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COMMENTS ON THE JUDGMENT OF THE EUROPEAN COURT OF HUMAN RIGHTS IN THE CASE GEORGIA V. RUSSIA (IV) (JUST SATISFACTION) OF 14 OCTOBER 2025. "JUST SATISFACTION IN INTER-STATE CASES: A DOCTRINE IN THE MAKING"

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1. Introduction

The European Court of Human Rights (hereinafter 'the Court') awarded just satisfaction in an inter-state case for the first time in *Cyprus v. Turkey* in 2014.[1] Since that time, the scholarly debate on just satisfaction in inter-state cases has centred on three key issues: the causal link between violations of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter 'the Convention')[2] and damage, the method of the identification of victims of violations, and the Court's argumentation on the amount of just satisfaction (equitable considerations).[3] In light of the above-mentioned issues, the purpose of this study was to provide a commentary on the Court's judgment

1 *Cyprus v. Turkey* (Just Satisfaction), no. 25781/94, judgment of 12 May 2014.

2 European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, 213 U.N.T.S. 221.

3 See, for example, Ichim, *Just Satisfaction under the European Convention on Human Rights*, 44 et seq.; Altwicker-Hámori, Altwicker, and Peters, "Measuring Violations of Human Rights: An Empirical Analysis of Awards in Respect of Non-Pecuniary Damage under the European Convention on Human Rights", 5 et seq.

of 14 October 2025 (Just Satisfaction) in the case *Georgia v. Russia (IV)*.[4] Judgments on the merits and on just satisfaction are functionally interconnected. Therefore, the Court's judgment of 9 April 2024 (Merits) in the case *Georgia v. Russia (IV)*[5] constitutes a context for the case that could not be overlooked. The core of this study is the 'Analysis' section, which comprises 'General Considerations' and 'Detailed Analysis'. The final part of the text consists of conclusions.[6]

2. Sentences

2.1. The Judgment of 9 April 2024 in the Case *Georgia v. Russia (IV)* (Merits)

The Court, in the judgment of 9 April 2024, originated in application no. 39611/18 lodged under Article 33 of the Convention by Georgia against the Russian Federation, held unanimously that:

> (1) there had been a violation of the substantive and procedural limbs of Articles 2 and 3 of the Convention; (2) there had been a violation of Article 5(1) and Article 8 of the Convention, Articles 1 and 2 of Protocol No. 1 and Article 2 of Protocol No. 4 to the Convention; (3) it was not necessary to examine whether there had been a violation of Articles 13, 14, 18 and 38 of the Convention; (4) the question of the application of Article 41 of the Convention was not ready for decision, and accordingly, (a) the Court reserved the said question in whole, and (b) invited the Georgian Government and the Russian Government to submit, within six months from the date on which this judgment became final in accordance with Article 44(2) of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they might reach.[7]

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4 *Georgia v. Russia (IV)* (Just Satisfaction), no. 39611/18, judgment of 14 October 2025.

5 *Georgia v. Russia (IV)* (Merits), no. 39611/18, judgment of 9 April 2024.

6 For the purposes of this analysis, the author assumes the jurisdiction of the respondent State solely in the context of Convention liability (including the award of just satisfaction), which does not prejudge the legal status of the disputed territory; this issue falls outside the scope of the present commentary.

7 *Georgia v. Russia (IV)* (Merits).

2.2. The Judgment of 14 October 2025 in the Case *Georgia v. Russia (IV)* (Just satisfaction)

The Court, in the judgment of 14 October 2025, held unanimously that:

> (1) it had jurisdiction under Article 58 of the Convention to deal with the Georgian Government's claims for just satisfaction under Article 41 of the Convention, notwithstanding the cessation of the Russian Federation's membership of the Council of Europe, and that the Russian Government's failure to cooperate did not present an obstacle to their examination; (2) Russia is to pay the Georgian Government EUR 1.300.000 (one million three hundred thousand euros) in respect of non-pecuniary damage suffered by a group of at least twenty victims of the administrative practice contrary to the substantive and procedural limbs of Article 2 of the Convention; (3) Russia is to pay the Georgian Government EUR 1.976.000 (one million nine hundred and seventy-six thousand euros) in respect of non-pecuniary damage suffered by a group of at least seventy-six victims of the administrative practice of ill-treatment by Russian or *de facto* Abkhaz and South Ossetian agents against ethnic Georgians following their arrest for a 'border violation', and of the lack of an effective investigation into those instances of ill-treatment; (4) Russia is to pay the Georgian Government EUR 5,172,000 (five million one hundred and seventy-two thousand euros) in respect of non-pecuniary damage suffered by a group of at least 2,586 victims of the administrative practice of unlawful detention of ethnic Georgians by Russian or *de facto* Abkhaz and South Ossetian agents for a 'border violation'; (5) Russia is to pay the Georgian Government EUR 320.000 (three hundred and twenty thousand euros) in respect of non-pecuniary damage suffered by a group of at least sixty-four victims of the administrative practice contrary to Article 2 of Protocol No. 4 to the Convention; (6) Russia is to pay the Georgian Government EUR 224.250.000 (two hundred and twenty-four million two hundred and fifty thousand euros) in respect of non-pecuniary damage suffered by a group of at least 23.000 victims of the administrative practice contrary to Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention; (7) Russia is to pay the Georgian Government EUR 20.000.000 (twenty million euros) in respect of non-pecuniary damage suffered by a group of at least 4.000 victims of the administrative practice contrary to Article 2 of Protocol No. 1 to the Convention; (8) from the expiry of three months until settlement, simple interest shall

be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points; (9) the above amounts shall be distributed by the Georgian Government to the individual victims under the supervision of the Committee of Ministers within eighteen months from the date of the payment or within any other period considered appropriate by the Committee of Ministers.[8]

3. The Facts

3.1. Merits

The circumstances of the case, as established in the judgment of 9 April 2024, may be summarised as follows.

