



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

FIFTH SECTION

CASE OF KHIZANISHVILI AND KANDELAKI v. GEORGIA

(Application no. 25601/12)

JUDGMENT

Art 1 P1 • Peaceful enjoyment of possessions • Domestic courts' failure to explain satisfactorily their approach in establishing value of unlawfully demolished property and amount of compensation due

STRASBOURG

17 December 2019

FINAL

17/03/2020

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

In the case of Khizanishvili and Kandelaki v. Georgia,

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

Angelika Nußberger, *President*,

Gabriele Kucsko-Stadlmayer,

Ganna Yudkivska,

Yonko Grozev,

Síofra O’Leary,

Mārtiņš Mits,

Lado Chanturia, *judges*,

and Milan Blaško, *Deputy Section Registrar*,

Having deliberated in private on 22 October and 19 November 2019,

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

PROCEDURE

1. The case originated in an application (no. 25601/12) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Georgian nationals, Ms Lali Khizanishvili (“the first applicant”) and Mr Giorgi Kandelaki (“the second applicant”), on 20 April 2012.

2. The applicants were represented by Ms L. Mukhashavria, a lawyer practising in the village of Kvemo Shukhuti. The Georgian Government (“the Government”) were represented by their Agent, Mr B. Dzamashvili, of the Ministry of Justice.

3. The applicants alleged, in particular, that the domestic courts had failed to afford them adequate redress for the unlawful demolition of their property, in breach of Article 1 of Protocol No. 1 to the Convention.

4. On 20 September 2017 notice of the complaint under Article 1 of Protocol No. 1 was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

5. The first applicant died on 15 December 2017. Her mother, Ms Luba Khizanishvili, expressed her wish to continue the proceedings before the Court in her daughter’s stead.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

6. The first applicant was born in 1963. The second applicant was born in 1955 and lives in Tbilisi.

7. On 31 October 2003, together with four other individuals and a company, the applicants acquired ownership of commercial premises

situated in Tbilisi near the entrance to Gotsiridze metro station (“the building”) on a plot of land measuring 154 sq. m. The plot of land was registered in the Public Registry as being jointly owned by the above-mentioned individuals and the company. The building on the land, which was also registered as being jointly owned by those persons, had a total area of 494 sq. m: the first applicant’s property measured 76.82 sq. m (45.8 sq. m on the basement level and 31.02 sq. m on the ground floor), and the second applicant’s property measured 40.74 sq. m (25.67 sq. m on the basement level and 15.07 sq. m on the ground floor).

8. The case-file material indicates that the first applicant paid 12,500 Georgian laris (GEL – approximately 5,500 Euros (EUR)) and the second applicant paid GEL 12,000 (approximately EUR 5,300) for their respective shares in the building and their rights to the plot of land on which it was located. Various sources, including the financial stability reports issued by the National Bank of Georgia, indicate a significant increase in the value of real estate in Tbilisi between 2003 and 2007.

9. The building had been built on the basis of a permit obtained on 11 July 2002, and use of the building was approved by the relevant municipal authority on 28 May 2003.

10. On 29 January 2007 the applicants applied to the Tbilisi City Hall (“the City Hall”) with a request for information about rumoured demolition plans relating to the building and any legal grounds for such demolition. On the same date the Public Defender applied to the mayor, noting that any demolition of the building, which constituted property duly owned by the applicants and other private parties, should be carried out in accordance with the law and be based on a written order. It does not appear that either the applicants or the Public Defender received a response.

11. On 30 January 2007 the Supervision Service of the City Hall (“the Supervision Service”) demolished the building with a bulldozer. Media coverage of the events suggested that the demolition of the building formed part of a campaign initiated by the City Hall to demolish buildings which had been either unlawfully constructed or unsightly.

12. On 27 February 2007 the applicants instituted judicial proceedings, stating that the Supervision Service had demolished their property without any legal grounds, and claiming damages. They presented the findings of a private assessor in respect of the value of the property. According to that assessor’s report, the overall market value of the basement floor and the ground floor of the commercial premises, measuring 229.73 sq. m, had been 760,000 United States dollars (USD – approximately EUR 585,300). Given that the building concerned no longer existed, the expert gave a tentative price based on the value of an “analogous hypothetical building”.

