



Russia's policy in 2006 of arresting, detaining and expelling large numbers of Georgian nationals violated the Convention

The case of [Georgia v. Russia \(I\)](#) (application no. 13255/07) essentially concerned the alleged existence of an administrative practice involving the arrest, detention and collective expulsion of Georgian nationals from the Russian Federation in the autumn of 2006.

In today's Grand Chamber judgment in the case, which is final¹, the European Court of Human Rights held, by a majority, that there had been:

a violation of Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens) of the European Convention on Human Rights;

a violation of Article 5 § 1 (right to liberty and security);

a violation of Article 5 § 4 (right to judicial review of detention);

a violation of Article 3 (prohibition of inhuman or degrading treatment);

violations of Article 13 (right to an effective remedy) in conjunction with Article 5 § 1 and with Article 3; and

a violation of Article 38 (obligation to furnish all necessary facilities for the effective conduct of an investigation).

The Court found **no violation of Article 8 (right to respect for private and family life), no violation of Article 1 of Protocol No. 7 (procedural safeguards relating to expulsion of aliens) and no violation of Articles 1 and 2 of Protocol No. 1 (protection of property and right to education).**

Having regard to the parties submissions, the statements by 21 witnesses it had examined during a hearing in Strasbourg, and the reports from various international organisations, the Court found that in the autumn of 2006, a coordinated policy of arresting, detaining and expelling Georgian nationals had been followed by the Russian authorities, which had amounted to an administrative practice incompatible with the Convention.

Principal facts

The case concerned the arrest, detention and expulsion from Russia of large numbers of Georgian nationals from the end of September 2006 until the end of January 2007.

According to the Georgian Government, those measures were reprisals following the arrest of four Russian officers in Tbilisi on 27 September 2006, which marked a climax in the tensions between the two countries.

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

According to the Georgian Government's submissions, during that period more than 4,600 expulsion orders were issued by the Russian authorities against Georgian nationals, of whom more than 2,300 were detained and forcibly expelled, whereas the remaining persons concerned left the country by their own means. The Georgian Government maintained that the figures represented a sharp increase in the number of expulsions of Georgian nationals, which had risen from about 80 to 100 persons per month between July and September 2006 to about 700 to 800 per month between October 2006 and January 2007.

In support of their allegation that the increase in expulsions was the consequence of a policy specifically targeting Georgian nationals, the Georgian Government submitted a number of documents, issued in early and mid-October 2006 by internal affairs and police authorities in St Petersburg and by the Russian Federal Migration Service. These documents, which referred to two circulars issued by the Internal Affairs Directorate of St Petersburg and by the Russian Ministry of the Interior in late September 2006, ordered staff of those authorities in particular to take large-scale measures to identify as many Georgian citizens as possible who were unlawfully residing in Russia, with a view to placing them in a detention centre and deporting them. The Georgian Government also submitted two letters from the Directorate of Internal Affairs of two Moscow districts sent to schools in early October 2006, asking them to identify Georgian pupils with the aim, among other things, of "ensuring public order and respect for the law, preventing terrorist acts and tensions between children living in Moscow and children of Georgian nationality".

The Russian Government contested the Georgian Government's allegations. They submitted that they had not adopted any reprisal measures against Georgian nationals, but had merely continued to apply the provisions for the prevention of illegal immigration. As regards the number of expulsions, they submitted that they had only kept annual or half-yearly statistics, stating that in 2006 about 4,000 administrative expulsion orders had been issued against Georgian nationals and about 2,800 between 1 October 2006 and 1 April 2007. As to the documents referred to by the Georgian Government, the Russian Government maintained that the instructions had been falsified. While confirming the existence of the two circulars issued by the St Petersburg Internal Affairs Directorate and by the Ministry of the Interior, the Russian Government disputed their content. However the Russian Government stated that the circulars could not be provided to the European Court of Human Rights, as they were classified "State secret". The Russian Government did not dispute that regional authorities had sent letters to schools in Moscow and elsewhere with the aim of identifying Georgian pupils, but denied that this had happened on the instructions of the Ministry of the Interior; instead the letters had been the act of over-zealous officials who had subsequently been reprimanded.

