dec.)* 6954/02, 28 June 2007).

As to the deceased or seriously ill individuals referred to by the applicant Government, the respondent Government submitted the following information: according to the post-mortem report, Mr Togonidze had died from a drugs overdose and had been under the responsibility of the Georgian Consul during the long period which had preceded his death; the latter had obliged Mr Togonidze to get off the bus which was taking the Georgian nationals to an airport in Moscow for deportation. With regard to Ms Jabelia, the detainees who shared her cell had stated that she was taken ill on 2 December 2006, although she had not previously complained about her health. The detention centre staff had immediately called an ambulance, but Ms Jabalia died when it arrived. According to the post-mortem report, her death had been due to a cardiovascular incident resulting from cardiac ischemia coupled with severe hypertension. As to Mr Muzashvili, he had apparently suffered a fresh bout of tuberculosis a few months before his placement in the Saratov detention centre for foreigners. According to statements by detainees held in the same cell, he complained of cardiac problems and had a persistent cough; he had been given medication, and an ambulance had been called when he had fallen ill. According to the post-mortem report, his death had been a direct consequence of his serious state of health. The respondent Government emphasised that in all three cases, death had not resulted from external causes, but from chronic illnesses or the use of drugs, given that there had been no trace of violence. In all three cases, the federal authorities had carried out an in-depth and effective investigation into the causes of death. In addition, no complaint had been made by the relatives of the individuals concerned with regard to possible acts or omissions by the State. Finally, with regard to Ms Nato Shavshishvili, the respondent Government contested the events as related by the applicant Government, indicating that administrative proceedings had never been brought against her, nor had any administrative deportation order ever been issued against her. In this respect, they referred to the letter of 19 September 2007 from the Russian Federal Migration Service[9].

[9] See Annex 2, I., document 14.

3. The deportation orders issued against Georgian nationals, allegedly in violation of Article 4 of Protocol No. 4 and of Article 1 of Protocol No. 7, taken alone and in combination with each of Articles 13, 14 and 18 of the Convention

22. With regard to Article 4 of Protocol No. 4, the applicant Government alleged that the practical arrangements for the expulsions showed that these were collective measures targeted at Georgian nationals who were resident in Russia. Firstly, during the period in question, the measures included approximately 4,634 deportation orders and the expulsion of 2,380 individuals who passed through the detention centres. Although the number of expulsions of nationals of the other States mentioned by the respondent Government[10] had fallen in comparison to the previous year, the number of Georgian nationals deported had risen by about 160%, from 2,879 in 2005 to 4,022 in 2006. The increase had been particularly striking in the period from October 2006 to January 2007: thus, the number of Georgian nationals expelled had risen from about 80-100 persons per month in July to September 2006 to about 700-800 persons per month in the period from October 2006 to January 2007[11].

Further, these expulsions had been preceded by announcements and instructions from the Russian political authorities, directly targeting Georgian nationals, although the nationals of other States, even those who were illegally resident, had not been targeted by such measures. The Russian authorities had relied heavily on the mass media in support of this anti-Georgian policy: thus, in his report of 30 May 2007, the Special Rapporteur of the General Assembly of the United Nations cited the Russian mass media as one of the key sources for the spread of xenophobic documents[12].

Furthermore, although in many instances the expulsion was based on a judicial decision, the conduct of the judicial proceedings ruled out any examination on the merits of each case[13] : thus, the length of the hearings had frequently not exceeded five minutes, the persons concerned had not had an opportunity to set out their arguments - which was particularly prejudicial to those who possessed valid residence permits or whose papers had been damaged or thrown out by Russian officials or who had been obliged to confess that they were unlawfully present in Russia - and had sometimes not even had an opportunity to be present at their own hearing. In addition, many people had not had access to their case file, in certain cases the judges had insulted them on the basis of their Georgian

[10] See § 23 below, and Annex 2, I., document 28.
[11] Figures submitted by the applicant Government at the hearing.
[12] See the report of 30 May 2007 of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (GE.07-12701).
[13] See Annex 1, I.C., summary of the statements by Georgian nationals.

nationality, and, finally, they were deported through a summary procedure without having been informed of their right to legal assistance by a lawyer or of their right to appeal. Finally, the very fact of having the Georgian nationals sign pre-printed forms expressing the deported individuals' so-called wish to waive their right to an appeal was an additional and cynical demonstration of the purely formal existence of domestic remedies – in reality, the Georgian nationals would have been ready to sign anything in order to escape their appalling conditions of detention. In general, there was no difference in treatment between immigrants who were lawfully resident in Russia and illegal immigrants, and the expulsion procedures had been in violation of the provisions of international law and the rights under the Convention of the individuals concerned.

