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Date: 15/12/2014

DH-DD(2014)1508

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Meeting: 1221 meeting (March 2015) (DH)

Item reference: Action report (05/12/2014)

Communication from Georgia concerning the case of Klaus and Youri Kiladze against Georgia (Application No. 7975/06)

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Réunion : 1221 réunion (mars 2015) (DH)

Référence du point : Bilan d'action

Communication de la Géorgie concernant l'affaire Klaus et Youri Kiladze contre Géorgie (Requête n° 7975/06) (**anglais uniquement**)

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**Action Report of the Government of Georgia on the Execution of the Judgment of
the European Court of Human Rights in the case of**
Klaus and Yuri Kiladze v. Georgia (7975/06)

Department of State Representation to the International Courts of Human Rights
Ministry of Justice of Georgia

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I. RELEVANT FACTUAL CIRCUMSTANCES OF THE CASE

A. Background

1. On 11 December 1997, the law on “Victim Status and Social Protection for Persons Subjected to Political Repression” was adopted by the parliament of Georgia (the Law of 11 December 1997). The law provided a prospect for Georgian nationals who sustained various forms of political persecution and oppression on the territory of the former Soviet Union between February 1921 and 28 October 1990, as well as for their first generation heirs, to obtain monetary compensation for non-pecuniary damage.
2. The relevant provisions were articulated in the Article 9 of the said law which read as follows: *“A person who has suffered repression in the form of placement in a place of detention, exile, a special place of residence or in a psychiatric establishment, or who died following such repression, and who has been recognised as a victim of political repression, as well as their first generation heirs, may receive monetary compensation. The amount and rules for remuneration is stipulated by law”*.
3. The adoption of the Law was a symbolic gesture on the part of the Georgian State to recognize and condemn the atrocities committed by the Soviet regime.
4. Despite the general undertaking contained in section 9 *in fine* of the Law of 11 December 1997, the Georgian State did not adopt a law defining the amount and modalities of payment of the relevant compensation.
5. On 15 March 2005, two applicants – Klaus and Yuri Kiladze applied to the domestic courts and by virtue of the abovementioned Article 9 requested the compensation for the non-pecuniary damages which they had suffered.
6. The claims of the applicants were rejected by the domestic courts. Amongst others, the courts concluded that the request of the applicants could not be admitted since the ‘laws’ to which Article 9 of the Law of 11 December 1997 referred to had not yet been enacted.
7. On 22 February 2006, the applicants lodged their claims with the Court. The applicants complained that the failure to adopt the laws referred to in Article 9 of the Law of 11 December 1997, when they are necessary in order to bring their right recognised under these provisions into effect, is a violation of their rights under Article 1 of Protocol no. 1 of the Convention.

B. The Court’s judgment of 2 February 2010 in the case of *Klaus and Yuri Kiladze v. Georgia*

8. In its judgment of 2 February 2010 in the case of *Klaus and Yuri Kiladze v. Georgia*, the Court found a violation of Article 1 of Protocol No. 1 on account of the respondent State's prolonged failure to undertake necessary measures in order to ensure the effective exercise of the applicants' right to receive a monetary compensation for non-pecuniary damage under Article 9 of the Law of 11 December 1997 (see *Klaus and Yuri Kiladze v. Georgia*, no. 7975/06, § 68 and §§74-77,).
9. Applying Article 46 of the Convention, the Court stated that, since the finding of a violation under Article 1 of Protocol No. 1 concerned a large number of people and reflected a structural problem, it was urgent to undertake necessary legislative, administrative and budgetary measures at the domestic level in order for victims of Soviet political repression, targeted by Article 9 of the Law of 11 December 1997, to effectively benefit from the right to receive compensation under that section (see *Klaus and Yuri Kiladze*, cited above, §§ 84 and 85).
10. The Court also held that if the necessary measures (legislative and other) were still lacking, the respondent State were to pay to each of the two applicants, within six months from the date on which the judgment became final in accordance with Article 44 § 2 of the Convention EUR 4,000 in respect of non-pecuniary damage (see *Klaus and Yuri Kiladze*, cited above, § 90).
11. As the necessary general measures were not implemented by the respondent State within the above-mentioned time-limit of six months, each of the two applicants duly received EUR 4,000 from the respondent State.

