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Inter-state Application at the EctHR as a Method to Benefit International Disputes

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Abstract

According to the European Convention for the Protection of Human Rights and Fundamental Freedoms, every contracting state has the power to initiate inter-state applications against other states. The use of this procedure is rare due to political and diplomatic reasons; states primarily attempt to resolve disputes through diplomatic means. Despite this, the European Court of Human Rights (ECtHR) has extensive experience, and its decisions and judgments in inter-state conflicts have contributed to positive changes for the disputing parties.

The ECtHR consistently aligns with the main goals of the Council of Europe—rule of law, democracy, and human rights—and contributes to the improvement of relations between conflicting parties. This experience holds crucial importance for situations in conflict areas, and the court's case law benefits the relations between the conflicting parties.

Inter-state procedures can have a positive impact on the overall situation, and the outcomes can be significant for both parties involved in the conflict. In some conflicts, a legal clarification of facts and recommendations is necessary to initiate further actions and spur negotiations regarding these actions.

Therefore, it is evident that there is a clear need for methods within the legal framework and legal procedures to commence the process of improving the situation and pursuing the primary goal of the Council of Europe: achieving peace on the European continent..

Keywords: Armed conflicts, European Convention, European Court, human rights.

Introduction

Under Article 33 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) "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".[1]

A state is eligible to bring other states to the European Court of Human Rights (ECtHR) not only in case of violation against it or against its nationals but also about the nationals of other states, including even the respondent state.[2] Good example for such kind of situation is Case *Ireland vs. United Kingdom*.[3] In the Judgment the ECtHR said that "the Convention allows contracting states to require the observance of these [Conventional] obligations without having to justify an interest deriving, for example, from the fact that a measure they complain of has prejudiced one of their nationals."[4]

Procedures for the inter-state applications are somewhat different to individual applications, e.g. obligation to exhaust all domestic remedies is a requirement for individuals under Article 35 but not for states, inter-state application can be admissible without this requirement.[5] In the first inter-state application of Georgia against Russia (*Deportation Case*)[6] the Russian Government was arguing of not exhausting all domestic remedies by the victims of the claimed violations,[7] but because of the different rule for the inter-state applications the ECtHR considered the application admissible on 30 June 2009.[8]

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[1] ECHR, Article 33 – Inter-State cases.

[2] D. Gomien, D. Harris and L. Zwaak, "Law and Practice of the European Convention on Human Rights and the European Social Charter", p.39.

[3] Case No.78/1 Ireland vs. United Kingdom (18.01.78).

[4] Case No.78/1 Ireland vs. United Kingdom, Judgment of 18 January 1978, 25 Publ. Eur. Court H.R. 1, at 91 (1978).

[5] T. Buergental, "International Human Rights", p.110.

[6] Case Georgia vs. Russia, Application no. 13255/07, lodged in 26 March 2007, considered admissible on 30 June 2008; The Case will be discussed in details in Paragraph 2.a of Chapter III.

[7] Deportation Case Admissibility Decision, paras.15 and 37.

[8] Deportation Case Admissibility Decision No. 13255/07; In its reasoning in paras.39-51 the Court bases its decision on its administrative 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 (decision), no. 34382/97, 8 June 1999; France, Norway, Denmark, Sweden and the Netherlands v. Turkey, No.9940-9944/82, Commission decision of 6 December 1983, §19, DR 35).

