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Meeting: 1362nd meeting (December 2019) (DH)

Item reference: Action plan (30/10/2019)

Communication from the Russian Federation concerning the case of Georgia v. Russian Federation (I)
(Application No. 13255/07)

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Réunion : 1362^e réunion (décembre 2019) (DH)

Référence du point : Plan d'action

Communication de la Fédération de Russie concernant l'affaire Géorgie c. Fédération de Russie (I)
(Requête n° 13255/07) (**anglais uniquement**)



30 OCT. 2019

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

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**DEPARTMENT FOR THE
EXECUTION OF JUDGMENTS
OF THE EUROPEAN COURT
OF HUMAN RIGHTS**

30.10.2019 № 10-3044-19

Mr Fredrik Sundberg

На № _____ от _____

Dear Sir,

Please find enclosed the Action Plan of the Russian authorities with regard to the judgment of the ECHR in case no. 13255/07 *Georgia v. Russia* (I) (JS).

Yours faithfully,

Head of the Office of Representative
of the Russian Federation at
the European Court of Human Rights

Andrey Fedorov

Enc: on 3 pages.

ACTION PLAN
on the execution of the judgement of the European Court of
Human Rights in case no. 13255/07 Georgia v. Russia (I) (just satisfaction)

1. Judgement of the European Court of Human Rights of 31 January 2019 on the issue of the compensation in the case *Georgia v. Russia (I)* determined that:

- the Russian Government are obliged to transfer EUR 10 million to the Government of the Republic of Georgia;
- the Georgian Government should distribute that amount of compensation and make payments under control of the CMCE to the respective individuals.

2. The Georgian Government should, in particular, create and put in place the effective mechanism for distributing compensation among victims, namely:

- provide for payments only to persons indicated in the general list of injured parties presented during the process, and only for violations established by the ECHR based on the consideration of the interstate application on the merits;
- exclude from this list persons who cannot be classified as victims (§ 79 of the judgement).

At the same time, it was noted that 290 people included by the Georgian Government in the list of victims cannot be considered as such, since they are listed more than once or they submitted individual complaints for which just satisfaction has already been awarded, or they acquired Russian citizenship, or they had citizenship other than Georgian from the very beginning, or decisions on their expulsion were made before or after the events considered in the judgement, or it was not possible to identify the persons indicated in the list, or the complaints of the persons were unsubstantiated due to insufficient information provided by the applicant Government (§ 70 of the judgement).

In view of the foregoing, the ECHR considered that the list of victims includes an objectively identifiable group of persons, excluding 290 persons who cannot be considered as such, but no less than 1,500 Georgian citizens from this list (§§ 70-72 and 74 of the judgement).

- calculate the amount of compensation to specific individuals on the basis of the criteria determined by the ECHR (§ 77 of the judgement). In particular the following should be awarded:

- EUR 2,000 to the citizens of the Republic of Georgia included in the list, who became victims only because of a violation of Article 4 of Protocol No. 4 to the Convention;
- from EUR 10,000 to 15,000 - to citizens of the Republic of Georgia included in the list, who also suffered due to violation of Article 5 § 1 and Article 3 of the Convention as a result of arrest and detention in special institutions (taking into account the length and conditions of detention in the relevant institutions, based on the case-law of the European Court).

3. The Russian Government have previously stated and insist that the final list of victims to whom compensation is payable, taking into account the criteria defined by the ECHR and referred to in § 2 of this document, should well be formed by the Georgian Government under the control of the CMCE at the initial stage (indicating the full name and date of birth, violations of the provisions of the Convention, as well as the amount of compensation due in respect of each person included in the relevant list).

4. § 79 and the operative part of the judgement under consideration in full enable the Committee of Ministers to implement this proposal.

Depending on these provisions the creation by the Georgian Government of a mechanism for the distribution of compensation to victims should be carried out and put into effect under the supervision of the Committee of Ministers and in accordance with all practical methods determined by the CMCE in order to facilitate the execution of the judgement.