13. On 1 May 2008 the first-instance court commissioned an expert examination with respect to the value of the demolished property. Among other things, the court asked the experts to determine the market value of the

demolished property as of 30 January 2007. The resulting report – no. 1765/15/19, dated 30 October 2008 – was written by two experts from the National Forensic Bureau (“the first NFB report”). The report concluded that the total market price of the building at the time of its demolition would have been GEL 1,068,975 (approximately EUR 497,400). However, as the building had no longer existed at the time of the assessment, and certain documents concerning the materials used for its construction had not been available, it had been impossible to describe the real picture, and the experts had given guide prices (*ბაზოიგენტაგომ ფასი*). The experts also noted that they had not had specific data (evidenced by documents) regarding information concerning the sale and purchase of similar buildings.

14. On 8 July 2009 the first-instance court ordered another expert examination in order to calculate the market price of the building excluding the value of the plot of land on which it had been located, as the applicants had retained ownership of the land. The resulting report – no. 1363/04/19 of 17 September 2009, issued by an expert from the National Forensic Bureau (“the second NFB report”) – concluded that the value of the plot of land in question was GEL 50,820 (approximately EUR 23,648), taking GEL 330 (approximately EUR 153) as the market price of each square metre. Therefore, the total market value of the building at the time of its demolition, without taking into account the value of the plot of land, would have been GEL 1,018,155 (approximately EUR 473,790): the first applicant’s share being GEL 187,501.74 (approximately EUR 87,252), and that of the second applicant being GEL 133,862.20 (approximately EUR 62,291).

15. On 9 November 2009 the City Court found that the demolition of the commercial premises had been unlawful. It noted the following:

“The court agrees with the claimants’ arguments and considers that the case material, as well as the video-recording [of the demolition], have incontrovertibly established the fact that the building owned by the claimants was illegally demolished by the ... Supervision Service of the Tbilisi City Hall ... especially considering that, despite the court’s instruction, the respondent failed to produce the material concerning the administrative proceedings relating to the demolition of the building, [and] the demolition of the building was carried out without any legal grounds. Accordingly, the Tbilisi City Hall is obliged to compensate [the claimants] for the damage inflicted upon [them].”

16. In making an award, the first-instance court noted that the applicants had not been deprived of the plot of land, therefore they should only be compensated for damage relating to the market price of the building. Relying on the findings of the second NFB report (see paragraph 14 above), the court allowed the applicants’ claims in part, and granted them damages as follows: the first applicant was granted GEL 187,501 (approximately EUR 87,252) and the second applicant was granted GEL 133,862 (approximately EUR 62,291). The second applicant was also granted the equivalent of USD 550 (approximately EUR 417) per month in the national

currency in respect of the period from 1 February 2007 until the judgment was finally enforced, in relation to the rent he would have received under a rental agreement concluded on 1 August 2006 in respect of his part of the building. Similar requests by the first applicant and the second applicant in respect of a lease agreement concluded with another party were dismissed for lack of sufficient evidence.

17. On 1 February 2010 the applicants lodged an appeal with the appellate court. Among other things, they disagreed with the amount of the award made in respect of them, and with the lower court's assessment of the evidence in that connection.

18. On 19 October 2010 the City Hall asked the appellate court to allow it to commission an expert examination by a panel of experts, owing to the fact that the State expert who had issued the second NFB report which the lower court had relied on to award damages had used a different method of calculating damage in other proceedings concerning similar facts, namely calculating the value of a property by means of material obtained as a result of its demolition. On the same date the appellate court adjourned the proceedings and instructed the City Hall to produce the results of the expert examination.

19. On 19 October 2010 the City Hall addressed the following request to the National Forensic Bureau:

"We request that you carry out a panel examination: (1) with a view to determining the value of the material [obtained] from the demolished commercial building at no. 2 Tsotne Dadiani Street in Tbilisi [a different location from where the applicants' property had been situated], and (2) taking into account the letter from the Architecture Service of the City Hall ..., with a view to determining the value of the demolished commercial building in Tbilisi near ... the Viktor Gotsiridze metro station."

20. The resulting report of the panel of three experts (including the author of the second NFB report) – no. 15737/10/1, produced between 20 October 2010 and 10 December 2010 ("the third NFB report") – contained the following conclusions:

"The value of the material obtained as a result of the demolition of the commercial building located at no.2 Tsotne Dadiani Street in Tbilisi is equivalent to USD 825 (approximately EUR 625) ...

