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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 & Iouri 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.[1] 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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for political repression. Some have already initiated judicial proceedings at the domestic and European level, referring to the *Kiladze* judgment. However, unlike legal professionals who are familiar with this judgment and with the European human rights system these individuals run the risk of misinterpreting the meaning and scope of the judgment, potentially leading to false expectations and wasted resources. Given that Memorial HRC estimates that there are around 700,000 victims of Soviet political repression in Russia, this issue is capable of generating very many doubtful ECtHR applications and therefore needs to be clarified for the general public.

The present situation in Russia is that victims of political repression are only entitled to compensation for pecuniary damages. According to Art. 16(1) of the Russian law on rehabilitation of victims of political repression of 18 October 1991, compensation for confiscated property may not exceed 4,000 RUB (100 EUR) for movable property and 10,000 RUB (250 EUR) for immovable property (if the restitution of property is impossible). Moreover, the Russian law establishes a time limit of three years from the date when victim status was granted in order to be eligible for compensation. As for non-pecuniary damage, after amendments made in April 2004 the law no longer officially includes the right to moral damages. Nevertheless, Art. 15 of the Russian law provides the right to compensation for deprivation of liberty or for coercive placement in psychiatric institutions, which may be regarded as the sole possibility to claim non-pecuniary damage.

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 ECtHR awarded to the Kiladzes.

In the case of *L.* the applicant argued before the Moscow City Court that the ECtHR awarded the applicants in *Kiladze* 4,000 EUR each as compensation for the moral damage they sustained during political repression in the Soviet period.[2] The applicant also referred to the Ruling of the Russian Constitutional Court of 26 February 2010, which recognised ECtHR 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 ECtHR 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 ECtHR's jurisdiction. In fact the ECtHR 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.[3] The ECtHR only dealt with the issue of compensation for political repression in the *Kiladze* case as the right to compensation was already prescribed *prima facie* in Georgian domestic legislation. The ECtHR 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.[4] Further proof of this is that the applicants' claims regarding Georgia's failure to compensate them for pecuniary damages were declared inadmissible. The ECtHR 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*.[5] It is also important that the ECtHR 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 Iouri Kiladze by the ECtHR should in no way be interpreted as compensation for Soviet political repression, as such. According to Art. 41 ECHR, the ECtHR 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 reparation 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 appropri-

ate amount of compensation to be awarded in respect of political repression was completely outside the scope of the ECtHR's consideration – as it pointed out states have a wide margin of appreciation, *inter alia*, as to the extent of such compensation.[6] 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 was mentioned above, this knowledge may save them from false hopes and avoid wasted resources, as well as preventing the ECtHR from being flooded with multiple clearly inadmissible applications.

1 *EHRAC Bulletin* No. 13, Summer 2010, p. 8.

2 No specific names or cases are described in the present article in order to maintain the privacy of all those involved.

3 *Klaus & Iouri Kiladze v Georgia* (No. 7975/06), 2/2/10. See in particular para.53.

4 Ibid, para. 54.

5 Ibid, paras. 60 and 61.

6 Ibid, para. 58.