EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 21727/05
Giorgi DEVADZE against Georgia
and 3 other applications
(see list appended)

The European Court of Human Rights (Fourth Section), sitting on 11 October 2016 as a Committee composed of:

Krzysztof Wojtyczek, *President,*
Nona Tsotsoria,
Marko Bošnjak, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having regard to the above applications lodged on the dates indicated in the appendix,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. A list of the applicants, who are all Georgian nationals, is set out in the appendix.

2. The Georgian Government ("the Government") were represented by their Agent, Mr L. Meskhoradze, of the Ministry of Justice.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The four applications listed in the appendix concern the compatibility with the Convention standards of the civil proceedings *in rem* for forfeiture of wrongly acquired property and unexplained wealth derived from

proceeds of offences committed in public office. The contested domestic procedure is governed by Article 37 § 1 (1) of the Code of Criminal Procedure ("the CCP") and Article 21 §§ 4 to 11 of the Code of Administrative Procedure ("the CAP").

1. Devadze v. Georgia, application no. 21727/05

5. In February 2004, Dj.G., the husband of the applicant's daughter, was charged with abuse of official authority. Consequently, a public prosecutor of the Ajarian Autonomous Republic ("the AAR") filed a civil action, requesting that certain property belonging to Dj.G. and his close relatives – his wife and father-in-law (the applicant) – be forfeited in favour of the State. The prosecutor submitted that there existed a reasonable suspicion that that property had been acquired with the proceeds of crime purportedly committed by Dj.G., a former public servant.

6. With respect to the property in the applicant's possession, a house in the centre of Batumi measuring some 190 square metres, the prosecutor submitted evidence suggesting that the house had been registered in the applicant's name fictitiously, whist in reality it had been acquired with Dj.G.'s funds. The Ajarian Supreme Court invited the applicant to submit documents capable of showing that the house in question could have been acquired with his own, lawfully earned income.

7. Having examined all the written and oral submissions of both the public prosecutor and the applicant in adversarial proceedings, the Ajarian Supreme Court found, in its judgment of 10 September 2004, that the construction of the contested house had coincided in time with the periods in which Dj.G. had been, first, a governor of the region and, then, a Deputy Minister of the Interior of the AAR. Furthermore, as the applicant had not provided sufficient proof to show that the house in question – with a market value of some 44,457 euros (EUR) – had been built with his own funds, the only declared source of his income being a monthly pension of no more than EUR 105, the court ordered that the house be considered as an "unlawful and unjustly acquired" asset and be confiscated for the benefit of the State.

8. The judgment of 10 September 2004 was finally upheld by the Supreme Court of Georgia on 17 January 2005.

2. Bakuridze and Others v. Georgia and Bakuridze v. Georgia, applications nos. 36588/05 and 48989/09

9. D.B., a high-rank officer in the Ajarian Ministry of the Interior between October 1993 and May 2004, was charged with abuse of official authority, extortion, false arrest and certain other offences. Shortly after, a public prosecutor of the AAR filed a civil action with the Ajarian Supreme Court to confiscate the unlawfully acquired property of the accused, his

family members and certain other close people from his private or professional entourage.

10. The prosecutor's claim concerned, amongst other people, the property registered in the name of the first, second, third and fourth applicants, who were, respectively, D.B.'s father, brother, wife and close friend. In support, the prosecutor submitted evidence suggesting that the salaries officially received by D.B. could not have sufficed to acquire the property in question owned by the applicants who, moreover, had not had their independent sources of income at the material period. The Ajarian Supreme Court transmitted the prosecutor's action to the applicants, inviting them to show documents capable to dispel the doubt that they had not had sufficient income for acquiring the property in question (several flats and other types of real property as well as a number luxury vehicles, with the overall market value of EUR 500,000).

11. Having examined submissions of both the public prosecutor and the applicants in adversarial proceedings, the Ajarian Supreme Court found, in its judgment of 14 September 2004, that the applicants had failed to demonstrate convincingly that they had acquired the property in question with lawfully earned money. Given that the property had been either purchased or constructed exactly at the time when D.B had held the high-rank post within the Ministry of the Interior, and given that the latter had earned in official salaries only 15,838 Georgian Laris (some EUR 7,000), a conclusion was made that the origins of the property were to be assumed to have been unlawful. The court consequently ordered the confiscation of the disputed property.

12. The judgment of 14 September 2004 was upheld by the Supreme Court of Georgia on 20 January 2005, which final decision was served to the applicants on 21 February 2005.