Russia recognised the Georgian regions of Abkhazia and South Ossetia as independent on 26 August 2008. Based on 'friendship and cooperation' agreements with Abkhazia and South Ossetia, Russia then established military bases and stationed up to 3.800 Russian soldiers in each of those two regions. Russian border guards secured the administrative boundary line (hereinafter 'the ABL') between those two regions and the territory controlled by the Georgian Government. Since 2009, physical barriers and other measures have been gradually established to prevent people from crossing the ABL freely. Many of those who crossed outside controlled crossing points had no crossing documents.

In the context of the temporal scope of the case in question, the Court held that no events which occurred before 2009 (that is, before the process of 'borderisation') will be considered as illustrations of the administrative practices.

The Court, by reference to its earlier case-law, held that the concept of an administrative practice comprises two elements: (1) the 'repetition of acts' and (2) 'official tolerance'. As to 'repetition of facts', the Court described these as 'an accumulation of identical or analogous breaches which are sufficiently numerous and inter-connected not to amount

8 *Georgia v. Russia (IV)* (Just Satisfaction).

to merely isolated incidents or exceptions but to a pattern or system'.[9] By 'official tolerance', the Court means that

> illegal acts are tolerated in that the superiors of those immediately responsible, though cognisant of such acts, take no action to punish them or to prevent their repetition; or that a higher authority, in face of numerous allegations, manifests indifference by refusing any adequate investigation of their truth or falsity, or that in judicial proceedings a fair hearing of such complaints is denied.[10]

The Court held that there had been various administrative practices contrary to the Convention: excessive use of force, loss of life, and the lack of an effective investigation into those incidents, in breach of the substantive and procedural aspects of Article 2; ill-treatment and the lack of an effective investigation into those incidents, in breach of the substantive and procedural aspects of Article 3; unlawful detention contrary to Article 5(1) in conditions contrary to Article 3; unlawful restrictions on access to homes, land, other property, cemeteries, and families, in breach of Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention; denial of the right to education in the Georgian language, in breach of Article 2 of Protocol No. 1 to the Convention; and unlawful restrictions on the day-to-day freedom of movement across the ABL, in breach of Article 2 of Protocol No. 4 to the Convention.

The Court assessed, in the context of the violation of Articles 2 and 3 of the Convention, that some of the incidents listed by the Georgian Government fell outside the temporal scope of this case. Some other incidents had no apparent link to the process of 'borderisation' since they did not occur at the ABL or after an arrest for a 'border violation.' Furthermore, the Court noted, that in the context of violation of Article 5(1) and Article 8 of the Convention, Articles 1 and 2 of Protocol No. 1 to the Convention, and Article 2 of Protocol No. 4 to the Convention, the incidents to which the international materials refer are sufficiently numerous and interconnected to amount not merely to isolated incidents or exceptions but to a pattern or system.

9 *Georgia v. Russia (IV)* (Merits), para. 19.
10 *Georgia v. Russia (IV)* (Merits), ibidem.

3.2. Just Satisfaction

The Court held that it had jurisdiction to deal with the claims for just satisfaction, since the facts giving rise to the violations found in the principal judgment occurred before 16 September 2022, the date on which the Russian Federation ceased to be a Party to the Convention. The Georgian Government submitted claims for just satisfaction for the following individuals in respect of non-pecuniary damage:

> (a) 51 alleged victims of the administrative practice contrary to both limbs (substantive and procedural) of Article 2 of the Convention (130.000 euros (EUR) per victim);
> (b) 166 alleged victims of the administrative practice of ill-treatment by Russian or de facto Abkhaz and South Ossetian agents of ethnic Georgians following their arrest for a "border violation", and of the lack of an effective investigation into those instances of ill-treatment (EUR 35.000 per victim);
> (c) 2.587 alleged victims of the administrative practice of unlawful detention of ethnic Georgians by Russian or de facto Abkhaz and South Ossetian agents for a "border violation" (EUR 16.000 per victim);
> (d) 32.488 alleged victims of the administrative practice contrary to Article 2 of Protocol No. 4, preventing the return of ethnic Georgians to their homes in Abkhazia and South Ossetia (EUR 6.500 per victim);
> (e) 719 alleged victims of the administrative practice of unlawful restrictions on the day-to-day freedom of movement across the ABL of ethnic Georgians who had already lodged individual applications with the Court (EUR 6.500 per victim);
> (f) 64 alleged victims of the administrative practice of unlawful restrictions on the day-to-day freedom of movement across the ABL of ethnic Georgians who had not lodged individual applications with the Court (EUR 6.500 per victim);
> (g) 32.488 alleged victims of the administrative practice contrary to Article 8 of the Convention and Article 1 of Protocol No. 1 of unlawful restrictions on the access of ethnic Georgians to their homes, land, other property, cemeteries and families (EUR 35.000 per victim);
> (h) 719 alleged victims of the administrative practice of unlawful restrictions on the access of ethnic Georgians who had already lodged individual applications with the Court to their homes, land, other property, cemeteries, and families (EUR 35.000 per victim); and

(i) several thousands of ethnic Georgians who had been denied the right to primary and/or secondary education in the Georgian language in Abkhazia and South Ossetia, in breach of Article 2 of Protocol No. 1 (a lump sum as deemed appropriate by the Court).[11]

The Court referred to general principles concerning just satisfaction claims in inter-state cases. It held that the question of whether it is justified to grant just satisfaction to an applicant state must be assessed and decided by the Court on a case-by-case basis. This assessment must take into account, *inter alia*, (1) the type of complaint made by the applicant government, (2) whether the victims of violations could be identified, and (3) the main purpose of bringing the proceedings. The Court held that the main point of this assessment is that the Court must satisfy itself that the applicant state has submitted just-satisfaction claims in respect of violations of the Convention rights of sufficiently precise and objectively identifiable groups of people who were victims of those violations. In addition, the applicant government's factual submissions must be plausible, and its claims must be sufficiently substantiated.