The value of the material obtained as a result of the demolition of the commercial property near ... the Viktor Gotsiridze metro station in Tbilisi is equivalent to USD 9,880 (approximately EUR 7,490) ..."

21. The descriptive part of the third NFB report noted that, in a different expert examination, the value of the building at no. 2 Tsotne Dadiani Street had been calculated on the basis of adding the value of the plot of land to the value of the material obtained as a result of the demolition of that property.

22. As concerns the applicants' property (the building near the Viktor Gotsiridze metro station in Tbilisi), the third NFB report noted the existence of the second NFB report, without elaborating on the latter's findings regarding the value of the property in question. The authors of the third NFB report took note of letters from the Architecture Service of the City Hall, according to which only the underground side of the plot of land measuring 154 sq. m could technically have been used, without elaborating further. The experts then addressed the technical aspects of the building itself, as described in the second NFB report, and, on the basis of that information, concluded "the value of the [construction] material obtained as a result of the demolition ... is USD 20 [approximately EUR 15] per square metre, hence the value of 494 sq. m is equivalent to USD 9,880 [approximately EUR 7,490] ..." The third NFB report concluded by explaining the experts' method for calculating "the market price of material obtained as a result of the demolition of immovable property."

23. On 15 January 2011 the applicants obtained a linguistic report from a philology expert. The expert had been asked to assess whether the findings of the third NFB report (see paragraph 20 above) had been relevant to the questions which the experts had been asked. The philology expert noted that while the two questions put to the experts had concerned two issues: one related to "the value of material" and the other related to "the value of a commercial property", essentially different things, "the answer in respect of both questions referred only to the value of the material obtained as a result of the demolition". Therefore, the philology expert concluded that the second question, which had concerned the determination of the value of the building, had not been answered.

24. On 21 January 2011 the Tbilisi Court of Appeal agreed with the lower court's finding that the demolition of the applicants' property had lacked any legal basis (see paragraph 15 above), and upheld the first-instance court's award in respect of the lost income (see paragraph 16, *in fine*), but overturned the lower court's award in respect of pecuniary damage in so far as the value of the demolished building was concerned. The appellate court granted the applicants reduced damages: the equivalent of USD 1,536.40 for the first applicant (approximately EUR 1,164), and the equivalent of USD 814.80 (approximately EUR 617) in the national currency for the second applicant. The appellate court based its decision on the third NFB report produced by the panel of experts (see paragraph 20 above). In particular, it noted the following:

"... the appellate court shares the view of the City Hall that, in cases ... where the value of a plot of land was not being taken into account, the expert [who wrote the second NFB report, see paragraph 14 above] used a different method to calculate the value of demolished buildings ...

The appellate court considers that while assessing [the first NFB report], the first-instance court did not consider the experts' comment that, in determining the value of

the building, they had not had specific data (evidenced by documents) regarding information concerning the sale and purchase of similar buildings. In that same report, the experts explained that as the building had no longer existed at the time of the assessment, it had been impossible to describe the real picture, and they had given guide prices. The appellate court also cannot consider [the second NFB report] convincing, as the expert did not duly reason the research method [used].

Accordingly, in view of the above-mentioned considerations, the appellate court considers that the first-instance court violated Article 105 of the Civil Procedure Code when assessing the National Forensic Bureau reports of 30 October 2008 and 17 September 2009.

...

The appellate court explains that, in accordance with Article 173 of the Civil Procedure Code, if the opinions of several experts are in contradiction, a court may, of its own motion, commission another expert examination ... if the circumstances set out in Article 162 § 1 exist. Considering that, in the instant case, the expert examination report by a panel of experts was presented by a party (the Tbilisi City Hall), the court [does] not consider it appropriate to commission another examination of its own motion. The appellate court underlines the fact that [the following factors] were taken into account during the examination by the panel of experts: the type of building [in question], building material, and the prospects of developing the plot of land belonging to the appellants. The appellate court considers the report issued by the panel of experts to be credible, taking into account the fact that it integrates the results of the [earlier] expert examinations of 30 October 2008 and 17 September 2009, and [it] is consistent with [the approach taken in] expert examinations carried out in similar cases [reference was made to eleven pages in the case-file material].”