C. Subsequent legislative developments

12. With the purpose of settlement of the structural problems highlighted in the judgment, the Georgian Government drafted amendments to the Law of 11 December 1997 and the Code of Administrative Procedure of Georgia to allow the victims of repression envisaged in Article 9 of that Law to benefit from the right guaranteed by this provision.
13. On 19 April 2011, the amendments were adopted, with certain modifications, by the Parliament of Georgia. They entered into force on 18 May 2011.
14. Thus, the newly introduced Article 21 (26)-(29) of the Code of Administrative Procedure entitled victims of Soviet political repression or their first generation heirs to submit the applications for monetary compensations under Article 9 of the Law of 11 December 1997 to the Tbilisi City Court. The new provisions of the Code also provided for various additional procedural modalities concerning the filing of such

applications, their examination by the Tbilisi City Court and subsequent appellate proceedings before the Tbilisi Court of Appeal, the latter acting as the final level of jurisdiction in such matters.

15. As to amount of compensation payable under Article 9 of the Law of 11 December 1997, they were not fixed by any of the above-mentioned legislative amendments. Instead, the newly added paragraph 4 of Article 9 of the Law of 11 December 1997 stated that it became the Tbilisi City Court's competence to determine an appropriate amount of compensation in each case, having regard to its particular factual circumstances. Notably: "*An amount of compensation shall be determined by the court on the basis of the gravity of the forms of coercion in question ... [deprivation of liberty, resettlement, exile, placement in a special place of residence, forceful assignment to a psychiatric hospital or death], as well as the age and health of the repressed person or his/her first generation heir, and other objective factors*" (Article 9 §4).

D. Relevant domestic judicial practice

16. As confirmed by the official statistics issued by the Tbilisi City Court, after the entry into force of the above-mentioned legislative amendments, more than 8,487 applications for monetary compensation under Article 9 of the Law of 11 December 1997 were lodged with the Tbilisi City Court, out of which 7,910 cases were decided. The compensation was granted in 6,914 cases (see annex 1 – Chart reflecting the statistics of cases submitted to the Tbilisi City Court). The awarded amounts of compensation in the examined cases varied between 200 and 500 Georgian laris (EUR 92 and EUR 230 respectively), the latter maximum amount having been awarded only to the first generation heirs of victims of repression who had been executed by the Soviet State.

E. Legislative amendments of 31 October 2014

17. The relevant shortcomings were closely examined by the authorities and it has been considered that further improvements were necessary in order to fully comply with Court's judgment in the case of *Klaus and Yuri Kiladze v. Georgia*. Therefore, on 31 October 2014, the draft Law prepared by the Government of Georgia was adopted by the Parliament of Georgia. By virtue of the new amendments, which will be presented below, the fixed amount of compensation has been determined by law and the territorial jurisdiction of the national courts has been extended as well. In this respect the Government have made significant efforts to comply with the Court's final judgment in the case of *Klaus and Yuri Kiladze v. Georgia*.

II. THE NEW LEGISLATIVE, ADMINISTRATIVE AND BUDGETARY MEASURES UNDERTAKEN BY THE GEORGIAN GOVERNMENT TO ALLOW THE VICTIMS OF SOVIET REPRESSIONS TO EFFECTIVELY BENEFIT FROM THEIR RIGHT UNDER ARTICLE 9 OF THE LAW OF 1997