Firstly, the Court noted that the Georgian Government's claim for just satisfaction under (d) above does not relate to any of the violations found in the principal judgment. The Court held that in the principal judgment it expressly excluded from the scope of the present case the issue of the inability of ethnic Georgians to return to their homes in Abkhazia and South Ossetia under Article 2 of Protocol No. 4 to the Convention.

Secondly, the Court held that the claims under (e) and (h) above should also be entirely excluded because they concern alleged victims who have lodged individual applications with the Court.

In contrast, the Court held that the claims under (a), (b), (c), (f), (g), and (i) above relate to the violations found in the principal judgment, and it would appear that the alleged victims have not lodged individual applications with the Court. Furthermore, the Georgian Government submitted a detailed list of alleged victims of the breaches of Article 2, Article 3, Article 5(1) and Article 8 of the Convention as well as Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4 to the Convention (the claims under (a), (b), (c), (f) and (g)). The Court observed that while it is true that there is no detailed list of alleged victims of the breach

11 *Georgia v. Russia (IV)* (Just Satisfaction), para. 8.

of Article 2 of Protocol No. 1 to the Convention (the claim under (i)), the group of alleged victims of that breach is nonetheless 'sufficiently precise and objectively identifiable'.[12]

With regard to the latter claims, the Court held that it examined the groups of alleged victims to ensure that the factual submissions of the Georgian Government were plausible and that their claims were adequately substantiated.

As regards the list of 51 alleged victims of the administrative practice contrary to the substantive and procedural limbs of Article 2 (the claim under (a)), that practice was defined in the principal judgment as follows: the use of force against ethnic Georgians by Russian or *de facto* Abkhaz and South Ossetian agents at the ABL or after an arrest for a 'border violation' where such force had not been 'absolutely necessary' for the achievement of one of the purposes set out in Article 2(2) of the Convention, and the incidental loss of life of ethnic Georgians while trying to cross the ABL by alternative routes with the intention of collecting their pension or medication from the territory controlled by the Georgian Government. The Court found, in the principal judgment, that at least 20 incidents fell within the scope of the case.

As regards the list of 166 alleged victims of the administrative practice of ill-treatment by Russian or *de facto* Abkhaz and South Ossetian agents against ethnic Georgians following their arrest for a 'border violation', and of the lack of an effective investigation into those instances of ill-treatment (the claim under (b)), the Court found, in the principal judgment, that at least 50 incidents fell within the scope of the case.

As to the list of 2.587 alleged victims of the administrative practice of unlawful detention of ethnic Georgians by Russian or *de facto* Abkhaz and South Ossetian agents for a 'border violation' (the claim under (c)), the Court noted that one of the incidents included in that list actually took place after 16 September 2022 and thus falls outside the temporal scope of this case. The Court considered that, for the purposes of awarding just satisfaction, at least 2.586 ethnic Georgians were victims of this administrative practice, for which the Russian Federation was found to be responsible.

As regards the list of 64 alleged victims of the administrative practice of unlawful restrictions on the day-to-day freedom of movement

[12] *Georgia v. Russia (IV)* (Just Satisfaction), para. 12.

of ethnic Georgians across the ABL (the claim under (f)), the Court found that the applicant Government sufficiently substantiated their claim. Notably, they provided a detailed account of each case and different pieces of evidence, such as testimonies.

As to the list of 32.488 alleged victims of the administrative practice contrary to Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention, involving unlawful restrictions on ethnic Georgians' access to their homes, land, other property, cemeteries, and families (the claim under (g)), the Georgian Government asserted that all those persons fled Abkhazia and South Ossetia in 2008 and have never been able to return. The Court referred to the case *Georgia v. Russia (II)*, where it found that the Russian and the *de facto* Abkhaz and South Ossetian authorities had prevented the return to those regions of some 23.000 ethnic Georgians (although the applicant Government also claimed in that case that the number was significantly higher).[13] The Court held that there is no reason to decide otherwise in the present case. Furthermore, there is no reason to doubt that access to their homes, land, other property, cemeteries, and/or families in Abkhazia and South Ossetia was restricted because of their inability to return to those regions. Therefore, for the purposes of awarding just satisfaction, the Court considered that at least 23,000 ethnic Georgians were victims of this administrative practice, for which the Russian Federation was found to be responsible.

As to the claim for just satisfaction in respect of alleged victims of the administrative practice contrary to Article 2 of Protocol No. 1 to the Convention (the claim under (i)), the Court held that the transition of Georgian schools to Russian as the language of instruction was completed in Abkhazia in 2022 and in South Ossetia in 2023. It also appeared that more than 4.000 schoolchildren were concerned. Therefore, for the purposes of awarding just satisfaction, the Court considered that at least 4.000 ethnic Georgians were victims of this administrative practice, for which the Russian Federation was found to be responsible.

