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

Information Note on the Court's case-law 225

January 2019

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

Judgment 31.1.2019 [GC]

Article 33

Inter-State application

Quantification and identification of victims eligible for compensation in respect of non-pecuniary damage in an inter-State case

Article 41

Just satisfaction

Quantification and identification of victims eligible for compensation in respect of non-pecuniary damage in an inter-State case

Facts – In the principal judgment of 3 July 2014 (see Information Note 176), the Court held that in the autumn of 2006 a "coordinated policy of arresting, detaining and expelling Georgian nationals" had been put in place in the Russian Federation amounting to an "administrative practice" constituting a collective expulsion of aliens, contrary to Article 4 of Protocol No. 4. The Court also found that the practice had infringed Article 5 §§ 1 and 4, Article 3 and Article 13 of the Convention, owing in particular to the arbitrary nature and conditions of detention of the persons arrested.

Law – Article 41

1. *Applicability* – The *Cyprus v. Turkey* judgment had set out three criteria for establishing whether just satisfaction could be sought in an inter-State case:

(i) the type of complaint made by the applicant Government, which had to concern the violation of basic human rights of their nationals (or other victims);

(ii) whether the victims could be identified;

(iii) the main purpose of bringing the proceedings, which must not seek to compensate the State for a violation of its rights but for the benefit of individual victims.

Those three criteria were satisfied in the present case.

Conclusion: Article 41 applicable (sixteen votes to one).

2. *Application*

(a) *Determination of a "sufficiently precise and objectively identifiable" group of people*

(i) *Role of the High Parties and the Court* – In stating in paragraph 135 of the principal judgment that there was nothing enabling it to establish that the alleged number of victims was not credible and that it "therefore assume[d]" that more than 4,600 expulsion orders had been issued against Georgian nationals, of whom approximately 2,380 had been detained and forcibly expelled, the Court had merely taken that numerical framework as a starting point in determining whether there had been an administrative practice in the context of the examination of the case in the principal judgment – which was very different from establishing the identity of the victims for the purposes of Article 41.

Unlike the case of *Cyprus v. Turkey*, which had concerned multiple violations of the Convention following the military operations carried out by Turkey in northern Cyprus during the summer of 1974 and which had not been based on individual decisions, in the present case the administrative practice in question had been based on individual administrative decisions expelling Georgian nationals from the Russian Federation during the autumn of 2006. Accordingly, the parties had to be in a position to identify the persons concerned and to furnish the Court with the relevant information. In that connection the High Contracting Parties' duty to cooperate set forth in Article 38 of the Convention applied to both parties: notwithstanding the difficulties associated with the passage of time and gathering a substantial quantity of data, the applicant Government had a duty to substantiate their claims, and the respondent Government to produce all relevant information and documents in their possession.

Following repeated requests by the Court, the applicant Government had submitted a list of 1,795 individual victims, together with annexes, and the respondent Government had sent the Court their comments, also together with annexes. The Court had carried out a preliminary examination of that list, even though the respondent Government had not submitted all the relevant information and documents (in particular the expulsion orders and court decisions). However, the Court did not have the capacity, nor was it appropriate to its function as an international court, to adjudicate on large numbers of cases which required the finding of specific facts or the calculation of monetary compensation (both of which should, as a matter of principle and effective practice, be the domain of domestic jurisdictions). That was particularly true in the context of an inter-State case, which was inherently distinguishable from a case containing a group of several individual applications in which the circumstances specific to each application were set forth in the judgment.

(ii) *Method* – Having regard to the numerical framework on which the Court had relied in its principal judgment, to the fact that the violations found concerned individual victims and were based on events which had occurred on the territory of the respondent Government, the Court proceeded on the assumption that the people named in the applicant Government's list could be considered victims of the violations found and that the burden of proof was on the respondent Government to prove the contrary.

In the present case the information provided by the respondent Government justified removing 290 persons from the list for one or other of the following reasons: they appeared more than once on that list; they had lodged individual applications before the Court; they had acquired Russian nationality or had from the outset possessed a nationality other than Georgian nationality; expulsion orders had been issued against them either before or after the period in question; they had successfully used available remedies; it had not been possible to identify them or the applicant Government had not furnished sufficiently substantiated complaints in their regard.

Accordingly, there was a "sufficiently precise and objectively identifiable" group of at least 1,500 Georgian nationals who had been victims of a collective expulsion of aliens, a certain number of whom had also been unlawfully deprived of their liberty and had suffered inhuman and degrading conditions of detention.

(b) *Non-pecuniary damage*

Reiterating that there was no express provision of the Convention for awards of non-pecuniary damage, the Court referred to the principles set out in a number of judgments concerning large-scale violations: in assessing whether compensation should be awarded under that head, it had regard not only to the position of the applicant but also the overall context in which the breach had occurred. Its non-pecuniary awards were determined so as to reflect in the broadest of terms the severity of the damage suffered.

Despite the large number of imponderable factors – due, among other things, to the passage of time – that came into play here, there was no doubt that the victims had suffered trauma and experienced feelings of distress, anxiety and humiliation during the period in which the administrative practice in question had been implemented. The findings of violations could not suffice here to provide adequate compensation.

With regard to calculating the level of just satisfaction to be awarded, the Court had a discretion but had always declined to make any awards of punitive or exemplary damages even in respect of claims made by individual victims of an administrative practice. Ruling on an equitable basis, it deemed it reasonable to award the amounts set out below.

With regard to Article 46 of the Convention, interpreted in the light of Article 1, it fell to the applicant Government to set up an effective mechanism for distributing the sums in question to the individual victims while having regard to the aforementioned indications and exclusions. This mechanism must be put in place under the supervision of the Committee of Ministers and in accordance with any practical arrangements determined by it.

Conclusion : EUR 10,000,000 for non-pecuniary damage (sixteen votes to one) to be paid to the applicant Government and redistributed as follows to the victims (a group of at least 1,500 Georgian nationals) within eighteen months (or any other time-limit considered appropriate by the Committee of Ministers):

(i) EUR 2,000 to each of the victims of a violation of Article 4 of Protocol No. 4 alone;

(ii) between 10,000 and EUR 15 000 to those of them who had also been victims of a violation of Article 5 § 1 and Article 3 of the Convention, taking into account the length of their respective periods of detention.

(See also *Cyprus v. Turkey* (just satisfaction) [GC], 25781/94, 12 May 2014, Information Note 174, and the summaries of the judgments in *Chiragov and Others v. Armenia* (just satisfaction) [GC], 13216/05, and *Sargsyan v. Azerbaijan* (just satisfaction) [GC], 40167/06, 12 December 2017, Information Note 213)