18. In order to entirely fill the gaps and improve the initial mechanism of compensation as well as to make the amount of compensation adequate and respectable, the relevant legislative, budgetary and financial measures have been introduced by the Georgian State. The essential purpose of the new measures undertaken by the Georgian Government is to (i) increase the amount of compensation; (ii) establish the fixed amount of compensation by law in order to ensure a high level of certainty to the victims as to the minimum and maximum thresholds of possible amounts; (iii) expand the territorial scope of the national courts entitled to decide the relevant cases.
19. For the purposes of implementation of general measures indicated by the Court in the judgment of *Klaus and Yuri Kiladze* case, the relevant legislative measures were undertaken by the Georgian State. More precisely, the Ministry of Justice of Georgia initiated amendments to the Law of 11 December 1997 and to the Code of Administrative Procedure. On 31 October 2014, these amendments were adopted by the Parliament of Georgia.¹ The said amendments will enter into force on 1 January 2015.
20. By virtue of the new Law the fixed amount of compensation has been determined by law (Article 9 § 4 of the Law of 11 December 1997). Moreover, the amount of compensation has been increased considerably ranging from a thousand (EUR 454) to two thousand Georgian laris (EUR 908). It follows that the minimum amount of compensation envisaged by the new Law has been increased at least fivefold compared to the amount established under the previous practice of the national courts (see paragraph 17 above).
21. The amount of compensation is determined on the basis of objective circumstances of the victim's case, i.e. gravity of the form of coercion age and health condition of the victims of Soviet repressions or his/her first generation heirs, other relevant factors (Article 9 § 4).
22. In order to enable those victims of Soviet repression, whose cases had been already adjudicated by national courts, to benefit from the novel amendments outlined above,

¹ Annex 2 – Law of Georgia on amendments to the law of 11 December 1997 on Victim Status and Social Protection for Persons Subjected to Political Repression

Annex 3- Law of Georgia on amendments to the Code of Administrative Procedure of Georgia

the provision of retroactive effect of the Law was included in the amendments. Particularly, on the basis of the new amendments of 31 October 2014, a victim, his/her first generation heir with regard to whom the Tbilisi City Court had rendered the judgment prior to the adoption of this Law and granted compensation below the minimum amount prescribed by this Law, shall be entitled to apply anew to the court which has the jurisdiction over the case and request the remuneration of the difference between the amount granted and the amount of compensation envisaged under the new Law (Article 2 of the Law on the Amendments to the Code of Administrative Procedure of Georgia).² It is notable that for this purposes the new Law imposes the duty upon the Tbilisi City Court to transfer the pending cases to the Kutaisi City Court (see para. 32 below) and immediately notify the applicant about the above-mentioned (Article 2 § 3).

23. The Government holds the view that the aforesaid standards are adequate enough to establish the effective paradigm for calculation of the compensation taking into account the distinguished situations of the victims of repression. The determination of the compensation amount while taking into account the individual circumstances through close examination of relevant facts of the case is under the sole competence of the national courts. Accordingly, the courts enjoy wide margin of appreciation. This also derives from the judgment *Klaus and Yuri Kiladze v. Georgia*, where it is highlighted that in principle, the respondent State remains free, under the control of the Committee of Ministers, to select the means of discharging its legal obligation under Article 46 of the Convention (§ 82).
24. In addition to the legislative measures, the Georgian authorities introduced the relevant **administrative measures** to ensure that victims effectively benefit from their rights under the Law of 11 December 1997. While the previous Law permitted the application of the request for compensation only with Tbilisi City Court, the territorial jurisdiction of the national courts has been extended by virtue of the new amendments. Namely, according to Article 21²⁶ of the Administrative Procedure Code of Georgia claim for compensation shall be lodged by the victim, his/her first generation heir or their representative with either the Tbilisi City Court or the Kutaisi City Court, according to the place of residence of the victim, his/her first generation heir not later than 1 January 2018.
25. Thus, the access to court is guaranteed by the new amendments provided that together with the Tbilisi City Court which has the jurisdiction over the cases from Eastern part of Georgia, the Kutaisi City Court is determined as the second court which has jurisdiction over the applications introduced by victims of the repression from the

² Annex 3 - Law of Georgia on amendments to the Code of Administrative Procedure of Georgia

Western part of Georgia. The main objective of the aforementioned amendment is to enable the victims from the Western part of Georgia to apply to the court without facing any difficulties and to provide the victims with sufficient and reasonable time for the submission of the applications. In addition, on the basis of new regulations, instead of 1 January 2014, as it was previously determined, the victims are given sufficient and reasonable time as they are entitled to file their applications with respective court until 1 January 2018.