Moreover, the Court held that in accordance with Article 46(2) of the Convention, it falls to the Committee of Ministers to supervise the execution of this judgment.

Finally, the Court held that the awarded sums are to be distributed by the Georgian Government to the individual victims and that the default

[13] See *Georgia v. Russia (II)* (Just Satisfaction), no. 38263/08, judgment of 28 April 2023, para. 44.

interest rate should be based on the European Central Bank's marginal lending rate, to which three percentage points should be added.

4. Analysis

4.1. General Considerations

4.1.1. Article 41 of the Convention

Article 41 of the Convention reads as follows:

> If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.[14]

Three predominant conditions result from the drafting of Article 41 of the Convention. Firstly, a violation of the Convention or Protocols thereto needs to be found. Secondly, the internal law of the Party to the Convention concerned allows only a partial reparation to be made. Thirdly, the award of just satisfaction to the injured party is required to be necessary.

As regards the first condition, in general, the Court will hold a state responsible for a violation of the Convention or Protocols thereto when it can be attributed to an official authority or agent, or when the state did not fulfil its positive obligation to take preventive measures to protect a right or to conduct an effective investigation into the circumstances of a violation.[15]

Regarding the second condition, it is to be noted that at first glance, it appears that Article 41 of the Convention was drafted with regard to disputes between Parties to the Convention and individuals. The prior exhaustion of national remedies, including the pursuit of reparation at the national level, is, in principle, required to be met when lodging an application with the Court by individuals. The Court in the case

[14] The Convention, Article 41.

[15] Ichim, *Just Satisfaction under the European Convention on Human Rights*, 24. See also Strzępek, *Status prawny i interpretacja Konwencji o Ochronie Praw Człowieka i Podstawowych Wolności*, 215 et seq.

Papamichalopoulos and Others v. Greece held: 'If the nature of the breach allows of restitutio in integrum, it is for the respondent State to effect it, the Court having neither the power nor the practical possibility of doing so itself'.[16] The situation is different regarding inter-state cases. Here, at least two states are involved in a dispute. It can sometimes be difficult to identify the actual injured party in such a dispute (whether it is a state or individuals). It is also difficult to maintain that there is a strict conformity with the requirement to exhaust domestic remedies in such a dispute. In fact, the principle of subsidiarity may be considered at two stages or, put differently, within two procedures: the merits procedure and the just satisfaction procedure. At the merits phase, individuals may be required to exhaust domestic remedies before lodging an application by a Party to the Convention (state), albeit not always. At the just satisfaction phase, the states in dispute may be invited to submit their written observations on the matter of just satisfaction and, in particular, to notify the Court of any agreement they might reach.[17] Therefore, it can be argued that Article 41 of the Convention is grounded in the principle of subsidiarity. Nevertheless, it is also to be noted that just satisfaction in inter-state cases had never been awarded until the case *Cyprus v. Turkey* in 2014, when the Court ordered Turkey to pay 90.000.000 (ninety million euros) in respect of non-pecuniary damage to Cyprus in order to be distributed among victims of the conflict in Northern Cyprus.[18]

As regards the third condition, the existence of a causal link between a violation of the Convention and Protocols thereto and a material loss or moral damage may be regarded as an argument for the necessity of granting just satisfaction. In the absence of causality, the alleged injury is not considered as caused by a violation of the Convention and Protocols thereto.[19]

Regrettably, it is also argued that the system of reparation under the Convention lacks consistency and predictability.[20] It stems, for instance, from the ambiguity of the phrase 'if necessary'. Yet, the term 'just satisfaction' itself is also ambiguous. In the case *Cyprus v. Turkey*,

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16 *Papamichalopoulos and Others v. Greece* (Article 50), no. 14556/89, judgment of 31 October 1995, para. 34.

17 *Georgia v. Russia (IV)* (Just Satisfaction), para. 12.

18 Sterio, "Introductory Note to Georgia v. Russia (Eur. Ct. H.R.)", 262.

19 Ichim, *Just Satisfaction under the European Convention on Human Rights*, 23-24.

20 Ichim, *Just Satisfaction under the European Convention on Human Rights*, 271.

the Court held, by reference to the case-law of the International Court of Justice, that it is a rule of public international law that an injured state is entitled to compensation from the state which has committed an internationally wrongful act for the damage caused by it.[21] In the Court's view, Article 41 is *lex specialis* in relation to the general rule of public international law.[22] It is also pointed out that the drafters of the Convention preferred the standard of 'just satisfaction' over that of 'full satisfaction', because it would have been utopian to have suggested that the Court could restore the *status quo ante* in every single case.[23]

In closing this part of the analysis, it can be argued that 'just satisfaction' may be seen as an element of 'full satisfaction' (*restitutio in integrum*), especially since it may be granted for pecuniary and non-pecuniary damage, as well as for costs and expenses'.[24] In contrast, some scholars argue that the legal basis for the obligation to make *restitutio in integrum* under the Convention resides in the fact that 'the Court pronounces on state responsibility and that states have a treaty obligation to comply with the final judgments, while Article 41 on just satisfaction appears to be a fall-back provision for cases where restitution is impossible'.[25]

4.1.2. Just Satisfaction in Inter-State Cases: Issues of Procedural and Substantive Fairness

A preliminary observation in this phase of the analysis is that the rulings on just satisfaction may be regarded as a 'procedure' separate from the Court's findings of violations established in the judgments on the merits. [26] This statement is supported by the application of the principle of subsidiarity to both judgments (proceedings).