For diplomatic reasons, states are often trying not to bring other states to the ECtHR in the inter-state dispute, but however, in cases like *Ireland vs. United Kingdom* and *Cyprus vs. Turkey*[9] there were political reasons for Ireland and Cyprus to have public hearings and public decisions.[10]

Inter-state disputes were influenced by the changes made in the ECHR. The Convention at the beginning established two monitoring institutions: the European Commission and the ECtHR.[11] However, in 1998 after entry into force of Protocol 11 the European Commission was abolished[12] and left the ECtHR as the full-time sole body of the ECHR.[13] After the changes, the system became fully judicial without the requirement to facilitate negotiations before the legal proceedings.[14]

The European Commission had the power to examine the admissibility of applications and was required to try to negotiate the settlement of a dispute with a friendly agreement.[15] It was first instance for individual and inter-state complaints and only after the first filter it was usually decided by the European Commission which further actions to take. It was eligible to refer the case to the ECtHR or to try by means of negotiations or investigation to reach a friendly settlement. It was also possible for the European Commission to make the decision and refer the case with investigated or agreed facts to the Committee of Ministers for further consideration.[16]

The Committee of Ministers is the main decision-making body of the organization and it has the power to discuss the issue of execution of the ECtHR judgments in case of non-compliance with them.[17] In the next paragraph, it will give examples of when the Committee of Ministers was also involved in cases with the power to discuss reports of fact-finding commissions and the decision of the European Commission.

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[9] Case No. 25781/94 Cyprus vs. Turkey, Judgment of 10 may 2001.
[10] R.K.M. Smith, p.140.
[11] A. Drzemczewski, "The European Human Rights Convention: Protocol No.11 – Entry into Force and First Year of Application", p.224.
[12] Protocol No. 11, ETS No. 155.
[13] A. Drzemczewski, p.224; The changes in the Convention was also introduced by the Protocol 14 and made it easier for the Court to examine admissibility of the application by single judge and introduced some other important things that will contribute the effectiveness of the Court, which was harmed by its workload (see V. Mantouvalou and P. Voyatzis, p.4).
[14] V. Mantouvalou and P. Voyatzis, p.2.
[15] V. Mantouvalou and P. Voyatzis, p.2.
[16] V. Mantouvalou and P. Voyatzis, p.4.
[17] H.J. Steiner, P. Alston and R. Goodman, p.947.

History of Inter-state Applications

While more than a hundred thousand individuals filed complaints in the ECtHR,[18] it has received only 21 inter-government applications (about 10 different situations) and only 6 of these cases have resulted in verdicts.

The first applications of the ECHR system were by Greece, complaining twice (in 1956 and 1957) against the United Kingdom, about its conduct in Cyprus (declaration of a state of exception).[19] The European Commission established the fact-finding sub-commission that carried out an investigation and submitted a report to the Committee of Ministers in 1958 but meanwhile, the parties concluded the Zurich and London Agreements and they decided to stop the procedures.[20] So the first application in the history of ECHR ended with an agreement between parties without significant involvement of the system of the Council of Europe.

A different result was reached in the Case *Austria vs. Italy*,[21] where Austria was complaining about the actions that took place during the murder trial against 6 German-speaking people in South Tyrol.[22] Austria was arguing against Italy about the violation of the principles of fair trial but the European Commission's opinion was that there was no violation (therefore no need to refer the case to the ECtHR) and the Committee of Ministers endorsed the same opinion.[23]

In 1967 Denmark, the Netherlands, Norway, and Sweden twice filed a complaint[24] against Greece.[25] The issue at stake was multiple infringements of human rights during the coupe carried out by military officials.[26] The European Commission established an international fact-finding sub-commission[27] to measure the involvement of the Government in the facts of torture and to examine the necessity of the acts of Government during the "emergency" and whether or not these acts were "strictly required by the exigencies of the situation".[28] The Case was also the illustration for the use of Article 58.2 when despite withdrawing from the Council of Europe and

[18] M. Haas, "International Human Rights", p.276; H.J. Steiner, P. Alston and R. Goodman, p.964.
[19] H.J. Steiner, P. Alston and R. Goodman, p.947.
[20] A.H. Robertson and J.G. Merrills, "Human Rights in Europe: A Study of the European Convention of Human Rights", p.275.
[21] Case No.788/60 Austria vs. Italy, Decision of 11.1.61, Yearbook 4 p.116 (140).
[22] D. Gomien, D. Harris and L. Zwaak, p.40.
[23] D. Gomien, D. Harris and L. Zwaak, p.40.
[24] Denmark and others vs. Greece (Application No. 4448/70), Report of the Commission adopted on 4 October 1976.
[25] R.K.M. Smith, p.140.
[26] D. Gomien, D. Harris and L. Zwaak, p.41.
[27] A.H. Robertson and J.G. Merrills, p.277.
[28] A.H. Robertson and J.G. Merrills, p.277.