25. As concerns the linguistic report adduced by the applicants (see paragraph 23 above), the appellate court noted the following:

“In order to disprove the findings of the panel of experts, [the appellants] presented the conclusions of a linguistic expert examination which concerned the question of to what extent the answers of the panel of experts had been consistent with the questions put to them. According to the findings of the linguistic expert, the value of the commercial property had not been determined and the answer to the question provided by the experts was inadequate. The court cannot share the conclusions of the linguist, for the simple reason that several expert examinations were carried out in order to determine the value of the demolished building, and the panel of experts also assessed the findings of earlier expert examinations, consequently it is less likely that the experts moved away from the issue about which they were asked. As concerns the formulation of the answer, it may indeed not be straightforward from a literal perspective, but the assessment [of that answer] should be based on reasonable judgment.”

26. The court reached the following conclusion regarding the value of the demolished property:

“Assessing the totality of the evidence available in the case file, as well as that presented during the appellate proceedings, the appellate court considers it proven that the value of the demolished building ... should be determined as being USD 9880, with [the price of] 1 square metre [being] USD 20.”

27. On an unspecified date the applicants appealed against the Court of Appeal's judgment. The case-file material does not contain a copy of their appeal on points of law.

28. On 12 September 2011 the Supreme Court of Georgia declared the appeals on points of law inadmissible. On 21 October 2011 the decision of the Supreme Court was served on the parties.

II. RELEVANT DOMESTIC LAW

29. At the material time, Article 105 (evaluation of evidence) of the 1997 Civil Procedure Code ("the CPC") provided that the judges of a court had to evaluate evidence in accordance with their inner conviction, on the basis of a "comprehensive, full and impartial examination of the evidence". A judgment had to set out the considerations underpinning that inner conviction.

30. In accordance with Article 162 § 1 of the CPC,

"If a judge does not have specialist knowledge regarding a matter relating to the case under consideration, a court may, of its own motion, commission an expert examination at any stage of the proceedings, only in circumstances where clarification of the matter is essential for deciding the case and it is impossible to reach a decision without it. In such cases, a court shall deliver a reasoned decision."

31. Article 172 of the CPC provided that an expert opinion was not binding upon a court, which made its assessment in accordance with Article 105 of the Code, but a refusal to admit an expert report had to be duly reasoned.

32. Article 173 of the CPC provided as follows:

"1. If an expert opinion is incomplete or unclear, a court may, of its own motion, commission an additional expert examination, if the conditions provided for in Article 162 § 1 exist.

2. If a court does not agree with an expert's conclusion on the grounds that it is not reasoned, [or] if several expert opinions are in contradiction with each other, a court may, of its own motion, commission another expert examination and order another expert or other experts to carry out the examination, if the conditions provided for in Article 162 § 1 exist."

33. Article 423 § 1 (g) of the CPC provides for a right to request the re-opening of civil proceedings based on newly discovered circumstances if "there exists a final judgment (decision) of the European Court of Human Rights finding a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms and/or its Protocols in relation to that case, and the violation found [by the European Court] originates from the judgment to be reviewed."

THE LAW

I. PRELIMINARY ISSUE

34. The Court notes at the outset that the first applicant, Ms Lali Khizanishvili, died after lodging the application on 20 April 2012, and that her mother, Ms Luba Khizanishvili, expressed the wish to continue the proceedings before the Court (see paragraph 5 above). The Government did not dispute that Ms Luba Khizanishvili had standing to pursue the application in the first applicant's stead.

35. The Court reiterates that in cases where an applicant has died in the course of the proceedings, it has previously taken into account the statements of the applicant's heirs or close family members expressing the wish to pursue the proceedings before the Court (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 97, ECHR 2014; *Fartushin v. Russia*, no. 38887/09, §§ 31-34, 8 October 2015; and *Paposhvili v. Belgium* [GC], no. 41738/10, § 126, ECHR 2016). In view of the above, and having regard to the circumstances of the present case, the Court accepts that the first applicant's mother has a legitimate interest in pursuing the application, in so far as it has been lodged by the first applicant. However, for reasons of convenience, the text of this judgment will continue to refer to Ms Lali Khizanishvili as "the first applicant", although her mother is today to be regarded as having this status.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

36. The applicants complained that the domestic courts had failed to afford them adequate redress for the unlawful demolition of their property, in breach of Article 1 of Protocol No. 1 to the Convention, which reads as follows:

"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."