In the context of the rulings on just satisfaction, an expression of the principle of subsidiarity will be an attempt to reach an agreement in respect of just satisfaction between the parties to the proceedings before the Court.

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[21] *Cyprus v. Turkey* (Just Satisfaction), para. 41. See also *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia),* judgment of 25 September 1997, para. 152.

[22] *Cyprus v. Turkey* (Just Satisfaction), para. 42.

[23] Ichim, *Just Satisfaction under the European Convention on Human Rights*, 23-24.

[24] von Staden, "Compliance with Just Satisfaction Awards and Individual Measures", 77.

[25] Ichim, *Just Satisfaction under the European Convention on Human Rights*, 31.

[26] Cf. Risini, *The Inter-State Application under the European Convention on Human Rights: Between Collective Enforcement of Human Rights and International Dispute Settlement*, 198.

In the context of the judgments on the merits (in inter-state cases), the Court's approach to this issue is not entirely consistent and depends on the type of conduct of the respondent state. In the case *Cyprus v. Turkey*, where the alleged violations of the Convention were invoked with reference to missing persons and their relatives, the Court held that: 'the inhabitants of the territory may be required to exhaust these remedies, unless their inexistence or ineffectiveness can be proved – a point to be examined on a case-by-case basis'.[27] Conversely, in the case *Georgia v. Russia (I)*, the Court held that the rule on exhaustion of domestic remedies does not in principle apply where the applicant government complains of an administrative practice, namely, a repetition of acts incompatible with the Convention, and official tolerance by the state has been shown to exist.[28] The differentiating factor would thus be the 'manner' in which the respondent government violated the Convention. It is, however, worth noting that the latter is examined only during the merits phase of the proceedings before the Court, while domestic remedies are required to be exhausted before lodging an application with the Court. Regrettably, the judgment of 9 April 2024 in the case *Georgia v. Russia (IV)* does not provide an in-depth analysis of the matter.

It is also noteworthy that in the judgment of 14 October 2025 in the case *Georgia v. Russia (IV)*, the Court held that claims under (a), (b), (c), (f), (g) and (i) *supra* '(…) relate to the violations found in the principal judgment and it would appear that the alleged victims have not lodged individual applications with the Court'.[29] Here, the question of lodging a prior individual application by the victims of the violations grows into a decisive criterion. However, it remains unclear whether the Court refers to it in relation to the concept of *res iudicata*.

The absence of considerations regarding the principle of subsidiarity, as well as the legal nature of previously lodged applications, may be seen as a certain weakness in the *Georgia v. Russia (IV)* judgments.

The above observation regarding the principle of subsidiarity may be further supported by other arguments. The execution of the judgment of 9 April 2024 shall be conducted separately (having regard to the fact, in particular, that it concerns violations of a systemic nature) from the payment and distribution of just satisfaction. Whereas

27 *Cyprus v. Turkey* (Merits), no. 25781/94, judgment of 10 May 2001, para. 98.
28 *Georgia v. Russia (I)* (Merits), no. 13255/07, judgment of 3 July 2014, para. 125.
29 *Georgia v. Russia (IV)* (Just Satisfaction), para. 12.

the judgment on the merits of 9 April 2024 serves to restore compliance with the Convention standards of human rights protection, the judgment on just satisfaction of 14 October 2025 may be regarded as intended to restore the sense of justice among victims of human rights violations and their families. The Court itself acknowledged the above in its judgment of 14 October 2025, concluding that: 'Just satisfaction has thus not been sought to compensate the State for a violation of its rights, but rather for the benefit of individual victims'.[30]

It might even be possible to argue that, as the judgment of 9 April 2024 on the merits concerns questions of law (and its violations) within a positivist approach, the judgment of 14 October 2025 on just satisfaction concerns moral questions (to some extent) within a naturalist approach. Natural law connotes beliefs of various abstract principles 'recognising human worth on an individual basis, and this in turn is linked to a strong pre-existing ideology'.[31] Positivism also connotes the beliefs of others, that is, 'a belief that law and non-legal normative values ought to be seen as being separate, perhaps for analytic purity and therefore for fundamental philosophical and/or ideological reasons, or for those fundamental reasons pure and simple'.[32] In a way, the above statements correspond with the Court's opinion in the case *Georgia v. Russia (I)*: 'In some situations, where a law, procedure or practice has been found to fall short of Convention standards this is enough to put matters right. In other situations, however, the impact of the violation may be regarded as being of a nature and degree as to have impinged so significantly on the moral well-being of the applicant as to require something further'.[33]

In general, judgments on the merits are usually more verifiable as they refer to violations of law and structural (often) shortcomings in the legal system. The level of verifiability of judgments on just satisfaction is lower, and it primarily rests on the victim's sense of justice (fairness). Altwicker-Hàmori, Altwicker, and Peters rightly point out that '[t]he basic problem for any legal system or legal instrument foreseeing financial payments for immaterial damage (bodily pain, mental anguish, loss of lifetime, etc.) is that such damage can never be truly compensated

30 *Georgia v. Russia (IV)* (Just Satisfaction), para. 12.