denouncing the ECHR by the Greek Government, the sub-commission did not stop the investigations and in its report[29] said that there were facts of torture and violation of other rights.[30] The European Commission based on the findings of the sub-commission also stated that there was no public emergency and the Greek derogations were illegal.[31]

In 1971 Ireland lodged application against the United Kingdom, which led to the first-ever inter-state ruling in 1978.[32] In the judgment, the ECtHR found the respondent state guilty of infringing the rights of prisoners suspected of being members of the Irish Republican Army.[33] After the investigations held by the European Commission (hearing 118 witnesses in total and investigating facts of the alleged violation of human rights) the ECtHR ruled that the techniques[34] used by British security forces could not be classified as torture, but were "inhuman and degrading".[35] The Irish Government did not request compensation, the satisfaction for them was the public acknowledgment that the UK had used inappropriate force and as a result respondent Government said it would abstain from using "inhuman and degrading" techniques during examinations.[36] Therefore, the judgment fulfilled the applicants' expectations to have a decision accessible to everyone who is interested in having information about the situation and made the respondent Government to recognize the breach of the ECHR and promise to abstain from using the same methods.[37]

In 1982 there was one more application alleging the torture by military Government of Turkey.[38] Denmark, France, the Netherlands, Norway, and Sweden were arguing the violation of Articles 3 of the ECHR.[39] The Case ended with a friendly settlement and Turkey promised to cooperate with "all public authorities of the Convention's prohibition against torture."[40]

The second inter-state judgment in the history of the ECtHR was in 2000, after the last inter-state application filed into the European

[29] European Commission Report about the Greek Case in 5 November 1969.
[30] D. Gomien, D. Harris and L. Zwaak, p.41.
[31] A.H. Robertson and J.G. Merrills, p.278.
[32] Case Ireland vs. United Kingdom, Application No. 5310/71, Judgment of 18 January 1978.
[33] Irish Republican Army was an armed group fighting British rule in the Northern Ireland.
[34] Interrogation techniques: such as stress positions and sleep deprivation.
[35] F.G. Jacobs, "The European Convention on Human Rights", Oxford University Press, Great Britain, 1975, p.27.
[36] F.G. Jacobs, "The European Convention on Human Rights", Oxford University Press, Great Britain, 1975, p.27.
[37] F.G. Jacobs, "The European Convention on Human Rights", Oxford University Press, Great Britain, 1975, p.27.
[38] H.J. Steiner, P. Alston and R. Goodman, p.947.
[39] Applications 9940-9944/82, 6 December 1983, (1984) 35DR 143.
[40] H.J. Steiner, P. Alston and R. Goodman, p.947.

Commission.[41] After consideration the case was referred to the Court and it ruled in favor of Denmark. Danish representatives were claiming that Turkish authorities were torturing one of the citizens of Denmark.[42] Despite ending the dispute with a friendly settlement[43] the ECtHR in its judgment stated that in spite of striking the Case out from the list respondent Government has to pertain from using the methods of "torture and ill-treatment".[44] The result of the Case was reached by the agreement between the parties which agreed to stop the proceedings and to cooperate in the protection of human rights. Turkey recognized the use of torture, adopted new legal and administrative regulations (to control and punish violators)[45] and agreed on the requirement of the ECtHR to take part in the Council of Europe police training program.[46] The ECtHR gave the judgment and indicated provisions from the agreement of the "Friendly Settlement" to make sure the parties follow bilaterally agreed provisions.