5. The Russian Government have earlier provided a reasonable justification in document DH-DD(2019)1017 of the proposal that the Georgian Government draw up a final list of victims at the initial stage of execution of the judgement. Attention is again drawn to the following:

- The formation of the final list of victims is not technical, it is essentially an establishment under the control of the CMCE of the facts, namely, who of the total number of persons declared by the Georgian Government (1,795) is really a victim and who should be included in the final list (1,500 persons), indicating the violated provisions of the Convention and the amount of compensation due in respect of each person.

- It seems obvious that, based on the provisions of the Convention, the facts should first be established (namely, whether a particular person is a victim and what violations have been committed against him), then the amount of compensation in respect of each person should be determined (taking into account the criteria and the principle of proportionality determined by the ECHR), and only then the compensation can be paid to the injured party by the state that committed the relevant violations.

- A different procedure of execution of the judgement would be in clear contradiction with the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and would violate the rights of the Russian Federation as a party to this treaty.

In this context, it is recalled that article 41 of the Convention for the Protection of Human Rights and Fundamental Freedoms provides that the Court shall, if necessary, award just satisfaction to the injured party. Such injured party was not the Georgian authorities in the case of *Georgia v. Russia* (I), but specific citizens of the Republic of Georgia.

The Convention (Article 33) and the Rules of the European Court (Rule 60) do not contain any regulations for awarding compensation (both to the party to the proceedings and victims) in the interstate case. Provisions of Article 41, in conjunction with Article 34 of the Convention and Rule 60 of the Rules of the ECHR, provide for an award of compensation only to individual applicants who are victims of violation of the Convention and who have submitted applications under Article 34 of the Convention.

Thus, at present, there is no legal basis for application of Article 41 and there are no legal regulations for its application in a particular case of an interstate application. In order to fill this lacuna, the European Court referred to the regulations of public international law, but this was insufficient to remove these serious problematic issues, now at the stage of execution of the European Court's judgement.

Assignment by the Committee of Ministers of the duties on the Georgian Government on formation of the final list of victims to whom compensation is payable with the criteria determined by the ECHR at the initial stage, will contribute to the resolution of the relevant problematic issues.

- Insisting on the preliminary compilation of the list of victims, the Russian Government also take into account that earlier in the course of consideration of the case in the European Court, the Georgian Government have already demonstrated their approaches to determination of the list of victims.

Having first declared over 4,000 alleged victims, the Georgian Government could within 10 years draw up a concrete list (with names) of only 1,795 persons, which finally was reduced to 1,500 persons (that is, it was decreased more than threefold). In such circumstances the Russian Government are reasonably on guard against the fact that the criteria determined by the ECHR might not be complied with while drafting the final list, and persons who may not be regarded as victims would receive compensations. If the CMCE finds out such instances, the compensation amounts that have already been paid may not be returned.

- In the course of payment of compensation to Georgian citizens, there may be an objective impossibility of making payments (for example, in connection with the death of a person included in the list of victims, prior to the adoption of a decision of the ECHR, or after its issuance in the absence of heirs, or in connection with the refusal of citizens to obtain redress etc.).

- It should further not be left without attention that the Georgian Government, which should be primarily interested in the speedy payment of compensation to their citizens, have not yet begun to draw up a final list of victims, despite there being no obstacles to the fulfilment of this obligation imposed by the European Court.

Such a non-constructive approach does not seem to contribute to the resolution of existing problematic issues and the implementation of the ECHR judgement.

6. Thus, the proposals of the Russian Government regarding the adoption of a decision by the CMCE to impose on the Georgian Government the obligation to draw up the list of victims, taking into account the criteria defined by the ECHR at the initial stage of execution of the judgement *Georgia v. Russia (I)*, are based on the provisions of the Convention and have a reasonable justification.

These proposals are aimed at resolving and optimally settling problematic issues related to the application by the ECHR of Article 41 of the Convention on the basis of public international law, in the absence in the Convention and the Rules of Court of provisions on awards of compensation in an interstate case, as well as at prompt payment of compensation to the victims.

The judgement of the European Court (§ 79 and its operative part) provides the CMCE with a real opportunity to implement the proposals of the Russian Government.