31 Reynolds, "Natural Law versus Positivism: The Fundamental Conflict", 441.

32 Reynolds, "Natural Law versus Positivism: The Fundamental Conflict".

33 *Georgia v. Russia (I)* (Just Satisfaction), no. 13255/07, judgment of 31 January 2019, para. 73. See also Sterio, "Introductory Note to Georgia v. Russia (Eur. Ct. H.R.)", 263.

with material goods or money'.[34] Both types of judgments, that is, on the merits and on just satisfaction, taken together, are intended to serve the most complete and possible realisation of the *restitutio in integrum* principle and to ensure substantive fairness, even though they concern different legal issues.[35] To adjudicate substantive fairness is traditionally more controversial as it refers in fact to less precise language and thought, which may also lead to the expansion of the scope of power exercised by courts.[36] The judgment on just satisfaction is complex due to the fact that individual victims lack *locus standi* in such proceedings. One could even provocatively ask whether, while the Court strives to achieve substantive fairness, it does not compromise procedural fairness. The answer to the above question does not have to be affirmative. It lies in the nuances of the evidence.

4.2. Detailed Analysis

4.2.1. Claims for Just Satisfaction – the Court's (Discretionary) Assessment

The Court in the case *Georgia v. Russia (IV)* observed, by reference to its earlier case-law, that the question of whether granting just satisfaction to an applicant state is justified, has to be assessed and decided by the Court on a case-by-case basis, taking into account (1) the type of complaint made by the applicant government, (2) whether the victims of violations can be identified, as well as (3) the main purpose of bringing the proceedings in so far as the application permits such a determination.[37]

The Court in the case *Georgia v. Russia (II)* identified two types of possible complaints: (1) a general issues complaint such as systemic problems and shortcomings or administrative practices; (2) a complaint concerning violations of the basic human rights of the applicant state's nationals by

[34] Altwicker-Hámori, Altwicker, and Peters, "Measuring Violations of Human Rights: An Empirical Analysis of Awards in Respect of Non-Pecuniary Damage under the European Convention on Human Rights", 10.

[35] Crema and Solum, "The Original Meaning of 'Due Process of Law' in the Fifth Amendment", 447 et seq.

[36] Mullan, "Natural Justice and Fairness – Substantive as well as Procedural Standards for the Review of Administrative Decision-Making?", 258. See also Kotowski, *Interpretive Judicial Activism and Risk Propensity in Judicial Decision-Making*, 31 et seq.

[37] *Georgia v. Russia (IV)* (Just Satisfaction), para. 10.

another state.[38] Those claims are substantially similar to those made in an individual application.[39] Therefore, if just satisfaction is afforded in an inter-state case, it should always be done 'for the benefit of individual victims'.[40] For the purposes of granting just satisfaction in such a case, the Court relies on a 'sufficiently precise and objectively identifiable' group of the applicant state's nationals who were victims of a violation of the Convention and the Protocols thereto.[41]

Firstly, the Court in the case *Georgia v. Russia (IV)* held that the claim for just satisfaction concerning the 32,488 alleged victims of the administrative practice contrary to Article 2 of Protocol No. 4, preventing the return of ethnic Georgians to their homes in Abkhazia and South Ossetia, did not relate to any of the violations found in the principal judgment. Indeed, in the judgment of 9 April 2024 the Court expressly excluded from the scope of the present case the issue of the inability of ethnic Georgians to return to their homes in Abkhazia and South Ossetia under Article 2 of Protocol No. 4 to the Convention by stating that:

> It will not deal with the issue of the inability of ethnic Georgians to return to their homes in Abkhazia and South Ossetia because that matter has already been examined by the Court (see *Georgia v. Russia (II)*).[42]

Yet, this statement raises some doubt. It is worth noting that the Court in its judgment of 29 January 2021 in the case *Georgia v. Russia (II)* held as follows:

> the Court concludes that there was an administrative practice contrary to Article 2 of Protocol No. 4 as regards the inability of Georgian nationals to return to their respective homes. That situation was still ongoing on 23 May 2018, the date of the hearing on the merits in the present case, when the parties submitted their most recent (oral) observations to the Court.[43]

38 *Georgia v. Russia (II)* (Just Satisfaction), para. 30.
39 *Georgia v. Russia (II)* (Just Satisfaction).
40 *Georgia v. Russia (II)* (Just Satisfaction).
41 *Georgia v. Russia (II)* (Just Satisfaction), para. 31.
42 *Georgia v. Russia (IV)* (Merits), para. 59.
43 *Georgia v. Russia (II)* (Merits), no. 38263/08, judgment of 21 January 2021, para. 299. See also Marcinko, "'A Little War That Shook the Court': Comment on the Judgment of the European Court of Human Rights in the Case *Georgia v. Russia (II)* of 21 January 2021.", 117 et seq. Milanovic, "The Fog of War: The *Georgia v. Russia (II)* Judgment".

The last sentence of this entire statement clearly indicates that the situation was still ongoing on 23 May 2018, thus, the process of the return of ethnic Georgians to their homes was not completed on the date of the judgment that the Court refers to in the judgment of 9 April 2024. Moreover, and without going into detail, the Court in the judgment of 28 April 2023 in the case *Georgia v. Russia (II)*, granted just satisfaction to at least 23,000 victims of the administrative practice of preventing the return of ethnic Georgians to their homes in South Ossetia and Abkhazia respectively.[44] Since the process of returning ethnic Georgians to their homes had not been completed by 2018, and given that the Court in the case *Georgia v. Russia (II)* granted just satisfaction to at least 23,000 victims, and in the case *Georgia v. Russia (IV)* the Georgian Government reported a total of 32,488 victims of the administrative practice in question, there remains a question of approximately 10,000 alleged victims and their cases would still require evaluation. This represents a certain weakness in the case *Georgia v. Russia (IV)*, although it results more from an erroneous assessment carried out in the merits phase (the judgment of 9 April 2024).