Various international governmental and non-governmental organisations (NGOs) – in particular the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE), Human Rights Watch, and the International Federation for Human Rights (FIDH) – reported, in 2007, on expulsions of Georgian nationals by Russia which had taken place in autumn of 2006. In their reports, they pointed to coordinated action between administrative and judicial authorities, referring to some of the same documents issued by the St Petersburg Internal Affairs Directorate quoted by the Georgian Government.

In the proceedings before the European Court of Human Rights, a witness hearing was held in Strasbourg from 31 January to 4 February 2011, during which 21 witnesses – nine proposed by Georgia, ten proposed by Russia and two chosen by the Court – were heard.

According to statements by Georgian witnesses, Georgian nationals had been arrested, following identity checks in the streets, on markets, at their workplaces and their homes. Several witnesses said that when they had asked why they were being arrested, they had been told that it was because they were Georgian and that there was an order from above to expel Georgian nationals. After a few hours or one or two days in police custody, they had been taken in groups by bus to courts which

had summarily imposed administrative penalties on them and given decisions ordering their administrative expulsion from Russian territory. The procedure before the courts had taken about five minutes without a real examination of the facts and without the defendants being represented by a lawyer. Both judges and police officers had discouraged them from appealing against the decisions, informing them that there was an order to expel Georgian nationals. They had then spent between two days and two weeks in detention centres for foreigners, in overcrowded cells – making it necessary to take turns sleeping and in which a bucket had served as a toilet – before being taken to various Moscow airports, from where they had been flown to Georgia.

The Russian witnesses, officials of the Federal Migration Service and the Moscow Prosecutor's Office, stated in particular that the Georgian nationals had had the possibility to appeal against the court decisions and that there had been no instruction restricting the rights of Georgian nationals. The Russian witnesses also denied that the conditions in the detention centres for foreigners had been inappropriate.

In their reports, the PACE Monitoring Committee and the international NGOs described the arrest, court procedures, detention conditions and expulsion of Georgian nationals in similar terms as the Georgian witnesses and reported on four Georgian nationals who had died in detention.

Complaints, procedure and composition of the Court

The Georgian Government alleged breaches of Article 3 (prohibition of torture, inhuman or degrading treatment), Article 5 (right to liberty and security), Article 8 (right to respect for private and family life), Article 13 (right to an effective remedy), Article 14 (prohibition of discrimination) and Article 18 (limitation on use of restrictions on rights) of the Convention, and of Articles 1 and 2 of Protocol No. 1 (protection of property and right to education) to the Convention, Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens) as well as of Article 1 of Protocol No. 7 (procedural safeguards relating to expulsion of aliens).

The application was lodged with the European Court of Human Rights on 26 March 2007 under Article 33 (Inter-State cases) of the Convention. Following a hearing on 16 April 2009, the application was declared admissible by a Chamber on 30 June 2009 and relinquished² to the Grand Chamber on 15 December 2009. From 31 January to 4 February 2011, a witness hearing was held in Strasbourg. A Grand Chamber hearing took place in public in the Human Rights Building, Strasbourg, on 13 June 2012.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Josep **Casadevall** (Andorra), *President*,
Nicolas **Bratza** (United Kingdom),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
Corneliu **Bîrsan** (Romania),
Peer **Lorenzen** (Denmark),
Elisabeth **Steiner** (Austria),
Khanlar **Hajiyev** (Azerbaijan),
Päivi **Hirvelä** (Finland),
Luis **López Guerra** (Spain),
Mirjana Lazarova **Trajkovska** ("The former Yugoslav Republic of Macedonia"),
Nona **Tsotsoria** (Georgia),

² Under Article 30 of the European Convention on Human Rights, "Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects."

Ann Power-Forde (Ireland),
Zdravka Kalaydjieva (Bulgaria),
Vincent A. de Gaetano (Malta),
André Potocki (France),
Dmitry Dedov (Russia), *Judges*,

and also Michael O'Boyle, *Deputy Registrar*.

Decision of the Court

Establishment of the facts

In order to establish the facts, the Court based itself on the parties' observations, the many documents they had submitted and on the statements of the witnesses heard in Strasbourg. It also had regard to the reports by international governmental and non-governmental organisations.