The longest dispute in the history of the Council of Europe was about the relations of Cyprus and Turkey. Cyprus applied to the Commission three times during 1974-78[47] but only the last application, filed in 1994 (Appl. No.25781/94), was followed by judgment in 2001.[48] The ECtHR ruled that Turkey is responsible for the breaches of human rights in North Cyprus because of having effective control and besides the acts of its own soldiers its responsibility must also consider the actions taken by the local Government which is in the power by virtue of Turkish support.[49] The main issue at stake was about the missing persons, who had been missing since the start of the war in 1974 and the ECtHR stated that the Turkish side had not taken any investigation to find the reasons and convicted Turkey of ill-treatment and disappearances of the Greek population of Northern Cyprus[50] and also about the violation of the freedom of expression and the right to education.[51] The applicant Government among other issues was arguing for the enjoyment of rights of property by displaced people. The ECtHR

[41] H.J. Steiner, P. Alston and R. Goodman, p.947.
[42] H.J. Steiner, P. Alston and R. Goodman, p.947.
[43] Agreement on the "Friendly Settlement of Application No. 34382/97 Denmark vs. Turkey".
[44] Case of Denmark vs. Turkey (Application no. 34382/97), Judgment (Friendly settlement) 5 April 2000, para.23.
[45] "Declaration by the Government of Turkey" from the "Friendly Settlement Agreement".
[46] H.J. Steiner, P. Alston and R. Goodman, p.947.
[47] Applications N° 6780/74 and N° 6950/75 Cyprus vs. Turkey, Decision of 26 May 1975 on the admissibility of the applications.
[48] H.J. Steiner, P. Alston and R. Goodman, p.947.
[49] H.J. Steiner, P. Alston and R. Goodman, p.949.
[50] H.J. Steiner, P. Alston and R. Goodman, p.950.
[51] H.J. Steiner, P. Alston and R. Goodman, p.950.

repeated its judgment from the *Loizidou Case* and stated that displaced people must remain the owners of their property lying in the occupied part of the country.[52]

The Case *Cyprus vs. Turkey* is also important because of its fact-finding commission, investigating facts raised by the applicant Government, questioning witnesses, and giving opinions about the actions that were taken by the parties of the conflict.[53] The report of the Commission based on these investigations played an important role in making the decision and finalizing the judgment. After four attempts since 1974, the Cyprus application finally resulted in a judgment in 2001, which states that Turkey bares the responsibility for violations of human rights in the territory of North Cyprus.[54] According to the judgment by the support and control over the local de facto government Turkey has real power in those territories, which means it is responsible to protect the values of the ECHR.[55]

Another case was submitted by Slovenia against Croatia, to protect the rights of the local commercial entity the Ljubljana Bank.[56] The case was rejected as "Article 33 did not empower the Court to examine an inter-State application alleging a violation of any Convention right in respect of that legal entity."[57]

The most recent conflict that emerged in Europe is in Ukraine, which started with Russian aggression in 2014 and continued in 2022. Based on the invasion, occupation, and control of the part of the country there were submitted several cases against Russia *(Ukraine vs. Russia 20958/14 and 38334/18 (Crimea case); Ukraine and the Netherlands vs. Russia 43800/14, 8019/16 and 28525/20)* and one case Russia vs. Ukraine *(Appl. No.36958/21)*. In all these cases the most important result is that the court ruled out that Russia supports and controls the local de facto government in Crimea and other occupied territories and has real power in those territories, which means it is responsible to protect the values of the ECHR.

In some of the above-mentioned cases, the procedure was used to have only legal recognition of violations of the ECHR, but more often it was a method to reach an agreement between conflicting states and to improve the situation for the people concerned.

Discussing and investigating possible human rights violations are good methods to show specific situations in detail and to find solutions based on findings.