Furthermore, during the first phase of the expulsion, the Georgian nationals had been transported in humiliating and degrading conditions, in cargo planes designed for carrying freight (merchandise, humanitarian materials and even corpses) rather than passengers[14]. These flights were conducted in disregard of basic security regulations: the majority of passengers, including young children, did not have a seat belt, and were obliged to use their luggage as seating.

According to the applicant Government, those Georgian nationals who had possessed valid visas and/or correct registration documents had, in addition, not had the benefit of the guarantees set out in Article 1 of Protocol No. 7[15].

23. The respondent Government reiterated that the applicant Government had not submitted any evidence in support of their allegations and had omitted to specify the names of the victims.

With regard to Article 4 of Protocol No. 4, they indicated that in 2006 the Russian ordinary courts had dealt with administrative disputes concerning more than 7,500 Georgian nationals against whom an administrative measure ordering deportation from Russian territory had been taken. Some 200 judicial decisions had been the subject of appeals submitted by the Georgian nationals themselves. The respondent Government also submitted statistics indicating that in 2006, the highest number of administrate deportation measures (6,089) was issued in respect of nationals of Uzbekistan, followed by nationals of Tajikistan (4,960) and Georgian nationals (4,022) who, in reality, were only in third position[16]. In addition, even if one noted an increase in the number of Georgian nationals deported in the course of 2006, this had been in the order of 39.7%, and not 160% as alleged by the applicant Government. However, the respondent Government had available only annual statistics in this connection, and not monthly statistics. In any event, even if a sharp increase in expulsions was to

[14] See Annex 1, I.C., summary of the statements by Georgian nationals.
[15] See Annex 1, I.C., summary of the statements by Georgian nationals.
[16] See Annex 3, documents 2 and 28.

observed over the past few years, the fact that these had concerned more particularly States such as Uzbekistan or Tajikistan showed that there had been no difference in treatment between illegal immigrants on the basis of their nationality. The respondent Government also contested the applicant Government's reference to the Special Rapporteur of the Assembly General of the United Nations[17] in respect of the Russian authorities' alleged anti Georgian policy, and emphasised, on the contrary, that the Special Rapporteur had concluded in his Report that there was no State policy of racism or xenophobia in the Russian Federation. The increase in the number of deportations of Georgian nationals was explained primarily by the considerable influx of illegal immigrants from Georgia. Nonetheless, the policy followed in this regard by the Russian Federation was no different from that adopted by other European States with regard to controlling illegal immigration. Moreover, the expulsion of Georgian nationals had not been automatic: thus, from 1 October 2006 to 1 April 2007, only 24% of the Georgian nationals who had breached the regulations governing residence on Russian territory had been subject to an administrative expulsion order. In fact, although they had committed 11,030 administrative offences under Article 18.8 of the Code of Administrative Offences during this period, only 2,862 of them had been expelled[18].

In addition, the administrative deportation of each Georgian national had been based on an individual decision taken after the most detailed examination of each individual's particular case by the Russian courts, in compliance with all the elements of due process, including the right of appeal against the judicial decision[19]. Yet none of them had lodged an appeal before the Russian appellate courts, and some had even signed declarations expressly waiving this right in order to be able to return to their country rapidly[20].

Finally, the applicant Government had also failed to indicate the names of those Georgian nationals who had been deported in so-called "cargo planes", and the dates and exact departure and arrival airports of those flights. For their part, the respondent Government submitted that aeroplanes from the Russian Ministry for Civil Defence had transported the Georgian nationals, at the request of the Georgian Embassy in Russia, for humanitarian reasons and in order to ensure their rapid repatriation to Georgia; the same aeroplanes had also been used to transport Russian nationals, including children, who were evacuated from Georgia to the Russian Federation, which demonstrated both the absence of discriminatory

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[17] See § 22 above.

