



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

THIRD SECTION

CASE OF TCHITCHINADZE v. GEORGIA

(Application no. 18156/05)

JUDGMENT
(Just satisfaction)

STRASBOURG

29 May 2012

FINAL

29/08/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tchitchinadze v. Georgia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President*,

Corneliu Bîrsan,

Egbert Myjer,

Ján Šikuta,

Ineta Ziemele,

Nona Tsotsoria,

Kristina Pardalos, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 10 May 2012,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 18156/05) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Sulkhan Tchitchinadze (“the applicant”), on 12 April 2005.

2. In a judgment delivered on 27 May 2010 (“the principal judgment”), the Court decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). It held that the arbitrary quashing of the Batumi City Court final and enforceable decision of 18 November 2004, which established the applicant’s title to real property, had violated his rights under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 (see *Tchitchinadze v. Georgia*, no. 18156/05, §§ 53-60, 27 May 2010).

3. In the principal judgment, the Court made an award to the applicant in respect of non-pecuniary damage and rejected his claim for costs and expenses. As regards pecuniary damage, the Court considered that the question of the application of Article 41 of the Convention in that particular respect was not ready for decision, reserved it and invited the parties to submit, within six months from the date on which the 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 they might reach (*ibid.*, § 69, and point 4 of the operative provisions).

4. The applicant and the Government each filed observations.

THE LAW

5. Article 41 of the Convention provides:

“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.”

A. Pecuniary Damage

1. *The parties' submissions*

6. The Government submitted that they were willing to restore the situation which had existed prior to the quashing of the Batumi City Court decision of 18 November 2004. Notably, they stated that the applicant's ownership of part of the house located at 54 Mazniashvili street in Batumi (“the Mazniashvili estate”), as was established by the above-mentioned court decision, could be recorded in the relevant Land Registry again. However, the Government reiterated a condition which they had previously raised before the Court, notably that the applicant should still bring a fresh court action for recovery of the estate and wait for a potentially positive outcome of the ensuing proceedings (see *Tchitchinadze*, cited above, § 67). Only if his action was rejected by domestic courts, the Government would then consider the possibility of awarding compensation instead; they did not, however, suggest any approximate amount of such eventual compensation.

7. The applicant replied that he should not be obliged to undertake additional legal steps for the purposes of Article 41 of the Convention. In any event, he expressed his preference for monetary compensation, arguing that the Mazniashvili estate had suffered depreciation due to the unauthorised construction of a second floor on its roof effectuated either by the State or a private person, the latter issue not being clearly explained in his submissions. The applicant added that he could accept the Mazniashvili estate on the condition that the Government would agree to demolish that illegal construction. Otherwise, he insisted to receive adequate compensation comparable to the value of the two-storey house located at 54 Mazniashvili street in its entirety. He invited the Court to define an adequate amount of such compensation.

2. *The Court's assessment*

8. The Court recalls that in the principal judgment it advised the parties, when inviting them to reach an agreement with respect to the issue of pecuniary damage, that the most appropriate form of redress would be to

restore to the applicant his title to the Mazniashvili estate, as was initially established by the Batumi City Court decision of 18 November 2004 (see *Tchitchinadze*, cited above, § 69). Alternatively, should this prove impossible, the Court suggested that the applicant's pecuniary claim could also be satisfied by awarding him reasonable compensation for the loss of his property title.

9. Having regard to the parties' latest submissions, the Court first notes that the Government's argument concerning the need for the applicant to bring a fresh court action for recovery of his property was already examined and dismissed as inappropriate in the principle judgment. Indeed, it is a well-established principle that applicants should not be obliged to exhaust domestic remedies anew with respect to their claims for just satisfaction under Article 41 of the Convention (see *Tchitchinadze*, cited above, § 68, with further references). However, having regard to the applicant's own position on the matter as well as to other particular circumstances of the case, the Court still finds that, instead of the option of *restitutio in integrum*, a more appropriate course of action would be to award him reasonable compensation.

10. The Court emphasises in this respect that the applicant's expectation to obtain from the State damages for the alleged depreciation of his estate, caused by the unlawful construction of the second floor on its roof, is groundless. Notably, as confirmed by the relevant records and cadastral map from the Batumi Land Registry, the house at 54 Mazniashvili street already represented a two-storey building at the time of the establishment of the applicant's title to its relevant part, which measured some 68 square meters and was situated on the first floor, by the Batumi City Court decision of 18 November 2004. Consequently, there cannot be any connection between the allegedly unlawful construction works and the consequences of the arbitrary quashing of the above-mentioned decision, the latter fact being the only one imputable to the respondent State under the Convention in the present case.

11. In the light of the foregoing, the Court considers that the applicant should be awarded an amount corresponding to the value of the Mazniashvili estate exactly as it stood, measuring some 68 square meters, at the time of the establishment of the applicant's property title by the Batumi City Court decision of 18 November 2004. Making such assessment on an equitable basis and having regard to the information at its disposal concerning relevant current prices on the Batumi real estate market (see *Străin and Others v. Romania*, no. 57001/00, § 81, ECHR 2005-VII), the Court estimates that value at 34,000 euros (EUR).

B. Default interest

12. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY*Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 34,000 (thirty-four thousand euros), in respect of pecuniary damage, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned six months period until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 29 May 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President