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[52] H.J. Steiner, P. Alston and R. Goodman, p.950.
[53] Case Cyprus vs. Turkey (Appl. No. 25781/94), Judgment of May 10, 2001, para.110.
[54] Case Cyprus vs. Turkey (Appl. No. 25781/94), Judgment of May 10, 2001, para.24.
[55] Case Cyprus vs. Turkey (Appl. No. 25781/94), Judgment of May 10, 2001, para.101.
[56] Case Slovenia vs. Croatia [GC] (Appl. No. 54155/16)
[57] Case Slovenia vs. Croatia [GC] (Appl. No. 54155/16)

Facts of the Cases – Georgia vs. Russia

The difficult political situation between Georgia and Russia started at the end of the 1980s and continued with the wars at the beginning of the 1990s. The tense relations during the two decades were followed by the war in August 2008. During and after these actions almost all international organizations Georgia and Russia are members of have been contributing to improving the relations. They have organized negotiation rounds, established fact-finding commissions and sent monitoring missions and mediators, issued resolutions and recommendations.

The previous chapter gave examples of when the Council of Europe used its power under the Statute and played an active role in improving the situation for other member states. The resolutions and recommendations are one of the methods used by the organization alongside the ECtHR and its inter-state procedures. For example, about the conflict between Cyprus and Turkey, as was already stated in previous chapters, the Council of Europe adopted several resolutions and discussed several individual and inter-state applications.

a) First Inter-state Application (*Deportation Case*)

On 26 March 2007, the Government of Georgia applied to the ECtHR by inter-state application: Georgia vs. Russian Federation. The Case covers the situation following the arrest of four Russian diplomatic service personnel in Georgia on September 27, 2006.[58] Despite releasing all four servicemen suspected in espionage[59] on October 4, 2006, the respondent state initiated illegitimate and reprisal measures against Georgian nationals and persons of Georgian origin on the territory of the Russian Federation.[60] The Case contains information concerning Georgian nationals whose rights were violated in contradiction to the obligations of Russia under the ECHR and its protocols.[61]

Georgian Government claims that the policy of the respondent state was directed against the Georgian immigrant population with the objective of their expulsion.[62] Importantly, the expulsion policy was based solely on the

[58] Deportation Case Admissibility Decision, para.11; The Monitoring Committee of PACE in its report of 22 January 2007 also considers these events.

[59] It is also important to mention that in case of espionage a person cannot be protected with functional immunity because espionage is not included in functions for diplomatic representatives (see the case US vs. Melekh et.al., NY district court, 28.11.1960).

[60] Deportation Case Admissibility Decision, para.24.

[61] Deportation Case Admissibility Decision, para.33.

[62] During the period in question about 4000-5000 ethnic Georgians were detained and deported from the territory of the Russian Federation (see Deportation Case Admissibility Decision, para.22; Report of the Investigation Commission of the Parliament of Georgia on

ethnic belonging of the immigrants, rather than their legal status or the validity of documents.[63] Conversely, manifest interferences with the documents evidencing a legitimate right to remain were observed, including the seizure and/or destruction of valid visas and registration documents.[64] Furthermore, in the opinion of the Georgian Government the measures implemented by the Russian authorities, encompassed various mass operations, resulting in infringements upon the right to liberty and security of the person, the right to respect for private and family life, home and correspondence, the right to the peaceful enjoyment of possessions and the right to education.[65]

The Admissibility Decision entails the facts of individual violations, which have been submitted as the illustrative instances of the extended and repetitive pattern demonstrated by the Georgian Government.[66] They further maintained that the analogous breaches of the Convention committed by Russia amount to the administrative practice that was officially tolerated by the leading members of the Russian Government.[67]

Furthermore, in the opinion of Georgia, the policy of indiscriminate arrest and collective expulsion was coupled with the unbearable conditions of detention. In this regard, the violations entailed the overcrowding and unsanitary situation of cells; inadequacy, insufficiency, and dirty condition of bedding and linen; lack of drinking water; failure to provide food for days at a time, and the poor quality of food provided; lack of ventilation; lack of proper medical care for those that needed it, leading in three of instances to the deaths of those detained.[68]