[18] Figures from the Russian Interior Ministry's information centre.

[19] For tables of police reports and expulsion orders by Russian courts of first instance, see Annex 2, II.

[20] See Annex 2, I., document 4.

practice towards the Georgian nationals and satisfactory humanitarian and security conditions for those flights[21].

As to Article 1 of Protocol No. 7, the respondent Government submitted that, with very few exceptions, all the Georgian nationals deported on the basis of an administrative decision as a result of court proceedings had been unlawfully resident on Russian territory: in reality, they had not possessed valid visas or registration documents, or adequate work permits. It followed that Article 1 of Protocol No. 7, which applied only to individuals who were lawfully resident in a State's territory, was not applicable in this case.

4. The other measures which allegedly entailed a violation of the rights guaranteed by the Convention

24. The applicant Government alleged that the individual deportation decisions had not taken into account the family situations of the persons concerned, with the result that families were separated (very young children were in some instances left to fend for themselves), contrary to the requirements of Article 8 of the Convention. In addition, the disclosure by schools and universities of information on the origin, family situation and addresses of Georgian pupils had not been in accordance with the law and had also been in breach of this Article.

Furthermore, the arrangements for the arrest and detention of the Georgian nationals had frequently obliged them to abandon their possessions; the expulsion measures and the interruption of communications between the Russian Federation and Georgia had not enabled them subsequently to take the necessary steps to protect their property, thus giving rise to a violation of Article 1 of Protocol No. 1.

Finally, the closure of Russian schools in Georgia had deprived Georgian pupils of all access to education in the Russian language and was contrary to Article 2 of Protocol No. 1.

Without referring to particular Articles of the Convention, the applicant Government also asserted that many businesses belonging to Georgian nationals and situated in the Russian Federation had been monitored and subsequently closed by the Russian authorities – the applicant Government referred to a statement of 3 October 2006 by the Director of Economic Security, Russian Ministry of the Interior, in this connection[22]. In addition, well-known figures of Georgian origin had been subjected to harassment by the Russian authorities[23]. Finally, a large part of the Georgian community had been subjected to discriminatory measures (in particular, denial of medical treatment on account of their ethnic origin...).

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[21] See Annex 3, document 3.
[22] See Annex 1, I.A., documents 17 and 18.
[23] See Annex 1, I.A., document 19.

25. The respondent Government emphasised again that the applicant Government had not submitted any evidence in support of their allegations.

As to Article 8, they indicated that, with regard to the first point, it was very difficult for the Russian courts to obtain information on the Georgian nationals' exact family situations, and pointed out that there did not exist, strictly speaking, a right to family reunion. As to the second point, they noted that while such requests for information may have been made by the Russian authorities, the responsible officials had subsequently been duly penalised[24] (see paragraph 19 above).

With regard to Article 1 of Protocol No. 1, the Georgian nationals had not been deprived of their right of property and had had the opportunity to bring any proceedings concerning the possession and disposal of their property.

Finally, with regard to Article 2 of Protocol No. 1, the Russian schools in Georgia had been run by the Russian Ministry of Defence, and had been closed following the departure from Georgia of Russian military personnel.

As to the last point, the respondent Government claimed that the applicant Government had failed to indicate the names of the businesses whose professional activity had allegedly been suspended, and the names of the Georgian nationals who had been victims of discriminatory measures on the part of the Russian authorities.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution of the Russian Federation of 12 December 1993

26. Anyone who is lawfully resident on the territory of the Russian Federation has the right to freedom of movement and to choose the place where they stay and reside (Article 27 of the Constitution of the Russian Federation). Foreign citizens and stateless persons enjoy in the Russian Federation the rights of its citizens and are subject to the same duties, with the exception of cases stipulated by the federal law or an international treaty to which the Russian Federation is a Party (Article 62 § 3 of the Constitution).

[24] See Annex 2, I., documents 9 and 12.

B. The laws governing immigration and the particular situation of Georgian nationals

27. The entry and residence of immigrants are governed by two laws, namely Federal Law no. 115-FZ of 25 July 2002 on the legal status of foreign nationals in the Russian Federation and Federal Law no. 109-FZ of 18 July 2006 on the registration in the Russian Federation of migrants who are foreign nationals or stateless persons.

