



What the Strasbourg court has established on the August 2008 war case

On 21st January 2021, the Grand Chamber of the European Court of Human Rights has announced its judgment in the inter-State case of Georgia v. Russia (II) (no. 38263/08) concerning violations committed by the Russian Federation during the August 2008 war.

Factual circumstances of the case:

In the context of the 2008 Russia-Georgia armed conflict, many Georgian citizens have been affected by Russia's actions. Hundreds of people were injured or killed resulted by Russian airstrikes and shootings during the war. There were many cases of illegal detention and ill-treatment of civilians. Thousands of civilians property was looted and destroyed, due to which civilians had lost access to their property. At the same time, more than 300,000 people were forced to flee South Ossetia and Abkhazia.

In the lodged application, Georgia alleged that Russia, as an administrative practice,

caused/ allowed indiscriminate and disproportionate attacks against civilians and their property by the Russian armed forces and the separatist forces placed under their control.

The application concerned a violation of eight Articles of the European Convention, namely the right to life (Article 2); prohibition of torture, inhuman or degrading treatment or punishment (Article 3); the right to liberty and security (Article 5); the right to protection of private and family life (Article 8); the right to an effective remedy (Article 13); protection of property (Article 1 of Protocol No. 1); the right to education (Article 2 of Protocol No. 1); freedom of movement (Article 2 of Protocol No. 4).

Georgia applied to the Strasbourg Court on 11th August 2008, and the state lodged a full application on 6th February 2009.

The main arguments of the European Court on the case of the August 2008 war

From 12th August 2008, the events following the cessation of hostilities (occupation phase) fell within the jurisdiction of the Russian Federation - according to the court, the Russian Federation had exercised effective control over South Ossetia, Abkhazia, and the so-called the "buffer zone" during the period from 12 August to 10 October 2008, until the official withdrawal of Russian troops. The strong presence of Russian troops on the territory of South Ossetia and Abkhazia after this period, and the dependency of these territories' authorities on Russia, indicates the existence of effective control over South Ossetia and Abkhazia. Accordingly, the Court established that the events following the ceasefire of 12 August 2008 fell within the jurisdiction of the Russian Federation for the purposes of Article 1 of the Convention.

Existence of an administrative practice contrary to Articles 2, 8 of the European Convention and Article 1 of Additional Protocol No. 1 - The Court found that the evidence in the case established the existence of an administrative practice contrary to Articles 2, 8 of the Convention and Article 1 of Protocol No. 1. According to the court, the killing of civilians, the torching (burning) and looting of houses in Georgian villages was an administrative practice, which meant repetition of such acts and Russia's official tolerance for these acts. The court also clarified that the acts committed against the victims, given their seriousness, classify as inhuman and degrading treatment and that the said persons were targeted to these acts because of

their ethnicity. Given the above, the court found violations of the right to life, the prohibition of torture, the protection of private and family life, and the property right.

Georgian civilians had been illegally detained by South Ossetian forces and had been subjected to inhuman and degrading treatment, on which Russia was responsible - the Court noted that 160 Georgian civilians, most of whom were elderly and one-third of whom were women, were detained and held in the basement of the building of the de facto Ministry of Internal Affairs of South Ossetia in the city of Tskhinvali by South Ossetian forces, from 10 to 27 August 2008. According to the court, the direct involvement of Russian military forces in the detention of civilians was not clearly established, however, the detention of these persons is attributed to the Russian Federation on the basis that Russia was responsible for the actions of the de facto authorities in South Ossetia and they did not take appropriate measures to prevent ill-treatment. The court did not share the Russian Federation's argument that the detention of civilians was for their own safety, especially considering that the reasons for the detention were not explained to the detainees. Accordingly, the court found the existence of an administrative practice and a violation of the prohibition of torture and the right to liberty and security, on the part of civilians.

Prisoners of war, who were detained between 8 to 17 August 2008, were subjected to torture, for which Russia was responsible - the ill-treatment of Georgian prisoners of war amounted to torture, which constituted an administrative practice. According to the court, even if the direct participation of the Russian forces has not been clearly demonstrated in the torture of Georgian prisoners of war, the prisoners of war fell within the jurisdiction of the Russian Federation. Consequently, Russia was responsible for the actions of the South Ossetian forces, and at the same time, they did not take appropriate measures to prevent ill-treatment. Accordingly, the court found that there has been a violation of the prohibition of torture in respect of prisoners of war.

Russia has violated the freedom of movement of displaced persons – as the court established, according to available information the de facto authorities of South Ossetia and Abkhazia did not allow ethnic Georgians to return home. The Court notes that the de facto authorities of those territories and the Russian Federation, as the State exercising effective control over those territories, had a duty under the Convention to enable inhabitants of Georgian origin to return to their homes according to Article 2 of Protocol No. 2 to the Convention.

Violation of Article 38 of the Convention by Russia - The Court found that the Russian Federation, as the respondent State, did not submit to the court important evidence, including combat reports, for which it failed to fulfill its obligation to furnish the court with all necessary facilities to establish the circumstances of the case.

Failure to conduct an effective investigation into the right to life - The court noted that Russia had an obligation to investigate not only the events that took place after the cessation of hostilities, but also the events that took place during the active phase of hostilities. Nevertheless, the Russian Federation has not conducted an effective and adequate investigation against the requirements of the procedural part of Article 2 of the Convention.

The Russian Federation had no jurisdiction over the events of the active phase of the hostilities (from 8 August to 12 August 2008) for the purposes of Article 1 of the European Convention - the Court explained that armed confrontations and hostilities between the parties' military forces seeking to establish control over the territory in a context of chaos, meant a lack of control over that particular area and also excluded State agent authority and control over individuals. Accordingly, the Court held that the events that took place during the active phase of the hostilities (August 8-12) did not fall within the jurisdiction of Russia for the purposes of Article 1 of the Convention.

Right to Education and Lack of Effective Remedies - The court noted that it did not have sufficient evidence to establish a violation of the right to education. The Court did not consider it necessary to examine separately the violation of Article 13 of the Convention.

The issue of just satisfaction (Article 41 of the Convention) - The European Court postponed the consideration of the issue for a period of one year, during which

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time the parties - Georgia and Russia - were allowed to reach a settlement on compensation.

GYLA represents more than 350 victims of the August 2008 war before the European Court of Human Rights. GYLA has lodged a total of 53 applications which concern the violation of various rights under the European Convention by the Russian Federation during the war. The consideration of the applications submitted by GYLA will start by the court in the nearest future.