26. Furthermore, as established by Law, the applicants may freely refer to Article 21²⁹ § 4 of the Code of Administrative Procedure, which enables the court to examine the cases without oral hearing. In case the oral hearing is requested, in line with the relevant provisions of the domestic legislation, the applicants are entitled to request the reimbursement of the costs and expenses incurred in the course of the proceedings. By virtue of Article 21²⁹ § 7 of the Code of Administrative Procedure, victims of Soviet repressions are exempted from incurring court fees as well.
27. In the context of the **budgetary measures** as well the requisite measures have been undertaken by the Government. In particular, for the purposes of the fulfillment of the Court's judgment in the case of *Klaus and Yuri Kiladze* and practical implementation of new amendments, 8 million Georgian laris (**EUR 3 650 000**) have been allocated from the State budget. According to the relevant financial calculations the aforesaid sum is considered sufficient for compliance with the financial liabilities in question. The Government wishes to draw the Committee of Minister's attention to the fact that in the draft 2015 State budget 6.4 million Georgian laris (EUR 2 909 000) have been allocated for HIV/AIDS palliative care, out-patient and in-patient treatment and for the first-line antiretroviral medicines as well as for the beneficiaries of methadone substitution treatment program; 4.7 million Georgian laris (EUR 2 114 000) for securing of educational and living conditions for children with special needs and for inclusive education development; 4.8 million Georgian laris (EUR 2 182 000) for the in-patient detoxification treatment and first-stage rehabilitation along with provision of the alternative drugs and medical supervision of the drug addicts. The aforesaid clearly demonstrates that 8 million Georgian laris is truly considerable amount considering the financial potential of the State Budget of Georgia.
28. In light of the above amendments, the Government contends that the respondent State took all efforts to comply with the said judgment as well as to contemplate to the fullest possible extent the legitimate expectations of the victims of repression.
29. Consequently the Government of Georgia has adopted the legal frame of the new mechanism and enacted the relevant amendments - which has the retroactive effect - through the execution of legislative, administrative and budgetary measures, that

enables victims of the repression to have the possibility to obtain the compensation which stands relevant and sufficient for the purposes of Article 1 of Protocol No. 1, as interpreted in the light of Article 1 of the Convention and represents the adequate remedy. Therefore the authorities demonstrated genuine commitment to settle the problem in question.

III. CONCLUSIONS

30. Stemming from the above reflections, the Government of Georgia believes that they have fully met with their international obligations under Article 46 of the Convention and therefore, kindly ask the Committee of Ministers to adopt the final resolution in the case.

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LIST OF THE ANNEXES

Annex 1 - Chart reflecting the statistics on cases submitted to the Tbilisi City Court;

Annex 2 - Law of Georgia regarding the amendments to the law of 11 December 1997 on Victim Status and Social Protection for Persons Subjected to Political Repression;

Annex 3 - Law of Georgia regarding the amendments to the Code of Administrative Procedure of Georgia.

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Annex 1

Updated on 14 November 2014

Period	Applications Concerning Compensation	Ended	Satisfied	Not Satisfied	Left without Examination	Terminated	Inadmissible	The Amount of Compensation	Examined Jointly
2011	5950	650	162		46		442	52 450	14
2012	1564	2050	1787	4	30	6	227	617 780	37
2013	895	3915	3793	3	18	52	49	1 225 490	9
2014	114	1291	1172	3	15	12	89	397 655	
In total	8487	7910	6914	10	109	70	807	2 293 375	60

Annex 2

The Law of Georgia

Regarding the amendments in respect of the “law on recognition of victim status and social protection for Georgian citizens subjected to political repression”