Since the entry into force on 29 October 2002 of the law on the legal status of foreign nationals, all citizens of the former USSR – including Georgian nationals – are required to regularise their situation by applying for a residence permit, although they were previously lawfully resident on Russian territory. Under sections 20 and 21 of that law, they must also submit a registration application to the local offices of the Russian Federal Migration Service, in order to obtain a registration certificate indicating their place of residence.

In addition, from 5 December 2000, following the denunciation of the Bishkek Agreement of 9 October 1992 on visa-free travel for the citizens of several member States of the CIS, including Georgia, all Georgian nationals are obliged to file a visa application in order to enter Russian territory.

C. The procedure for administrative deportation

28. Any foreign national who infringes the immigration regulations of the Russian Federation (Articles 18.8, 18.10 and 18.11 of the Code of Administrative Offences) is liable to administrative sanctions and risks deportation (Article 3.2). Any decision concerning an accusation of an administrative nature that could result in deportation from the Russian Federation is to be taken by a judge of an ordinary court (Article 23.1 § 3). An appeal lies with a court or appeal court within ten days (Article 30.1 § 1, 30.2 § 2 and 30. 3 § 1). This deadline may be extended at the request of the appellant (Article 30.3 § 2). An appeal against an administrative detention order is to be examined within one day of the lodging of the appeal documents (Article 30.5 § 3) and is exonerated from court fees. Finally, the foreign national may also lodge an appeal with the courts of review against an administrative expulsion order that has become enforceable (judgment of the Constitutional Court of 22 April 2004).

REQUESTS BY THE PARTIES

29. In their application and observations in reply, the applicant Government invited the Court to:

> "1. declare the application admissible and proceed to an examination of the merits, including, as necessary, an on-the-spot investigation of the facts;
> 2. hold that the Russian authorities have deliberately submitted misleading information and consequently reject all or part of their observations in application of Rule 44 (d);
> 3. hold that there has been a violation of Articles 3, 5, 8, 13, 14 and 18 of the Convention and of Articles 1 and 2 of Protocol No. 1, of Article 4 of Protocol No. 4 and of Article 1 of Protocol No. 7; and,
> 4. award it just satisfaction under Article 41, namely, compensation, reparation, damages, restitution *in integrum*, costs, expenses and further and other relief to be specified for all the pecuniary and non-pecuniary damage suffered or incurred by the injured parties as a result of the violations and the pursuit of these proceedings."

30. In their principal and supplementary observations, the respondent Government asked the Court to:

> "1. declare inadmissible, in its entirety, the application *'Georgia v. Russia'* alleging a violation, by the Russian Federation, of Articles 3, 5, 8, 13, 14 and 18 of the Convention, of Articles 1 and 2 of Protocol No. 1, of Article 4 of Protocol No. 4 and Article 1 of Protocol No. 7;
> 2. oblige Georgia to provide details with regard to the so-called victims of the violation of the rights guaranteed by the Convention and its Protocols and to confirm, with supporting evidence, the will and intention of the individuals in question to be represented before the European Court, and to prove the authenticity of their first names and surnames, or, failing this, to note the anonymous nature of the application and, consequently, its inadmissibility, in accordance with Article 35 § 2 (a) of the Convention;
> 3. oblige the Georgian authorities to give specific facts since, for the most part, the application merely contains general statements, without evidence, and does not refer to clearly identified individuals or to the violation of the rights allegedly sustained; and
> 4. oblige the Georgian authorities to provide copies of the relevant judgments and administrative decisions made in respect of the Georgian nationals in this question, since Rule 46 (g) of the Rules of Court provides that an inter-State application filed by a

High Contracting Party must be accompanied by 'copies of any relevant documents and in particular the decisions, whether judicial or not, relating to the object of the application."

THE LAW

31. In their written and oral observations, the respondent Government raised a number of objections as to the admissibility of the application. The Court will consider these, establishing first the object of the application before examining the issue of compliance with the admissibility criteria laid down in Article 35 § 1 of the Convention.