Secondly, the Court held that the claim for just satisfaction concerning the 719 alleged victims of the administrative practices of unlawful restrictions on the day-to-day freedom of movement across the ABL and of unlawful restrictions on the access to homes, land, other property, cemeteries, and families of ethnic Georgians who had already lodged individual applications with the Court, should also be entirely excluded because they concern victims who already lodged their individual applications with the Court. The Court referred at this point to the judgment of 31 January 2019 (just satisfaction) in the case *Georgia v. Russia (I)*. Again, in paragraph 70 of the above judgment the Court mentioned 290 individuals (victims) who have lodged individual applications.[45] Moreover, regarding those 290 individuals, the Court also referred to a number of other grounds for inadmissibility of just satisfaction, and not merely to the fact that those individuals had lodged their applications with the Court.[46] In fact, this is an issue that should be assessed at the admissibility stage of the proceedings, if at all. It is also difficult to explain why individuals who have made the effort to pursue their rights and

44 *Georgia v. Russia (II)* (Just Satisfaction), para. 44.
45 *Georgia v. Russia (I)* (Just Satisfaction), para. 70.
46 *Georgia v. Russia (I)* (Just Satisfaction), para. 70.

lodged an application with the Court are treated less favourably when the state of which they are nationals won its case against Russia concerning the same rights and claims. Those individuals in question should be included in the judgment of 14 October 2025, and their individual applications should be struck out of the Court's list of cases, assuming that no ruling has been delivered in those cases yet.

The Court held that the claims under (a), (b), (c), (f), (g) and (i) *supra* 'relate to the violations found in the principal judgment and it would appear that the alleged victims have not lodged individual applications with the Court'.[47] The question of lodging a prior individual application by the victims of the violations grows into a decisive criterion. The Court duly considered it when it comes to the claims under (e) and (h) as well as those under (a), (b), (c), (f), (g) and (i) *supra*. It is worth mentioning that the Court did not relate to the question of *res iudicata* but to the mere fact that some of the victims had lodged an application with the Court. This fact should not have prevented those victims from being on the list of victims in the current proceedings, especially, that the Court, in the same paragraph further argued: 'Just satisfaction has thus not been sought to compensate the State for a violation of its rights, but rather for the benefit of individual victims'.[48] The victims' prior applications should just be struck out of the list of cases if they have not yet been adjudicated (though the judgment on just satisfaction in the case *Georgia v. Russia (IV)* is silent on this matter).

In the context of the claim under (i), the Georgian Government introduced

> several thousands of ethnic Georgians who had been denied the right to primary and/or secondary education in the Georgian language in Abkhazia and South Ossetia, in breach of Article 2 of Protocol No. 1 (a lump sum as deemed appropriate by the Court) *supra*.

The Court relied on a determination that the deprivation of the right to primary and/or secondary education above amounted to a pattern or system and that it was not based on individual decisions. The Court referred to the case *Cyprus v. Turkey*, where the breaches of human rights

[47] *Georgia v. Russia (IV)* (Just Satisfaction), para. 12.
[48] *Georgia v. Russia (IV)* (Just Satisfaction), para. 12.

and freedoms resulted from military operations of a general character and were not based on any formal, individual administrative decisions towards any specific persons.[49] The Court held that 'the transition of Georgian schools to Russian as the language of instruction was completed in Abkhazia in 2022 and in South Ossetia in 2023. It also appears […] that more than 4.000 schoolchildren were concerned'.[50] An issue that certainly raises some doubt at first glance in the context of this claim is the 'question of precision' with which the Georgian Government identified the victims of the violation of Article 2 of Protocol No. 1 to the Convention ('several thousands of ethnic Georgians'). Furthermore, the sentence of the judgment of 14 October 2025, in which just satisfaction is granted to 'at least' a specific group of victims in the context of the Convention violations, also raises doubts regarding the precise identification of the victims of the respondent Government's conduct.

In general, the award of a particular sum is guided by the principle of equity. According to the Court, the principle of equity

> involves flexibility and an objective consideration of what is just, fair and reasonable in all the circumstances of the case, including not only the position of the applicant but the overall context in which the breach occurred. Its non-pecuniary awards serve to give recognition to the fact that moral damage occurred as a result of a breach of a fundamental human right and reflect in the broadest of terms the severity of the damage; they are not, nor should they be, intended to give financial comfort or sympathetic enrichment at the expense of the Contracting Party concerned.[51]

It is also argued that, as regards the sums awarded, they should be adapted to the price level in the respondent state.[52] The judgment of 14 October 2025, however, does not address this latter issue.

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[49] *Cyprus v. Turkey* (Just Satisfaction), paras. 51-55 and 58.

[50] *Georgia v. Russia (IV)* (Just Satisfaction), para. 21.

[51] *Varnava and Others v. Turkey*, nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, judgment of 18 September 2009, para. 224.

[52] Altwicker-Hámori, Altwicker, and Peters, "Measuring Violations of Human Rights: An Empirical Analysis of Awards in Respect of Non-Pecuniary Damage under the European Convention on Human Rights", 42. See also Fikfak, "Non-pecuniary damages before the European Court of Human Rights: Forget the victim; it's all about the state", 357.

The reasoning of the judgment of 14 October 2025 lacks any consideration of the principle of equity. The Court failed to explain what this principle entails and what motivates its application in the circumstances of the case. Likewise, the Court did not provide justification for the amount of just satisfaction granted in the case. This may be seen as a shortcoming of the judgment, although it must be noted that the Court's existing case-law also lacks any extensive consideration concerning the principle of equity.[53] The lack of cooperation on the part of the Russian Government did not help either.