Moreover, the Georgian government stated that its nationals were denied to protect their interests through the domestic remedies in the Russian Federation, the deportees were deprived of any opportunity to challenge the legality of their arrests and detention and as a result, they were instantaneously deported, in violation of the minimal human rights standards.[69] In addition, all postal communication between the Russian Federation and Georgia was interrupted on 2 October 2006. The subsequent closing of the land, air, and maritime borders, thereby establishing a

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Actions by the Russian Government against Georgian Nationals www.parliament.ge; Human Rights Watch October 2007, "Russia's Detention and Expulsion of Georgians" Volume 19 No. 5(D), p.3).

[63] Deportation Case Admissibility Decision, para.22.
[64] Deportation Case Admissibility Decision, para.22.
[65] Deportation Case Admissibility Decision, para.24.
[66] Deportation Case Admissibility Decision, para.35.
[67] Deportation Case Admissibility Decision, para.18.
[68] Deportation Case Admissibility Decision, para.20.
[69] Deportation Case Admissibility Decision, para.40.

unilateral economic embargo on Georgia, further frustrated the access of deportees to the national remedies in the Russian Federation.[70]

Overall, the main point of the case was about a breach of the ECHR Article 14 (prohibition of discrimination), that was approved by the judgment. Therefore also in the final Judgment the grand chamber decided that the respondent State is to pay the applicant Government EUR 10,000,000 in respect of non-pecuniary damage suffered by a group of at least 1,500 Georgian nationals and that this amount shall be distributed by the applicant Government to the individual victims, by paying EUR 2,000 to the Georgian nationals who were victims only of a violation of Article 4 of Protocol No.4 (prohibition of collective expulsion of aliens), and EUR 10,000 to EUR 15,000 to those of them who were also victims of a violation of Article 5 §1 (right to liberty) and Article 3 (prohibition of inhuman and degrading treatment and punishment) of the Convention, taking into account the length of their respective periods of detention.[71]

b) Second Inter-state Application against Russian Federation (August War)

On 6 February 2009, Georgia lodged the second inter-state application against Russia with the ECtHR. This application arose from the attacks committed against civilians and their property during the war in August 2008. In the opinion of the Georgian government, this amounted to serious violations of human rights guaranteed by the ECHR and its Protocols.

Georgian Government argued that the human rights violations were caused by the attacks, which took place in August 2008 by the military forces of Russia and separatist forces under Russian control. By the opinion of the Georgian Government, it was the result of the long practice of Russia supporting the de facto authorities directly in military, economic, and political fields, thereby promoting separatist conflict and resulting in violations of human rights.

In particular, the Application concerned: Article 2 of the ECHR (right to life): the government of "Georgia claimed the Russian Federation has flagrantly violated both by means of bombing the territory of Georgia as well as by the ground forces that entered Georgia" and separatists forces under control of Russia; Article 3 (prohibition of torture) – claimed to be "violated in respect of both, civilian population as well as the members of the armed forces who are equally protected by this very Article" and accomplished by both Russian troops and separatists forces; Article 5 (right to liberty and security) – claimed to be "violated by the Russian Federation by means of

[70] Deportation Case Admissibility Decision, para.11.

[71] CASE OF GEORGIA v. RUSSIA (I) (13255/07) Grand Chamber Judgment (Just Satisfaction) 31 January 2019

taking innocent civilian population hostage"; Article 8 (right to respect for private and family life) – claimed to be "violated by forcing civilian population to leave their homes and impeding their due return"; Article 13 (right to an effective remedy) – claimed that there was not guaranteed the right and there was no possibility for effective remedy; Article 1 of Protocol I (protection of property) – claimed that it "has been blatantly violated by the respondent Government in the present case both by means of bombing and torching houses as well as looting of property"; Article 2 of Protocol I (right to education) – claimed that it "has been violated within the territories under Russian control"; Article 2 of Protocol IV (freedom of movement) – claimed "that is continuously denied to the population residing within the mentioned territories".

