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Does the practice of the Georgian national courts meet the requirements for the effective enforcement of the Kiladze judgment?

Natia Katsitadze, lawyer, Georgian Young Lawyers' Association (GYLA)

The 2010 judgment in the case of Klaus and Yuri *Kiladze v Georgia* (No. 7975/06) 02.02.10 at the European Court of Human Rights (ECtHR) paved the way for around 20,000 victims of Soviet-era repression in Georgia to benefit from their right to monetary compensation as guaranteed under national law – a right which had remained illusory for more than ten years.

For the purposes of the proper implementation of the ECtHR's findings in this case, the Georgian Parliament adopted legislative amendments to the Law of 11 December 1997 on the Recognition of Status as a Victim of Political Repression for Georgian Citizens and Social Protection for the Oppressed and to the Administrative Procedure Code of Georgia. The legislative amendments allow victims of political repression, as envisaged under Article 9 of the Law of 11 December 1997, or, in the event of their death, their heirs, to apply for pecuniary compensation through the Tbilisi City Court.[1] The Tbilisi City Court is to determine the amount of compensation on examination of the factual circumstances of each case, taking into account the gravity of different forms of coercion, as well as the age and health of the repressed person (or his/her heir), among other objective factors.[2] During the discussions at the Parliamentary Legal Committee, the legislators argued that the judiciary would be best placed to evaluate the individual circumstances of each and every case and consequently to define the amount of monetary compensation. Subsequently, the relevant amendments entered into force in May 2011.

In the five months after the amendments entered into force more than 3,000 applications for monetary compensation were lodged with the Tbilisi City Court. The minimum amount of compensation awarded in individual cases is less than GEL 100 (€46), while the maximum award of compensation is GEL 400 (€186), which is only provided to first generation heirs of victims of repression who were sentenced to death and shot. The practice of national courts has caused huge frustration among the beneficiaries of the minimum level of compensation.

In this regard, it is important once again to reiterate the Court's comments in the *Kiladze* judgment, that there is no specific obligation on the Contracting State to redress injustice or damage caused by its predecessors.[3] In the judgment of *Wolkenberg and Others v Poland* (No. 50003/99) 04.12.07, following the pilot judgment in the *Broniowski v Poland* (No. 31443/96) 22.06.04, the ECtHR reiterated that the State has a wide margin of appreciation when passing laws in the context of a change of political and economic regime and that in such contexts situations may even arise where the lack of any compensation would be found compatible with the requirements of Article 1 of Protocol 1.[4] In *Broniowski* the Grand Chamber had held that not only was there a violation of Art. 1(1), but that Poland should take steps to ensure that the 'Bug River' claimants, who had been forced to abandon their properties between 1944-53, were properly compensated. In response, the Polish Government passed a national Act setting the compensation at 20% of the original value of the property. Despite complaints from the applicants that the amount of compensation was low, the ECtHR was satisfied with the scheme of compensation introduced by the national Act and held that the Act effectively secured *"the implementation of the property right in question in respect of the remaining Bug River claimants".*[5]

Taking into account the established ECtHR case law, doubts nonetheless arise in the present case as to whether the national court practice meets the rationale of the new law and whether the Committee of Ministers (CoM) and the ECtHR will be satisfied with the implementation of the law adopted to ensure the effective enforcement of the *Kiladze* judgment.

Although determining the amount of pecuniary compensation to be awarded to victims of Soviet-era repressions is at the State's discretion and, in this particular instance, at the discretion of the national courts (as provided by domestic legislation), one can argue that the minimal levels of compensation set by the Tbilisi City Court do not conform with the intention or the procedural requirements of national law.

Analysis of the judgments of the Tbilisi City Court reveals that, contrary to the requirements of the relevant law, the majority of the court's decisions are standardised, citing provisions of relevant laws and paragraphs of the *Kiladze* judgment, with only two or three lines given to the individual circumstances of the applicant. The majority of the Court's rulings fail to make any reference to health issues or other individual circumstances of an applicant. Instead, a standard statement is issued to the effect that the applicant and/or their heir was a victim of Soviet repression.

In essence, the content of every decision delivered by the Tbilisi City Court follows a standard template. For example, it is clear that without any consideration of individual circumstances the Tbilisi City Court grants a uniform award of GEL 400 (€186) in

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compensation to first generation heirs of victims of repression who were sentenced to death and shot. The Court's approach directly contradicts the intention of the amendment adopted in May 2011 that each case should be considered on an individual basis.

By any objective standard, the levels of compensation set by the Court are minimal and in no way commensurate with the violations suffered by the victims. Furthermore, the standardisation of the Court's awards undermines the intention of the legislation; to acknowledge the harm suffered and provide a level of reparation which takes into consideration the individual circumstances of the victims and their heirs.

If the intention behind the legislation had been to grant predetermined and standard amounts of compensation to every applicant, filing claims in court would not have been required but rather one of the agencies within the executive branch of the Government would have been given the authority to make the compensation payments. This would have prevented over-burdening the court and avoided delay in awarding payment.

The current approach of the national courts aims to discourage victims of repression or their first generation heirs to realise their lawful rights. As the majority of the beneficiaries are elderly, they frequently find it difficult to obtain all the necessary documents required for the court proceedings; often, they do not even have the financial resources to pay to obtain the necessary documents. This is compounded by unreasonably small awards of compensation by the courts which, in practical terms, renders the right to compensation meaningless.

In light of the approach taken by the ECtHR in the 'Bug River' property cases following the *Broniowski* pilot judgment, and the practice exercised by the Georgian national courts in the present case, it will be fully incumbent upon the CoM and the ECtHR to judge whether this practice constitutes the effective enforcement of the *Kiladze* judgment.

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1 Para 2, Article 9 of the Law of 11 December 1997 and para 2, Article 21^{26} of the Administrative Procedure Code of Georgia.

2 Para 4, Article 9 of the Law of 11 December 1997 and para 2, Article 21^{29} of the Administrative Procedure Code of Georgia.

3 Para 53, *Kiladze v Georgia* (No. 7975/06) 02.02.10.

4 Para 60, *Wolkenberg & Others v Poland* (No. 50003/99) 04.12.07.

5 Ibid. para 174.