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

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Multiple violations in case brought by Georgia against Russia concerning human-rights toll caused by hardening of boundary lines after 2008 conflict

In today's **Chamber** judgment[1] in the case of Georgia v. Russia (IV) (application no. 39611/18) the European Court of Human Rights held, unanimously, that there had been:

violations of Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment), 5 § 1 (right to liberty and security) and 8 (right to respect for private and family life), Articles 1 (protection of property) and 2 (right to education) of Protocol No. 1 and Article 2 of Protocol No. 4 (freedom of movement) of the European Convention on Human Rights.

The armed conflict between Georgia and Russia in August 2008 led to a process, which started in 2009 and is known as "borderisation", blocking people from crossing the administrative boundary lines freely between Georgian-controlled territory and the Russian-backed breakaway Georgian regions of Abkhazia and South Ossetia.

The situation has been referred to as "one of the most painful legacies of the August 2008 Georgia-Russia conflict"[2].

The Georgian Government alleged in particular that people had been killed while trying to enter or exit Abkhazia or South Ossetia, while others had been arrested, detained and/or ill-treated for "illegally crossing" the administrative boundary lines. People had been deprived of land, which they used for farming, families had been separated and children had been forced to choose between learning in Russian or making long and perilous journeys to Georgian-controlled territory to attend school.

The Court found that it had sufficient evidence, in particular lists of victims, testimonies, media reports and international material, to conclude beyond reasonable doubt that the incidents alleged were not isolated and were sufficiently numerous and interconnected to amount to a pattern or system of violations. Moreover, the apparent lack of an effective investigation into the incidents and the general application of the measures to all people concerned proved that such practices had been officially tolerated by the Russian authorities.

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There have been three other applications lodged by Georgia against Russia with the Court. There are also around 200 individual applications still pending before the Court against Georgia, against Russia or against both States concerning the armed conflict in 2008 or the process of "borderisation". For further information, see the Questions and Answers on Inter-State Applications and the table of inter-State Applications.

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

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

2 See Amnesty International report "Behind barbed wire: Human rights toll of 'borderisation' in Georgia", 2018.

Principal facts

In August 2008 Russian armed forces invaded Abkhazia and South Ossetia, two regions of Georgia. These two regions are now recognised as independent States by Russia and are thus outside the *de facto* control of the Georgian Government (see *Georgia v. Russia (II),* application no. 38263/08).

Russia established military bases in each of the two regions and stationed Russian soldiers there. It also set up a joint military command between Russia and Abkhazia and incorporated the South Ossetian "military" into the Russian armed forces. Russian border guards (under the Federal Security Service of the Russian Federation) patrol the administrative boundary line ("ABL") between the two regions and the territory controlled by the Georgian Government.

Since 2009, physical barriers and other measures have gradually been established to block people from crossing the administrative boundary line freely. This process – often called "borderisation" – includes physical infrastructure, such as fencing, barbed wire, guard towers, signs informing people that they are approaching the "borders" and advanced surveillance equipment; surveillance and patrolling by either Russian border guards or security guards from the breakaway regions, who detain people if they are in violation of the rules; and a crossing regime requiring commuters to have specific documents and to only use "official" crossing points.

People frequently bypass the controlled crossing points as they do not have the required documents. Others simply find travelling to the crossing points too inconvenient. Also, only parts of the administrative boundary line have been marked, so it is not always clear where it lies.

Georgia and the overwhelming majority of the international community consider the process of "borderisation" illegal under international law. The Georgian authorities refer to the administrative boundary line as the occupation line. In contrast, the Russian and the *de facto* Abkhaz and South Ossetian authorities treat the administrative boundary line as an international border on the grounds that Russia has recognised the two breakaway entities as independent States.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 22 August 2018.

The Georgian Government alleged that ethnic Georgians attempting to cross, or living next to, the administrative boundary lines that now separate Georgian-controlled territory from Abkhazia and South Ossetia were systematically harassed, unlawfully arrested and detained, assaulted, tortured and even murdered by the Russian authorities. It also alleged restrictions on access to homes, land and education in Georgian and that Russia had failed to conduct Convention-compliant investigations into all of its allegations.

The Georgian Government relied on Articles 2 (right to life), 3 (prohibition of torture and inhuman or degrading treatment), 5 (right to liberty and security), 8 (right to respect for private and family life), 13 (right to an effective remedy), 14 (prohibition of discrimination), 18 (limitation on use of restrictions on rights) and 38 (obligation to furnish necessary facilities for the examination of the case) of the Convention, Articles 1 (protection of property) and 2 (right to education) of Protocol No. 1 and Article 2 (freedom of movement) of Protocol No. 4.

The Court's procedure for processing of applications against Russia can be found here.

Judgment was given by a Chamber of seven judges, composed as follows:

Arnfinn **Bårdsen** (Norway), *President*,
Jovan **Ilievski** (North Macedonia),
Egidijus **Kūris** (Lithuania),
Pauliine **Koskelo** (Finland),
Lado **Chanturia** (Georgia),

Lorraine **Schembri Orland** (Malta),
Davor **Derenčinović** (Croatia),

and also Hasan **Bakırcı**, *Section Registrar.*

Decision of the Court

Firstly, the Court established that it had jurisdiction to deal with the Georgian Government's complaints between 2009, when the "borderisation" process started, and 16 September 2022, the date on which Russia ceased to be a contracting Party to the European Convention.

