



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

Information Note on the Court's case-law 176

July 2014

Georgia v. Russia (I) [GC] - 13255/07

Judgment 3.7.2014 [GC]

Article 4 of Protocol No. 4

Prohibition of collective expulsion of aliens

Collective expulsion of Georgian nationals by Russian authorities from October 2006 to January 2007: *administrative practice in breach*

Article 33

Inter-State application

Collective expulsion of Georgian nationals by Russian authorities from October 2006 to January 2007

Article 35

Article 35-1

Exhaustion of domestic remedies

Inapplicability of obligation to exhaust owing to administrative practice of arresting, detaining and expelling Georgian nationals: *preliminary objection dismissed*

Facts – The case concerned the arrest, detention and expulsion from Russia of large numbers of Georgian nationals from the end of September 2006 to the end of January 2007. The facts of the case were disputed.

According to the Georgian Government, 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, while the remainder left by their own means. This represented a sharp increase in the number of expulsions of Georgian nationals per month.

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 that had been issued in early and mid-October 2006 by the Russian authorities. These documents, which referred to two administrative circulars issued in late September 2006, purportedly ordered staff to take large-scale measures to identify Georgian citizens unlawfully residing in Russia, with a view to their detention and deportation. The Georgian Government also submitted two letters from Russian regional authorities that had been sent to schools in early October 2006 asking for Georgian pupils to be identified.

The Russian Government denied these allegations. They said they had simply been enforcing immigration policy and had not taken reprisal measures. As regards the number of expulsions, they only kept annual or half-yearly statistics that showed about 4,000 administrative expulsion orders against Georgian nationals in 2006 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, they disputed their content while at the same time refusing – on the grounds that they were classified “State secret” – to disclose them to the European Court. They did not dispute that letters had been sent to schools with the aim of identifying Georgian pupils, but said this had been the act of over-zealous officials who had subsequently been reprimanded.

Various international governmental and non-governmental organisations, including the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE), reported in 2007 on the expulsions of Georgian nationals, pointing to coordinated action between the Russian administrative and judicial authorities.

Law – Article 38: The Russian Government had refused to provide the Court with copies of two circulars issued by the authorities at the end of September 2006 on the grounds that they were classified materials whose disclosure was forbidden under Russian law. The Court had already found in a series of previous cases relating to documents classified “State secret” that respondent Governments could not rely on provisions of national law to justify a refusal to comply with a Court request to provide evidence.* In any event, the Russian Government had failed to give a specific explanation for the secrecy of the circulars and, even assuming legitimate security interests for not disclosing the circulars existed, possibilities existed under Rule 33 § 2 of the Rules of Court to limit public access to disclosed documents, for example through assurances of confidentiality. The Court therefore found that Russia had fallen short of its obligation to furnish all necessary facilities to assist the Court in its task of establishing the facts of the case.

Conclusion: failure to comply with Article 38 (sixteen votes to one).

Article 35 § 1 (exhaustion of domestic remedies): From October 2006 a coordinated policy of arresting, detaining and expelling Georgian nationals had been put in place in the Russian Federation. That policy amounted to an administrative practice meaning, in line with the Court’s settled case-law, that the rule requiring exhaustion of domestic remedies did not apply.

In so finding, the Court noted that there was nothing to undermine the credibility of the figures indicated by the Georgian Government: 4,600 expulsion orders against Georgian nationals, of whom approximately 2,380 were detained and forcibly expelled. The events in question – the issuing of circulars and instructions, mass arrests and expulsions of Georgian nationals, flights with groups of Georgian nationals from Moscow to Tbilisi and letters sent to schools by Russian officials with the aim of identifying Georgian pupils – had all occurred during the same period in late September/early October 2006.

The concordance in the description of those events in the reports of international governmental and non-governmental organisations was also significant. Moreover, in view of the Court’s 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.

As regards the effectiveness and accessibility of the domestic remedies, the material before the Court indicated there had been real obstacles in the way of Georgian nationals seeking to use the remedies that existed, both in the Russian courts and following their expulsion to Georgia. They had been brought before the courts in groups. Some had not

been allowed into the courtroom, while those who were complained that their interviews with the judge had lasted an average of five minutes with no proper examination of the facts. They had subsequently been ordered to sign court decisions without being able to read the contents or obtain a copy. They did not have an interpreter or a lawyer and, as a general rule, were discouraged from appealing by both the judges and the police officers.

Conclusion: existence of administrative practice (sixteen votes to one); preliminary objection dismissed (sixteen votes to one).

Article 4 of Protocol No. 4: Georgia alleged that its nationals had been the subject of a collective expulsion from the territory of the Russian Federation. The Court reiterated that for the purposes of Article 4 of Protocol No. 4 collective expulsion was to be understood as any measure compelling aliens, as a group, to leave a country, except where such a measure was taken following, and on the basis of, a reasonable and objective examination of the particular case of each individual member of the group.** Unlike the position under Article 1 of Protocol No. 7, Article 4 of Protocol No 4 was applicable even if those expelled were not lawfully resident on the territory concerned.

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 the number of Georgian nationals expelled from October 2006 onwards 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 its own immigration policy, problems with managing migration flows could not justify practices incompatible with the State's obligations under the Convention.

The expulsions of Georgian nationals during the period in question had not been carried out following, and on the basis of, a reasonable and objective examination of the particular case of each individual. This amounted to an administrative practice in breach of Article 4 of Protocol No. 4.

Conclusion: administrative practice in breach of Article 4 of Protocol No. 4 (sixteen votes to one).

The Grand Chamber also found, by sixteen votes to one, that the arrests and detention of Georgian nationals in Russia during the period in question were part of a coordinated policy of arresting, detaining and expelling Georgian nationals and thus arbitrary. As such they amounted to an administrative practice in breach of Article 5 § 1 of the Convention. By the same majority, it found that the absence of effective and accessible remedies for Georgian nationals against the arrests, detentions and expulsion orders had violated Article 5 § 4, while the conditions of detention in which Georgian nationals were held (overcrowding, inadequate sanitary and health conditions and lack of privacy), amounted to an administrative practice in breach of Article 3. The Court also found violations of Article 13 in conjunction with Article 5 § 1 (thirteen votes to four) and in conjunction with Article 3 (sixteen votes to one).

The Court found (by sixteen votes to one) no violation of Article 1 of Protocol No. 7 (procedural safeguards relating to expulsion of aliens), since that provision expressly referred to “aliens lawfully resident in the territory of a State” and 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 Russian Federation. Lastly, it found no violation of Article 8 and Articles 1 and 2 of Protocol No. 1 (unanimously).

* *Davydov and Others v. Ukraine*, 17674/02 and 39081/02, 1 July 2010; *Nolan and K. v. Russia*, 2512/04, 12 February 2009, [Information Note 116](#); and *Janowiec and Others v. Russia* [GC], 55508/07 and 29520/09, [Information Note 167](#).

** See *Čonka v. Belgium*, 51564/99, 5 February 2002, [Information Note 39](#); see also *Sultani v. France*, 45223/05, 20 September 2007, [Information Note 100](#); and *Hirsi Jamaa and Others v. Italy* [GC], 27765/09, 23 February 2012, [Information Note 149](#).

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