4.2.2. Administrative Practice

The Court in the case *Georgia v. Russia (IV)*, in the context of the violation of Articles 2 and 3 of the Convention, referred to incidents (sufficiently numerous) such as the use of lethal force or incidental loos of life of ethnic Georgians that took place at the ABL (or after an arrest for a 'border violation') and to the detention for a 'border violation' in Abkhazia and in South Ossetia in conditions that might cause severe health problems.[54] The Court held that those incidents amounted to a pattern or system and the lack of an effective investigation into the incidents in question constituted an 'official tolerance' element of such administrative practice.[55]

In light of the foregoing findings, a noteworthy observation can be made regarding the 'lack of an effective investigation' into the incidents in question under Articles 2 and 3 of the Convention. On the one hand, the Court held that there had been a violation of Articles 2 and 3 of the Convention under their procedural limbs. On the other hand, those violations, as the Court's reasoning indicates, constitute an 'official tolerance' element of administrative practice. This approach by the Court cannot be considered ill-founded; it is only worth noting that a violation of the Convention Article may produce a two-fold effect.

In the context of the violation of Article 5(1) and Article 8 of the Convention and of Article 2 of Protocol No. 4 to the Convention, Articles 1 and 2 of Protocol No. 1 to the Convention, the Court referred to (without going into detail) the *de facto* transformation of the ABL into

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[53] Ichim, *Just Satisfaction under the European Convention on Human Rights*, 272. See also Radivojević and Raičević, "State Liability for Non-Pecuniary Damages", 29-30.

[54] *Georgia v. Russia (IV)* (Merits), para. 41.

[55] *Georgia v. Russia (IV)* (Merits), paras. 29-31 and 39-46.

state borders and to the repetition of incidents with regard to this 'border', such as a detention for 'illegally crossing' the ABL.[56] The repetition of incidents was established primarily on the basis of the Georgian Government's submissions and international materials produced by intergovernmental and non-governmental organisations. As regards the 'official tolerance' element, the Court held that no information had been submitted to the Court by the Russian Government (*de facto* Abkhaz and South Ossetian authorities) to enable the determination of whether the legal provisions which were in force and applied at the time of the facts were compatible with the requirements regarding the limitation of the rights and freedoms under the above-mentioned Articles of the Convention and Protocols thereto. In the Court's view, this failure to cooperate as such constitutes the 'official tolerance' element of the administrative practice in question. Therefore, a failure to cooperate may constitute an 'official tolerance' element of an administrative practice.

In light of these findings, it is worth noting the role of the 'international materials' that the Court referred to. This reliance underscores the significance of the intergovernmental and, more importantly, non-governmental organisations in the human rights protection framework.[57]

5. Conclusions

As the Court noted in the case *Georgia v. Russia (IV)* (just satisfaction), the question of whether to grant just satisfaction shall be assessed and decided on a case-by-case basis.[58] This assessment is based on three key factors: (1) the type of complaint made by the applicant government; (2) whether the victims of violations could be identified as sufficiently precise and objectively identifiable groups; (3) the main purpose of bringing the proceedings. Here, the Court referred to its earlier case-law in the cases *Georgia v. Russia (I)*, *Georgia v. Russia (II)*, and *Cyprus v. Turkey*.[59]

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[56] *Georgia v. Russia (IV)* (Merits), para. 52.

[57] Strzępek, "Subjects of Public International Law and Non-State Actors – Time for Reflection", 115.

[58] *Georgia v. Russia (IV)* (Just Satisfaction), para. 10.

[59] *Georgia v. Russia (I)* (Just Satisfaction), paras. 68-71; *Georgia v. Russia (II)* (Just Satisfaction), paras. 31-33; *Cyprus v. Turkey* (Just Satisfaction), para. 43.

The first factor highlights the clear nexus between the just satisfaction award and the judgment on the merits. The question arises as to whether it truly concerns the 'type of complaint made by the applicant government' or rather the 'type of violation' found by the Court in the principal judgment. In the context of the case *Georgia v. Russia (IV)* (just satisfaction), the latter conclusion is supported by the Court's constant references to the 'administrative practices' contrary to the respective Articles of the Convention and the Protocols thereto, as established by the Court in the merits phase. It is supported by the concept of the Court as the 'master of characterisation'.[60] It is also interesting to note that the so-called 'official tolerance' element of administrative practices in the case was established on the Russian Government's (*de facto* Abkhazian and South Ossetian authorities) failure to cooperate with the Court in the course of the proceedings.

Regarding the second factor, the Court in the case *Georgia v. Russia (IV)* (just satisfaction), sought to verify the list of victims of the violations of the Convention and of the Protocols thereto submitted by the Georgian Government. However, the question remains whether it did so with sufficient precision, given the considerations in Subsection 4.2.1. *supra*.

As regards the third factor, it may be concluded that both types of judgments, that is, on the merits and on just satisfaction, taken together, are intended to serve the most complete and possible realisation of the *restitution in integrum* principle and to ensure substantive fairness, even though they concern different legal issues. To adjudicate substantive fairness is traditionally more controversial as it refers in fact to less precise language and thought, which may also lead to the expansion of the scope of power exercised by courts. Moreover, the judgment on just satisfaction is complex due to the fact that individual victims lack *locus standi* in such proceedings (see considerations in Subsection 4.1.2. *supra*). To some extent, the latter findings serve as an argument both in favour of and against the principle of equity. This complexity may explain the difficulty in defining the principle of equity in the Court's case-law.

[60] See, for example, *Grosam v. The Czech Republic*, no. 19750/13, judgment of 1 June 2023, para. 55.

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