Examination of Russia's compliance with Article 38

Having regard to the Russian Government's persistent refusal to provide the Court with copies of the two circulars issued by the Internal Affairs Directorate of St Petersburg and by the Russian Ministry of the Interior at the end of September 2006 – stating that they were "State secret" – the Court considered it appropriate to address the question of whether Russia had complied with its obligation under Article 38. Under that Article, States are obliged to furnish all necessary facilities for the effective conduct of an investigation which the Court shall undertake if need be.

Given that the Russian Government had exclusive access to these documents, capable of corroborating or refuting the allegations in question, their lack of cooperation enabled the Court to draw inferences as to the well-foundedness of those allegations. The Court had already found in other cases relating to documents classified "State secret" that the Government could not rely on provisions of national law to justify their refusal to comply with the Court's request to provide evidence. Furthermore, the Russian Government had failed to give a specific explanation for the secrecy of the circulars. The Court thus found that Russia had fallen short of its obligation to furnish all necessary facilities to the Court in its task of establishing the facts of the case. There had accordingly been a violation of Article 38.

Administrative practice and exhaustion of legal remedies at national level

In order to determine whether or not there had been an administrative practice, within the meaning of its case-law – namely, a repetition of acts incompatible with the Convention and official tolerance by the State –, the Court assessed all the evidence available to it.

As regards the number of expulsions of Georgian nationals during the period in question, the Court noted that the Russian Government had maintained, in response to the detailed figures indicated by the Georgian Government, that they had only annual or half-yearly statistics. However, they had submitted statistics for a period ranging from 1 October 2006 to 1 April 2007, which did not correspond to half a calendar year; this fact thus suggested that monthly statistics had in fact been collected. Having regard to the failure to communicate monthly statistics for the years 2006 and 2007, the Court could not accept that the number indicated by the Russian Government corresponded to the exact number of Georgian nationals expelled during the period in question. There was therefore nothing to establish that the figures indicated by the Georgian Government were not credible.

Furthermore, in the light of all the material before it, the Court observed that the events in question – the issuing of the circulars and instructions, the mass arrests and expulsions of Georgian nationals, the flights with groups of Georgian nationals from Moscow to Tbilisi and the letters sent to

schools by Russian officials with the aim of identifying Georgian pupils – had all occurred at the same time, namely, at the end of September or the beginning of October 2006. The concordance in the description of those events in the reports by the international governmental and non-governmental organisations was also significant in this regard.

The Court did not see any reason to question the reliability of these reports, given the thoroughness of the investigations on which they were based and the fact that their conclusions confirmed the statements of the Georgian witnesses. Moreover, the Court considered that following its finding of a violation of Article 38, there was a strong presumption that the Georgian Government's allegations regarding the content of the circulars ordering the expulsion specifically of Georgian nationals were credible. The same applied to the authenticity of the other documents submitted by the Georgian Government and the instructions given in them by the Russian authorities.

Concerning the availability of legal remedies at national level, the Court noted that the statements of the Georgian witnesses matched each other regarding the conditions of their arrest and the very summary procedures before the courts in Russia and were concordant with the reports of the international organisations. Having regard to all the material before it, the Court considered that during the period in question there had been real obstacles for the Georgian nationals in appealing to the Russian courts, both before and after their expulsion to Georgia. The Court therefore dismissed the Russian Government's objection that the legal remedies at national level had not been exhausted.

The Court accordingly concluded that, from October 2006, a coordinated policy of arresting, detaining and expelling Georgian nationals, amounting to an administrative practice, had been implemented in Russia.

[Article 4 of Protocol No. 4](#)

The Court pointed out that Article 4 of Protocol No. 4, prohibiting the collective expulsion of aliens, was applicable, irrespective of the question of whether the Georgian nationals in this case had been lawfully resident or not, given that that Article did not only refer to those lawfully residing within the territory of a State.

As regards the question of whether the expulsion measures had been taken following, and on the basis of, a reasonable and objective examination of the particular situation of each of the Georgian nationals, the Court took note of the concordant description given by the Georgian witnesses and international governmental and non-governmental organisations of the summary procedures conducted before the Russian courts. It observed in particular that, according to the PACE Monitoring Committee, the expulsions had followed a recurrent pattern all over the country and that in their reports the international organisations had referred to coordination between the administrative and judicial authorities.