Article 1. Article 9 of the law on “recognition of victim status and social protection for Georgian citizens subjected to political repression” (the Official Gazette of Parliament, №47-48, 31.12.1997, p. 123):

a) paragraph 2 shall be formulated as follows:

“2. Application on compensation must be lodged by the victim, his/her first generation heir or their representative with the Tbilisi City Court or the Kutaisi City Court”.

b) paragraph 4 shall be formulated as follows:

“4. Amount of compensation is determined by the gravity of the form of coercion envisaged under first paragraph of this article, also in accordance with the age and the health condition of the repressed person or his/her first generation heirs, as well as pursuant to other objective factors. The amount of compensation is determined as of not less than thousand and not more than two thousand GEL”.

Article 2. This law shall take effect on 1 January 2015.

The President of Georgia

Giorgi Margvelashvili

Kutaisi,

31 October 2014

Annex 3

The Law of Georgia

Regarding the amendments in respect of the Administrative Procedure Code of Georgia

Article 1. The following amendment shall be introduced to the Administrative Procedure Code of Georgia (the Official Gazette of Georgia, №39 (46), 1999, Article 190):

1. Paragraph 2 of Article 21²⁶ shall be formulated as follows:

“ 2. Application on compensation must be lodged by the victim, his/her first generation heir or their representative with the Tbilisi City Court or the Kutaisi City Court, according to the place of residence of the victim, his/her first generation heir, not later than 1 January 2018. For the purpose of this chapter the jurisdiction of the Tbilisi City Court incorporates the Eastern part of Georgia and the jurisdiction of the Kutaisi City Court incorporates the Western part of Georgia.”

2. Article 21²⁹ shall be formulated as follows:

“Article 21²⁹. The rules regarding the granting of compensation

1. A respondent in the administrative proceedings deriving from this chapter is the Ministry of Finance of Georgia;
2. Considering the gravity of coercion envisaged under the first paragraph of Article 9 of the ‘law on recognition of victim status and social protection for Georgian citizens subjected to political repression’ also, in accordance with the age and the health condition of the repressed, as well as pursuant to other objective factors, the Tbilisi/Kutaisi City Court determines the issue of granting of compensation;
3. The amount of compensation is determined as of not less than thousand and not more than two thousand GEL;
4. Disputes envisaged under this chapter are examined without oral hearing. On the request of one of the parties the application will be examined on oral hearing. Disputes deriving from this chapter are examined in a time limit envisaged under the procedures established within procedural legislation;
5. Decision of the Tbilisi/Kutaisi City Court can be appealed in the Tbilisi/Kutaisi Appeals Court as prescribed under the rules of administrative procedures;

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6. Appeal is submitted to the Tbilisi/Kutaisi City Court, the latter submission and accompanying documents are immediately transferred to the Tbilisi/Kutaisi Appeals Court;

7. Application on compensation is exempted from courts fees;

8. Decision of the Tbilisi/Kutaisi Appeals Court is final and cannot be appealed.”

Article 2

1. The victim, his/her first generation heir with regard to whom the Tbilisi City Court rendered the judgment prior to the implementation of this law and the granted compensation according to the judgment is below the minimum level prescribed by this law, shall be entitled to apply anew to the court which has the jurisdiction and request the remuneration of the difference between the amount granted and the amount of compensation envisaged under this law. In this case the dispute is examined without oral hearing;

2. For the victim, his/her first generation heir with regard to whom the court rendered the judgment according to the rule prescribed by this law concerning the grant of compensation, the relevant sum will be reimbursed in one year from the date of the judgment, within the framework of the state budget approved for respective year;

3. The Tbilisi City Court at the moment of enactment of this law, in consideration of the jurisdiction, shall ensure the transfer of the pending cases to the Kutaisi City Court and immediately notify the applicant about the above-mentioned;

Article 3. This law shall take effect on 1 January 2015.

The President of Georgia

Giorgi Margvelashvili

Kutaisi,

31 October 2014