It went on to note that those complaints came under the concept of an "administrative practice" of human-rights violations, as outlined in *Georgia v. Russia (I)*. This concept means the "repetition of acts incompatible with the Convention" and an element of "official tolerance" by the State.

The Court carefully analysed the lists of the alleged victims and all other evidence – including testimonies, forensic reports, death certificates, as well as media reports and/or material originating from international organisations and independent international human-rights protection associations – submitted by the applicant Government.

On that basis, the Court found that the incidents were not isolated and were sufficiently numerous and interconnected to amount to a pattern or system ("administrative practice"). Moreover, taking into account the apparent lack of an effective investigation into the incidents and the general application of the measures to all people concerned, the Court considered that the "official tolerance" element had also been established beyond reasonable doubt.

The Russian Government – which had failed to submit written observations in the case – had not argued, let alone substantiated, that the incidents involving killings, ill-treatment, large-scale arrests and detention had not taken place. Nor had they disputed the allegations with regard to restrictions on freedom of movement, leading to lack of access to homes, land and cemeteries and to education in Georgian. Moreover, the allegations were confirmed in the international material submitted.

The Court found in particular, as concerned Articles 2 and 3, that at least 70 incidents from the lists of 109 alleged victims submitted by the applicant Government fell within the scope of the case. That included the deaths of seven ethnic Georgian residents of Abkhazia while trying to cross the administrative boundary line by alternative routes to collect their pension or medication from Georgian-controlled territory. Instances of use of lethal force, incidental loss of life, ill-treatment and inhuman and degrading conditions of detention were also confirmed in reports by the Council of Europe and the United Nations High Commissioner for Human Rights.

As concerned Article 5, the Court noted that the list submitted to it of more than 2,800 alleged cases of arrest and detention for "illegally crossing" the administrative boundary line was supported by the international material. It was a direct consequence of the official position of the Russian Federation and the breakaway regions that the boundary line was an international border. It had already found in a previous case before it that the Abkhaz legal system had never been considered compatible with Convention principles, meaning that the *de facto* Abkhaz authorities could not order "lawful arrest or detention". That conclusion continued to be valid and there was no reason to decide otherwise in respect of South Ossetia.

For those reasons, the Court found that the *de facto* authorities of Abkhazia and South Ossetia could also not lawfully order restrictions on the rights to freedom of movement under Article 2 of Protocol No. 4, to respect for the home under Article 8 and to protection of property under Article 1 of Protocol No. 1.

It noted the examples of restrictions on access to homes, land and cemeteries cited in Amnesty International's 2018 report "Behind barbed wire: Human rights toll of 'borderisation' in Georgia".

They included villagers from South Ossetia, the poorest part of the country, whose main source of income is livestock and farming, losing access to their pasturelands without warning or compensation; families ending up on different sides of the boundary lines, with the only possibility to see one another via extended or covert journeys, compounded by difficulties in obtaining official documents required to make crossings which, even when obtained, were not always accepted; and, village cemeteries behind barbed wire becoming inaccessible to visit.

Lastly, the Court noted that, according to certain international reports, the Russian language was gradually replacing instruction in Georgian in schools in Abkhazia and South Ossetia. There were cases of children crossing at uncontrolled crossing points to attend school in Georgian-controlled territory, resulting in their regularly being held or detained by Russian border guards. The journeys were sometimes long and perilous. Such restrictions on access to education in Georgian, the official language of Georgia, had no legitimate aim and curtailed the right to education under Article 2 of Protocol No. 1 to such an extent as to impair its very essence.

Overall, the Court considered that it had sufficient evidence in its possession to conclude beyond reasonable doubt that there had been an "administrative practice" contrary to Articles 2, 3, 5 § 1 and 8, and Articles 1 and 2 of Protocol No. 1 and Article 2 of Protocol No. 4.

Other articles

The Court held, unanimously, that there was no need to examine separately the applicant Government's complaints under Articles 13, 14, 18 and 38 of the Convention.

Just satisfaction (Article 41)

The Court held, unanimously, that the question of the application of Article 41 was not ready for decision.

Other cases

Since 2007 there have been three other Georgia v. Russia inter-State applications:

- *Georgia v. Russia* (I) (application no. 13255/07) concerning the arrest, detention and expulsion from the Russian Federation of Georgian nationals in the autumn of 2006. The Court's principal judgment was handed down in 2014 and it decided on the application of Article 41 (just satisfaction) of the Convention in a judgment in 2019.
- *Georgia v. Russia* (II) (application no. 38263/08) concerning the 2008 armed conflict between Georgia and the Russian Federation and its aftermath. The Court's principal judgment was handed down in 2021 and it decided on the application of Article 41 (just satisfaction) of the Convention in a judgment in 2023.
- *Georgia v. Russia* (III) (application no. 61186/09) concerning the detention of four Georgian minors by the *de facto* authorities of South Ossetia. The Court decided to strike the application out of its list of cases (Article 37 § 1 (a) of the Convention) in 2010.

The judgment is available only in English.

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

We are happy to receive journalists' enquiries via either email or telephone.

Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)

Denis Lambert (tel.: + 33 3 90 21 41 09)
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.