I. OBJECT OF THE APPLICATION

32. The respondent Government alleged that the application did not meet the requirements of Rule 46 of the Rules of Court on the contents of an inter-State case, on the ground, in particular, that the description of the alleged violations of the Convention and its Protocols was abstract and that the victims had not been treated as individuals in the application; in addition, the object of the application had not been clearly defined and the application had not been accompanied by a single relevant document, in particular decisions, judgments or other documents concerning its object. The presentation of the object of the application had not shown that the Georgian authorities had attempted to protect and re-establish the rights of Georgian nationals, guaranteed by the Convention and its Protocols, that had allegedly been violated. Had that truly been the aim of the Georgian authorities, they should first have contacted the authorities of the Russian Federation in the context of the mechanisms and instruments for international cooperation.

33. The applicant Government replied that the application was not abstract and that they had, on the contrary, submitted specific information about each of the victims who had requested them to protect their interests before the Court. In addition, the definition of the object of the application was sufficiently clear: it concerned the "international undertakings of the Russian Federation under the European Convention, [the] grave breach of which resulted in tides of cynic[al] violations of rights of the Georgian nationals residing in Russia". Finally, the applicant Government submitted that they had provided all the documents available to date.

34. The Court reiterates that under Article 33 of the Convention any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party. In the instant case, it considers that the content and scope

of the application and the written and oral submission by the applicant Government are sufficiently clear to allow a judicial examination under the Convention. In this regard, it notes that the applicant Government refers not only to the existence of an administrative practice that is incompatible with the Convention, but also submits statements by more than a hundred Georgian nationals requesting the Court to award just satisfaction for all the damage sustained by the injured parties as a result of the violations.

35. In the opinion of the Court, it follows that the object of the application covers both the allegations concerning the existence of an administrative practice and those concerning individual violations of the rights guaranteed by the Convention.

II. ADMISSIBILITY CRITERIA LAID DOWN IN ARTICLE 35 § 1 OF THE CONVENTION

36. Article 35 § 1 of the Convention provides:

> "1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken."

A. Arguments of the parties

1. The respondent Government

37. The respondent Government submitted that there had been both non-exhaustion of domestic remedies and a failure to comply with the six-month time-limit.

With regard to the first point, they alleged that the Georgian nationals and Georgian authorities had at their disposal effective remedies capable of guaranteeing protection of the rights and freedoms recognised by the Convention. In this connection, they referred both to the various Conventions on mutual legal assistance signed by Georgia and the Russian Federation and to the procedures under Russian law for appealing against administrative expulsion orders or decisions (see paragraphs 15 and 28 above). They also pointed to the examples of successful appeals lodged by Georgian nationals. However, the applicant Government had submitted no evidence that such appeals had been brought in practice by the alleged victims of violations of the Convention and that obstructions had been placed in their path by the Russian authorities. The respondent Government also challenged the applicant Government's allegations that there had been massive violations, targeted against Georgian nationals, and collective expulsions amounting to an administrative practice by the Russian

authorities. This was a manoeuvre aimed at circumventing the rule on the exhaustion of domestic remedies, which was also applicable to inter-State applications. Furthermore, the applicant Government had not submitted sufficient evidence justifying an examination of the merits of the application, as the mere allegation of the existence of an administrative practice was insufficient in this respect.

As to the second point, the respondent Government alleged that the application had not been lodged within the six-month time-limit, in particular with regard to the statements by the nine Georgian nationals referred to for the first time by the applicant Government in their observations in reply of 5 May 2008.

Overall, the respondent Government considered that the application was manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, on the ground, in particular, that the applicant Government had not provided the necessary information that would make it possible to identify the presumed victims or to establish the particular circumstances of the alleged violations. Furthermore, the fact that the applicant Government had submitted inexact data or completely fabricated evidence amounted to an abuse of the right of petition.

2. The applicant Government

38. The applicant Government submitted as their main argument that the rule of exhaustion of domestic remedies did not apply to inter-State cases where the object, as in the instant case, was to determine the compatibility of an administrative practice with the Convention. They protested, in particular, against the illegal actions by the Russian authorities, which had not provided a fair and transparent expulsion procedure or a minimum of procedural guarantees when placing, without reason, the expelled individuals in detention centres where they had remained for months. In the applicant Government's opinion, the evidence submitted to the Court was sufficient to establish the existence of numerous inter-related breaches of the Convention, which had been tolerated by the Russian authorities. They also referred to reports by international organisations, particularly the report by the organisation Human Rights Watch of October 2007, concerning Russia[25]. Referring to the Court's case-law, the applicant Government alleged that the existence of an administrative practice could only be established after an examination of the merits and that at the admissibility stage a *prima facie* case ought to be considered sufficient. As a subsidiary argument the applicant Government considered that the Georgian nationals had been effectively refused access to domestic remedies (see paragraphs 13 and 22 above). While they had submitted voluminous extracts from the legislation of the Russian Federation, the Russian

[25] See Annex I.A., document 2E.

authorities had not proved that the texts in question provided effective protection mechanisms to the expelled individuals or that they were effective and accessible in theory and in practice.