The inter-state application is part of the process that started straight after the August War, when Georgia on 11 August 2008 applied to the ECtHR and the next day the President of the Court decided to apply Rule 39 (interim measures).[72] But also, based on the Grand Chamber's final Judgment the respondent State is responsible for the human rights violations in the territory controlled by the Russian Federation and is to pay the applicant Government in respect of non-pecuniary damage:

- EUR 3,250,000 to at least 50 victims of the administrative practice of killing civilians in Georgian villages in South Ossetia and in the “buffer zone” and of the respondent Government’s failure to comply with their procedural obligation to carry out an adequate and effective investigation into those killings;
- EUR 2,697,500 to at least 166 victims of the administrative practice of inhuman and degrading treatment and arbitrary detention of Georgian civilians detained by the South Ossetian forces in the basement of the “Ministry of Internal Affairs of South Ossetia” in Tskhinvali between approximately 10 and 27 August 2008;
- EUR 640,000 to at least 16 victims of the administrative practice of torture of Georgian prisoners of war detained by the South Ossetian forces in Tskhinvali between 8 and 17 August;
- EUR 115,000,000 to at least 23,000 victims of the administrative practice of preventing the return of Georgian nationals to their respective homes in South Ossetia and Abkhazia;
- EUR 8,240,000 to at least 412 victims of the respondent Government’s failure to comply with their procedural obligation to carry out an

[72] Information Note No.110, p.49; the procedure and the actions taken were discussed in Chapter II, Paragraph 5.

adequate and effective investigation into the deaths that occurred during the active phase of the hostilities.[73]

The Role of the Cases to solve the conflicts

The Cases are an important opportunity for Georgia to include in the conflict negotiations legal aspects alongside political discussions and to prove the violation of human rights not only on the occupied territories but also in the territory of the Russian Federation itself, as a general politics and trend of discrimination based on nationality.

The decision of the Georgian government not to wait for the individuals to claim the violation of their rights and to fill in the inter-state applications was based on the obligation of a state to protect their nationals. By starting the inter-state procedure applicant government organized all the facts of claimed violations and started the procedure as a whole, against the general politics of discrimination based on nationality and not only about one action. The alleged punishment of Georgians for the actions of the Georgian government needs a response from the government, to protect their nationals using all available legal methods. Therefore, the inter-state application was the only possibility for the government to argue about the infringement of the rights.

The application result, first of all, was that the Georgian Government reached the justification of their arguments about the human rights violations in both situations, that the respondent state has breached and continues to breach the ECHR and its protocols, which means that Russian Federation was not complying with its international undertakings.

Secondly, the judgment is a good source as an international recognition of the facts and a clear and neutral source of information for all interested people. As was in the Case of *Ireland vs. the UK* the main requirement for the Irish government was public acknowledgment that the UK had used inappropriate force and to have a decision accessible to everyone who wanted to have information about the situation.

One more important benefit is the justification of the facts of discrimination based on nationality. In the Deportation Case Judgment, the Court stated that it is evident that "Georgians – being the victims of racial discrimination – were singled out for differential treatment publicly and with the aim, among other things, of causing humiliation and debasement that represents an administrative practice of degrading treatment for the purposes of Article 3 of the Convention."[74]

[73] Case of Georgia vs. Russia (II) (App.no. 38263/08) GC Judgment (Just satisfaction) 28 April 2023.