13. Subsequently, the first applicant initiated a separate set of proceedings aimed at the discontinuation of the enforcement proceedings in so far as part of his property was concerned, but to no avail. Those additional proceedings were finally terminated to his detriment by a decision of the Supreme Court of Georgia dated 1 December 2008. A reasoned copy of this decision was served on the applicant on 9 March 2009.

3. Loria v. Georgia, application no. 31135/06

14. On an unspecified date in 2004 a former Minister of Security of the AAR, Mr I.G., was charged with abuse of power, extortion and certain other criminal offences. He absconded from the investigation and trial by fleeing to Moscow.

15. Subsequently, a public prosecutor filed a civil action for forfeiture of a number of "unlawfully or unjustly" obtained assets belonging to I.G., his family members and other close persons. The applicant was identified as

one of such close persons from the former Minister's personal entourage, and the prosecutor challenged the lawfulness of the origin of her apartment in Batumi, the market value of which was assessed at some EUR 35,000.

16. The Ajarian Supreme Court summoned the applicant to a hearing twice, but she, who by that time had moved to Moscow, failed to appear without giving any valid reason. Nor did the applicant submit her arguments in writing. That being so, on 6 September 2004 the court delivered a judgment, noting that, contrary to the requirements of Article 21 § 6 of the CAP, the applicant had failed to submit evidence proving that the impugned asset had been purchased by her with lawfully declared income. In consequence, the court ordered that the flat in question be confiscated and transferred to the State.

17. The judgment of 6 September 2004 was upheld, on appeal, by the Supreme Court of Georgia on 20 January 2005, which final decision was served to the applicant on 22 March 2006.

B. Relevant domestic law and practice

18. The relevant domestic provisions in the domestic law, including Article 37 § 1 of the CCP and Article 21 §§ 4 to 11 of the CAP, which concerned the procedure specifically aimed at recovering wrongfully acquired property and unexplained wealth from a public official charged with a criminal offence committed in public office, as well as from the latter's family members, relatives and other close people, are summarised in the leading case of *Gogitidze and Others v. Georgia* (no. 36862/05, §§ 44-54, 12 May 2015).

COMPLAINTS

19. All applicants complained that the confiscation of their assets and the relevant domestic proceedings amounted to a breach of Article 6 §§ 1 and 2 of the Convention as well as of Article 1 of Protocol No. 1.

20. As regards application no. 21727/05, *Devadze v. Georgia*, the applicant also cited Articles 8 and 13 of the Convention.

THE LAW

A. Joinder of the cases

21. Given their common factual and legal background, the Court decides that the four applications listed in the appendix should be joined pursuant to Rule 42 § 1 of the Rules of Court.

B. Complaints under Article 6 §§ 1 and 2 of the Convention and Article 1 of Protocol No. 1

22. The applicants complained that the confiscation of their property, amounted to a criminal sanction, imposed in the absence of final convictions establishing the guilt of the various civil servants with whom they were associated. They alleged that that had infringed their various criminal procedural rights under Article 6 §§ 1 and 2 of the Convention. The applicants further complained that the loss of their property as the result of the contested civil proceedings *in rem* amounted to a breach of Article 1 of Protocol No. 1. The relevant provisions read as follows:

Article 6

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. ..."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

1. The parties' submissions

23. As regards the complaints under Article 6 §§ 1 and 2 of the Convention, the Government submitted that the cited provisions could not apply to the contested civil proceedings *in rem*, as the latter had not involved determination of any criminal charge against the applicants.

24. As to the complaints under Article 1 of Protocol No. 1, the Government, essentially repeating the arguments made by them in *Gogitidze and Others v. Georgia* (no. 36862/05, §§ 44-54, 12 May 2015),

submitted that the contested procedure of civil forfeiture of property had been fully compatible with the relevant domestic provisions, introduced by the Georgian legislator in February 2004 and served the public interest of the eradication of corruption in the public service. The Government argued that the confiscation was a proportionate measure, as the relevant civil disputes between the State and the applicants had been subjected to comprehensive judicial reviews by independent and objective courts. However, during those judicial proceedings, the applicants had failed to prove that they had had lawful incomes that could have been sufficient to acquire the property in question.

25. The applicants maintained their complaints. Their submissions were mostly aimed at criticising the political and legal reforms undertaken by the Georgian Government in general, accusing the then ruling forces of anti-democratic methods of governing and of adjusting the law, including the legislation on civil proceedings *in rem*, to their own whims. They also called into question the outcome of the judicial proceedings, complaining that the domestic courts had shifted onto them the burden of proving the lawful origins of their assets.