Finally, the applicant Government considered that the issue of compliance with the six-month rule did not arise, on the ground that there had been an ongoing violation of the rights guaranteed by the Convention and the Protocols thereto.

B. The Court's assessment

39. As the object of the present application concerns two different complaints, the Court will examine the compatibility of each of them with Article 35 § 1 of the Convention.

1. Compatibility with Article 35 § 1 of the Convention as regards the question of the existence of an administrative practice

40. The Court reiterates that the rule of exhaustion of domestic remedies as embodied in Article 35 § 1 of the Convention applies to State applications (Article 33), in the same way as it does to "individual" applications (Article 34), when the applicant State does no more than denounce a violation or violations allegedly suffered by "individuals" whose place, as it were, is taken by the State. On the other hand and in principle, the rule does not apply where the applicant State complains of a practice as such, with the aim of preventing its continuation or recurrence, but does not ask the Court to give a decision on each of the cases put forward as proof or illustrations of that practice (see *Ireland v. the United Kingdom*, 18 January 1978, § 159, Series A no. 25; *Cyprus v. Turkey*, no. 25781/94, Commission decision of 28 June 1996, Decisions and Reports (DR) 86; and *Denmark v. Turkey* (dec), no. 34382/97, 8 June 1999). An administrative practice involves two distinct elements: a repetition of acts and official tolerance (see *France, Norway, Denmark, Sweden and the Netherlands v. Turkey*, nos. 9940-9944/82, Commission decision of 6 December 1983, § 19, DR 35).

41. The Commission moreover set out the threshold required with regard to evidence in inter-State cases (see *France, Norway, Denmark, Sweden and the Netherlands v. Turkey*, cited above, §§ 21-22):

> "However, in accordance with the Commission's case-law on admissibility, it is not sufficient that the existence of an administrative practice is merely alleged. It is also necessary, in order to exclude the application of the rule requiring the exhaustion of domestic remedies, that the existence of the alleged practice is shown by means of substantial evidence ... .
>
> The Commission finds that this condition is satisfied in the present case. It observes that the term 'substantial evidence', used in the First Greek Case, cannot be understood as meaning full proof. The question whether the existence of an

> administrative practice is established or not can only be determined after an examination of the merits. At the stage of admissibility *prima facie* evidence, while required, must also be considered as sufficient... There is *prima facie* evidence of an alleged administrative practice where the allegations concerning individual cases are sufficiently substantiated, considered as a whole and in the light of the submissions of both the applicant and the respondent Party. It is in this sense that the term 'substantial evidence' is to be understood."

42. In the instant case, the Court notes that the applicant Government has submitted a number of documents – including, in particular, statements by Georgian nationals, instructions from the Russian authorities and statistical data – in support of their allegations as to the existence of an administrative practice involving a repetition of acts and official tolerance. They also referred to reports by international organisations. For their part, the respondent Government deny the existence of an administrative practice targeted against Georgian nationals and challenged the contents of the documents submitted by the applicant Government, as well as the conclusions of the reports by international organisations. They also submitted documents – including, in particular, statements by the Russian authorities, decisions by Russian courts and statistical data – to contest the applicant Government's argument. They alleged that the applicant Government had not submitted sufficient evidence to justify an examination of the application on the merits. In addition, the application was manifestly ill-founded and abusive within the meaning of Article 35 § 3 of the Convention.