During the period in question the Russian courts had made thousands of expulsion orders expelling Georgian nationals. Even though, formally speaking, a court decision had been made in respect of each Georgian national, the Court considered that the conduct of the expulsion procedures during that period, after the circulars and instructions had been issued, and in view of the high number of Georgian nationals expelled – from October 2006 – had made it impossible to carry out a reasonable and objective examination of the particular case of each individual.

While every State had the right to establish their own immigration policy, it had to be underlined that problems with managing migration flows could not justify practices incompatible with the State's obligations under the Convention.

The Court concluded that the expulsions of Georgian nationals during the period in question amounted to an administrative practice in breach of Article 4 of Protocol No. 4.

Article 5 §§ 1 and 4

Having regard to its finding that there had been a coordinated policy of arresting, detaining and expelling Georgian nationals, and referring in particular to the concordant descriptions by the Georgian witnesses and international organisations of mass arrests preceding the expulsions, the Court considered that those arrests had been arbitrary. The arrests and detention of Georgian nationals in Russia during the period in question had therefore amounted to an administrative practice in breach of Article 5 § 1.

Given its finding that no effective and accessible remedies had been available to the Georgian nationals against their arrest, detention and expulsion orders during the period in question, the Court considered that there had also been a breach of Article 5 § 4.

Article 3

As regards the detention conditions in which the Georgian nationals had been kept before their expulsion from Russia, the Court noted that, while some Georgian witnesses had made contradictory statements in particular regarding the size of the cells, the witnesses' description of the police detention and the detention centres for foreigners were generally consistent and corresponded to those made by the international organisations. All those reports had referred, in particular, to overcrowded cells, lack of food and water and lack of hygiene. Given the large number of Georgian nationals detained with a view to their detention during a short period of time, the Court found those reports more credible than those of the Russian officials who, in their witness statements, had described very good conditions of detention. Furthermore the Court reiterated that the inadequacy of the conditions of detention constituted a recurring problem in Russia which resulted from a dysfunctioning of the Russian prison system, as it had already noted in a large number of its judgments; the Court therefore did not see any reason to depart from that conclusion in the present case.

Having regard to all these factors, the Court concluded that the detention conditions had amounted to an administrative practice in breach of Article 3.

Other Articles

Furthermore, the Court found violations of Article 13 in conjunction with Article 5 § 1 and with Article 3, holding that the Georgian nationals concerned had had no effective and accessible remedies at their disposal in respect of either their arrests, detentions and expulsion orders, or of their detention conditions.

The Court found no violation of Article 1 of Protocol No. 7 (procedural safeguards relating to expulsion of aliens), which expressly refers to "aliens lawfully resident in the territory of a State". The Court considered that it had not been established that during the period in question there had also been arrests and expulsions of Georgian nationals lawfully resident in the territory of the Russia. It therefore considered that the complaint raised by the Georgian Government was not sufficiently substantiated and that the evidence was therefore insufficient to conclude that there had been a violation.

The Court also found no violation of Article 8 (right to respect for private and family life) and Articles 1 and 2 of Protocol No. 1 (protection of property and right to education). It considered that the complaints raised by the Georgian Government under these Articles were not sufficiently substantiated and that the evidence was therefore insufficient to conclude that there had been a violation.

Finally, the Court did not consider it necessary to examine separately the complaints raised: under Article 13 of the Convention taken in conjunction with Article 4 of Protocol No. 4 and Article 5 § 4; under Article 14 of the Convention taken in conjunction with Article 4 of Protocol No. 4,

Article 5 §§ 1 and 4 and Article 3; and, under Article 18 of the Convention taken in conjunction with Article 4 of Protocol No. 4, Article 5 §§ 1 and 4 and Article 3 of the Convention.

[Just satisfaction \(Article 41\)](#)

The Court held that the question of the application of Article 41 of the Convention was not ready for decision and reserved it. It invited the parties to submit, within twelve months from the judgment, their observations on the matter and to notify the Court of any agreement that they may reach.

Separate opinions

Judge López Guerra, joined by Judges Bratza and Kalaydjieva, expressed a partly dissenting opinion; Judge Tsotsoria also expressed a partly dissenting opinion; Judge Dedov expressed a dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

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