The European Court and Soviet political repression: a trap for potential applicants?

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On 2 February 2010, the ECtHR delivered a judgment in the case of Klaus & Ivan Kiladze v Georgia (No. 7975/06). The ECtHR found Georgia responsible for having failed to provide the applicants with the compensation to which they were legally entitled as victims of Soviet political repression. It required Georgia to rapidly introduce the necessary legislative and budgetary measures to make the applicants’ existing rights under Georgian law effective and ordered it to pay the applicants 4,000 EUR each if it failed to do so within six months of the judgment becoming final. As previously reported in this Bulletin, this judgment has significance for thousands of other Georgians in a similar position. The current progress of the implementation of the Kiladze judgment in Georgia is discussed below.

It would also appear that this judgment has significance for victims of political repression from other former USSR countries. In Russia, for example, many perceived Kiladze as a new European standard for compensation.

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According to Memorial HRC, the compensation paid to victims of political repression in Russia varies from region to region, but rarely exceeds 1,000 RUB (25 EUR) per case. Following the Kiladze judgment some Russian individuals who have victim status initiated administrative and judicial proceedings with a view to receiving the same type and amount of compensation as the ECHR awarded to the Kiladze.

In the case of L., the applicant argued before the Moscow City Court that the ECHR awarded the applicants in Kiladze 4,000 EUR each as compensation for the moral damage they sustained during political repression in the Soviet period. The applicant also referred to the Ruling of the Russian Constitutional Court of 26 February 2010, which recognised ECHR judgments as grounds for reconsidering a case.

In its decision the Moscow City Court dismissed the complaint, on the basis that the Constitutional Court ruling only applies to a person in respect of whom the ECHR has delivered a judgment. Although the Moscow City Court duly applied this procedural provision in dismissing the complaint, it is also important to outline some relevant substantive issues.

The ECHR does not guarantee the right to compensation for political repression. Therefore, raising such a complaint on its own would be deemed to be manifestly incompatible ratione materiae with the ECHR’s jurisdiction. In fact the ECHR began its reasoning in the Kiladze judgment by reiterating the absence of any specific obligation on a Contracting State to redress injustice or damages which were caused by its predecessors. The ECHR only dealt with the issue of compensation for political repression in the Kiladze case as the right to compensation was already prescribed præferentia factae in Georgian domestic legislation. The ECHR explicitly stated that in the light of the right to property as set out in Art. 1 of Protocol 1 ECHR, it had to verify whether the right to compensation for pecuniary and non-pecuniary damage was sufficiently established in domestic law.* Further proof of this is that the applicants’ claims regarding Georgia’s failure to compensate them for pecuniary damages were declared inadmissible. The ECHR concluded that Art. 8(3) of the Georgian law of 11 December 1997 did not in itself create ‘une espérance légitime’ (a legitimate expectation) and therefore, the applicants’ claims under this head were incompatible ratione materiae. It is also important that the ECHR explicitly pointed out that there are no restrictions on a state’s freedom to choose the conditions applicable to the restitution of property or to the compensation of injured persons.

Another important point is that the compensation awarded to Klaus and Jouri Kiladze by the ECHR should in no way be interpreted as compensation for Soviet political repression, as such. According to Art. 41 ECHR, the ECHR may afford just satisfaction to the injured party if it finds a violation of the ECHR. Thus, the 4,000 EUR awarded to the Kiladzes represents compensation for a violation of their right to property under Art. 1 of Protocol 1 and not compensation for political repression. In Kiladze this compensation was an alternative form of reparations and would only come into force should Georgia fail to introduce the necessary legislative and other measures to allow the applicants and others in a similar position to effectively enjoy their rights within six months of the date of delivery of the judgment. The question of the appropr
ate amount of compensation to be awarded in respect of political repression was completely outside the scope of the ECHR's consideration — as it pointed out, states have a wide margin of appreciation. In other words, to the extent of such compensation. Consequently, the amount of compensation provided by Russian law, even if it appears insignificant, cannot be regarded as breaching the ECHR in itself.

Thus, the subject matter of the Kiladze judgment, as well as its practical and legal interest, focused on the effective implementation of the Georgian law in question and not on Soviet political repression, as it may seem at first sight. This may be disappointing to many individuals but, as has been mentioned above, this knowledge may save them from false hopes and avoid wasted resources, as well as preventing the ECHR from being flooded with multiple clearly inadmissible applications.

2 No specific names or cases are described in the present article in order to maintain the privacy of all those involved.
3 Kiladze and Saakhi Kiladze v. Georgia (No. 7975/06), 2/2/10, see in particular para.53.
4 Ibid, para. 54.
5 Ibid, para. 56.
6 Ibid, para. 58.