43. The Court reiterates at the outset that it is not its task, at the admissibility stage, "to carry out a preliminary examination of the merits", since the provisions of Article 35 § 3 - empowering it to declare inadmissible any application which it considers either "incompatible with the provisions of the Convention" or "manifestly ill-founded or abusive" - apply, according to their express terms, to individual applications under Article 34 only. Consequently, any examination of the merits of the application must in inter-State cases be entirely reserved for the post-admissibility stage (see *France, Norway, Denmark, Sweden and the Netherlands v. Turkey*, cited above, §§ 8-9; *Cyprus v. Turkey*, cited above; and *Denmark v. Turkey*, cited above).

44. In determining the existence of *prima facie* evidence, the Court must ascertain – in the light of the criteria already applied by the Commission and the Court in inter-State cases – whether the allegations of the applicant Government are "wholly unsubstantiated" ("*pas du tout étayées*") or are "lacking the requirements of a genuine allegation in the sense of Article 33 of the Convention" ("*feraient défaut les éléments constitutifs d'une véritable allégation au sens de l'article 33 de la Convention*") (see *France, Norway, Denmark, Sweden and the Netherlands v. Turkey*, cited above, § 12, and *Denmark v. Turkey*, cited above).

45. In the instant case, having regard to the evidence submitted by the parties, it considers that the allegations made by the applicant Government cannot be considered as being wholly unsubstantiated or that they lack the requirements of a genuine allegation for the purposes of Article 33 of the Convention. In this connection, it also takes into consideration the report of 27 January 2007 by the Monitoring Committee of the Parliamentary Assembly of the Council of Europe concerning the disputed events (see paragraph 11 above).

46. However, the examination of all the other questions concerning the existence and scope of such an administrative practice, as well as its compatibility with the provisions of the Convention, relate to the merits of the case and cannot be examined by the Court at the admissibility stage.

47. As to the issue of compliance with the six-month rule, the Court points out that in the absence of remedies, this time-limit is to be calculated from the date of the act or decision which is said not to comply with the Convention and, further, that it does not apply to a situation that is still continuing (see *Cyprus v. Turkey*, cited above). In the instant case, it notes that the events in dispute are said to have begun in Russia following the arrest on 27 September 2006 of four Russian officers in Georgia and that the application was lodged with the Court on 26 March 2007. In addition, and in so far as the applicant Government submitted additional evidence after that date, it considers that the question of the application of the six-month rule and compliance with it are so closely related to that of the existence of an administrative practice that they must be considered jointly during an examination of the merits of the case.

2. Compatibility with Article 35 § 1 of the Convention as regards the allegations of individual violations of the rights guaranteed by the Convention

48. The Court reiterates that the rule of exhaustion of domestic remedies obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system. It is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights.

Article 35 § 1 also provides for a distribution of the burden of proof. It is incumbent on the respondent Government claiming non-exhaustion to satisfy the Court that the remedies were effective and available in theory and in practice at the relevant time. Once this burden of proof has been discharged, however, it falls to the applicant – in this case to the applicant Government – to establish that the remedies or the aggregate remedies advanced by the respondent Government were in fact exhausted or were for some reason inadequate and ineffective in the particular circumstances of the case (see, *inter alia*, *Akdivar and Others v. Turkey*, 16 September 1996,

§ 68, *Reports of Judgments and Decisions,* 1996-IV, and *Denmark v. Turkey*, cited above).

49. In the instant case, the Court notes that the respondent Government alleged that the rule of exhaustion of domestic remedies was not complied with, in that the Georgian nationals whose statements were submitted to the Court had not shown that they attempted to use the remedies existing in Russian law. The applicant Government submitted that those remedies were unavailable in practice to the Georgian nationals or had proved ineffective, and that Russian officials effectively prevented them from exercising the remedies in question.

50. The Court considers that in the instant case the question of the application of the rule of exhaustion of domestic remedies and compliance with it are so closely related to that of the existence of an administrative practice that they must be considered jointly during an examination of the merits of the case.

51. It follows that the applicant Government's complaints cannot be declared inadmissible within the meaning of Article 35 §§ 1 and 4 of the Convention.

FOR THESE REASONS, THE COURT, BY A MAJORITY,

1. *Joins to the merits* the question of compliance with the six-month rule and also that of the exhaustion of domestic remedies in respect of the allegations of individual violations of the rights guaranteed by the Convention;
2. *Declares* the application admissible, without prejudging the merits of the case.

Claudia Westerdiek
Registrar

Peer Lorenzen
President

ANNEXES: LINK