[74] Case of Georgia vs. Russia (I) (App.no. 13255/07) GC Judgment (MERITS) 3 July 2014

The applicant government was arguing to the ECtHR that Russia was responsible for violations perpetrated by its armed forces outside Russian territory and also that it was responsible both for the actions of its armed forces and of separatist militia.[75] In the cases about the Turkish invasion of Cyprus and the Case *Ilaşcu vs. Moldova and Russia* the ECtHR stated that Turkey and Russia are exercising control over the North Cyprus and Transdniestria territories respectively and they are responsible for the violation of human rights by both local de facto government and its own military forces.[76] Based on the reasoning in the mentioned cases the ECtHR confirmed the argument of the Georgian government and found the Russian Federation responsible for the actions taken by the local de facto governments.[77] Indicating in the judgment that Russia has control over the conflicting territories and it exercises effective control not only in the territories but also over the de facto government in one more step towards the recognition and justification of the occupation with the binding legal document.[78]

The fourth issue in this case is about the right to property; displaced people have the right to be owners of their property. Despite being located out of the controllable area, they must remain owners. In the *Loizidou Case* the main issues were about the property that is located in the territory under Turkish control. The ECtHR stated that everyone has the right to property and that displaced people must be guaranteed the enjoyment of the right to property. In the judgment, the Court also said that displaced people must remain the owners of their property lying in the occupied part of the country.[79] The practice of the ECtHR is to protect the right of property for displaced people and in a similar case in Georgia, it is most probably to have a similar judgment. This issue is highly relevant for refuges and internally displaced people from Abkhazia and South Ossetia, because of destroying or selling to other people their property. Most of these people have not been able to enjoy the right for years, since the first actions in the regions, and the situation even decreased after August 2008. The court stated in the judgment that after the cessation of active hostilities, the systematic campaign of burning and looting of homes in Georgian villages in South Ossetia and in

[75] Case of Georgia vs. Russia (II) (App.no. 38263/08) GC Judgment (MERITS) 29 January 2021, para.78.
[76] The applicant Government's position was confirmed by the Court's well-established case-law regarding the extraterritorial application of the Convention (Loizidou v. Turkey (merits), §§52 and 56; Cyprus v. Turkey [GC], §77).
[77] Case of Georgia vs. Russia (II) (App.no. 38263/08) GC Judgment (MERITS) 29 January 2021, para.292.
[78] Case of Georgia vs. Russia (II) (App.no. 38263/08) GC Judgment (MERITS) 29 January 2021, para.294.
[79] H.J. Steiner, P. Alston and R. Goodman, p.950.

the “buffer zone” was observed and such information also corresponds to the satellite images,[80] therefore concluded that the Russian Federation had applied, and continued to apply, an administrative practice of frustrating the right of ethnic Georgian internally displaced people to return to their homes.[81]

Another benefit upon the request of the Georgian Government was the compensation to provide redress to those affected by the violations of the ECHR. In the opinion of the Georgian Government because of this situation, lots of Georgians were harmed and they needed appropriate remedies to provide redress.[82] In this innovative request, the government argues that the anti-Georgian policy in the Russian Federation affected the position of the people legally residing in its territory. The information indicated in the *Deportation Case* Admissibility Decision is also based on the report of "the Special Rapporteur of the General Assembly of the United Nations [who] cited the Russian mass media as one of the key sources for the spread of xenophobic documents".[83] Therefore, the Georgian Government for the satisfaction was also asking to compensate the victims of violations of the rights protected by the ECHR, which was achieved in both cases.

In the end, it must be stated that after the judgments the possibility of ending the conflict is still small but it can facilitate the negotiations from a different point of view (that can have more successful results than previous rounds of negotiations), to force parties to refrain from further human rights violations and to be more careful to make sure the full enjoyment of the rights guaranteed by the ECHR and its Protocols.

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[80] Case of Georgia vs. Russia (II) (App.no. 38263/08) GC Judgment (MERITS) 29 January 2021, para.205.
[81] Case of Georgia vs. Russia (II) (App.no. 38263/08) GC Judgment (MERITS) 29 January 2021, para.284.
[82] This can be done with the same methods as was alleged anti-Georgian campaign, through the Russian mass media.
[83] Deportation Case Admissibility Decision, para.22; see also Annual Report to the General Assembly (A/62/306) by Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance, sixty-second session, 24 August 2007.

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