2. The Court's assessment

26. The Court recalls that it has already examined the Georgian system of civil proceedings *in rem* aimed at the recovery of assets wrongfully or inexplicably accumulated by public officials accused of offences in official capacity as well as by their close entourage (that is "relatives" and "connected persons"), envisaged by Article 37 § 1 of the CCP and Article 21 §§ 4 to 11 of the CAP, in the case of *Gogitidze and Others*, cited above (see, in particular, §§ 91-115 and 120-127).

27. In that leading case, the Court found that that the forfeiture of property ordered as a result of civil proceedings *in rem*, without involving determination of a criminal charge, was not of a punitive but of a preventive and/or compensatory nature and could not thus give rise to the application of either the criminal limb of Article 6 § 1 or the principle of "presumption of innocence" under the second paragraph of the same provision (see *Gogitidze and Others*, cited above, §§ 121 and 126, with further references).

28. The Court does not see any reason to depart from these findings in the present case. It follows that the applicants' complaints under the "criminal" limb of the first paragraph as well as under the second paragraph of Article 6 are incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

29. Assuming that the applicants also meant to invoke the "civil" limb of Article 6 § 1 of the Convention in relation to the outcome of the domestic court proceedings (see *Arcuri and Others v. Italy* (dec.), no. 52024/99, ECHR 2001−VII), the Court reiterates that it is primarily for the national

authorities, notably the courts, to resolve problems of interpretation of domestic legislation and assess the facts. As to their argument that they should not have been made to bear the burden of proving the lawfulness of the origins of their property (see paragraph 25 above), the Court reiterates that there can be nothing arbitrary, for the purposes of the "civil" head of Article 6 § 1, in the reversal of the burden of proof onto the respondents in the forfeiture proceedings *in rem* after the public prosecutor had submitted a substantiated claim (compare with *Gogitidze and Others*, cited above, § 122).

30. It follows that the applicants' complaints under the "civil" limb of Article 6 § 1 of the Convention are manifestly ill‑founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4.

31. As to the complaints under Article 1 of Protocol No. 1, the Court reiterates its previous findings that the Georgian system of the civil proceedings *in rem* is in full conformity with the "lawfulness" requirement contained in Article 1 of Protocol No. 1 (see *Gogitidze and Others*, cited above, §§ 98-100). Furthermore, there can be no doubt that the forfeiture measures were effected in accordance with the general interest in ensuring that the use of the property did not procure advantage for the applicants to the detriment of the community (ibid., §§ 101-103; compare also with *Phillips v. the United Kingdom*, no. 41087/98, § 52, ECHR 2001 VII). As to the proportionality requirement, the Court first recalls that the respondent State enjoys a wide margin of appreciation with regard to what constitutes the appropriate means of applying measures to control the use of property such as the confiscation of all types of proceeds of crime (see *Gogitidze and Others*, cited above, §§ 105-108, with further references). Furthermore, judging by the materials available in the case file, the Court could not see anything in the conduct of the civil proceedings *in rem* to suggest that the applicants were either denied a reasonable opportunity of putting forward their case, an issue not even disputed by any of them, or that the domestic courts' findings were tainted with manifest arbitrariness.

32. Accordingly, the applicants' complaints under Article 1 of Protocol No. 1 are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. The remaining complaints

33. As regards application no. 21727/05, *Devadze v. Georgia*, the applicant, additionally citing Articles 8 and 13 of the Convention, reiterated his complaints about the outcome of the domestic proceedings.

34. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court considers that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application

must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 3 November 2016.

Andrea Tamietti	Krzysztof Wojtyczek
Deputy Registrar	President

APPENDIX

(List of the joined applications)

No	Application No	Lodged on	Applicant Date of birth Place of residence	Represented by
1.	21727/05	07/06/2005	**Mr Giorgi DEVADZE** 20/02/1940 Tbilisi	NONE
2.	36588/05	20/08/2005	**Mr Otar BAKURIDZE** ("the first applicant") 25/12/1939 Batumi **Mr Bakuri BAKURIDZE** ("the second applicant") 16/01/1974 Batumi **Ms Diana BAKURIDZE-KHUNDADZE** ("the third applicant") 09/08/1982 Batumi **Mr Ilia BEKAIA** ("the fourth applicant") 24/04/1973 Batumi	Ms Ts. Javakhishvili Ms M. Pkhaladze
3.	31135/06	04/06/2006	**Ms Tamar LORIA** 09/05/1978 Batumi	NONE
4.	48989/09	26/08/2009	**Mr Otar BAKURIDZE** (the same person as in application no. 36588/05) 25/12/1939 Batumi	Mr G. Zirakishvili