37. The Government contested that argument.

A. The parties' submissions

1. The Government

38. The Government asked the Court to strike the application out of the list of cases, because the applicants had lost their victim status after the domestic courts had found that their right of property had been violated and granted them compensation in respect of pecuniary damage, thus providing adequate redress for the breach of the Convention. According to the Government, the redress granted to the applicants had been the result of the domestic courts considering in detail the various reports obtained in the proceedings, with a view to determining the extent of the losses suffered by the applicants. According to the Government, it was within the domestic courts' discretion to evaluate the evidence before them. As regards the amount of compensation awarded, the Government submitted that the Court's case-law did not provide for there being full compensation in all cases. However, the compensation awarded to the applicants had been adequate with regard to the damage sustained. The Government also submitted that the applicants' failure to request compensation for pecuniary damage before the Court as regards the allegedly inadequate compensation awarded in respect of the demolition of the building further indicated that they had lost their victim status.

39. The Government also maintained that the applicants had not suffered a significant disadvantage, owing to the fact that they had retained ownership of the plot of land on which the demolished building had been located. Furthermore, the first applicant and the second applicant had paid GEL 12,500 (approximately EUR 5,500) and GEL 12,000 (approximately EUR 5,300) respectively for their shares in the commercial premises and the plot of land on which it had been located. Those sums were considerably smaller than the amounts which applicants had sought in damages before the domestic courts. Accordingly, the award made by the domestic courts (see paragraph 24 above) had been sufficient and had not caused the applicants a significant disadvantage.

2. The applicants

40. The applicants submitted that they had not been awarded adequate redress for the unlawful demolition of their property. In this connection, they argued that the domestic courts' findings – especially those of the appellate court – had not been sufficiently reasoned. They submitted that the appellate court had failed, among other things, to take due account of the findings of the linguistic expert examination produced by the applicants according to which the third NFB report had merely established the value of the demolished construction materials rather than the value of the demolished building. Therefore, the award of compensation had not

corresponded to the real losses which the applicants had suffered as a result of the illegal demolition of their property. In such circumstances, the compensation amount had been insufficient, and had not deprived them of their victim status, nor had the disadvantage which they had suffered been insignificant. The applicants also submitted that the award had not been enforced.

41. Furthermore, relying on the letter addressed to them by a prosecutor concerning the fact that a criminal investigation into the unlawful destruction of their property had still been ongoing in April 2015, the applicants additionally complained that that investigation had been ineffective.

B. The Court's assessment

1. Scope of the complaint

42. The Court observes that in their observations submitted to the Court after notice of the application had been given to the Government, the applicants stated that the award made by the domestic courts had not been enforced, without elaborating or providing any evidence or information as to the steps taken in that regard. Similarly, without providing a detailed explanation of their grievance, they also submitted that a criminal investigation into the unlawful demolition of their property had been ineffective. However, owing to the lack of information and the absence of evidence in that connection (see paragraph 40 above), and the fact that these issues were not part of the complaint of which the Government were given notice on 20 September 2017 (see paragraph 4 above), the Court will limit its consideration to the applicants' initial complaint under Article 1 of Protocol No. 1 to the Convention, namely the alleged inadequacy of the compensation awarded for the unlawful demolition of their property.

2. Admissibility

43. The Court reiterates that, in accordance with its settled case-law, where the national authorities have found a violation and their decision constitutes appropriate and sufficient redress, the party concerned can no longer claim to be a victim within the meaning of Article 34 of the Convention (see, among other authorities, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 181, ECHR 2006-V).

44. Turning to the circumstances of the present case, the Court observes that the parties before it have not disputed the fact that the domestic courts expressly acknowledged a violation of the applicants' right of property. However, the applicants and the Government disagree as to whether the applicants were afforded appropriate and sufficient redress in that regard. The Court considers that, in the particular circumstances of the case, the

Government's objection is so closely connected to the merits of the applicants' complaint under Article 1 of Protocol No. 1 to the Convention that it should be joined to the merits.

45. As regards the Government's objection about the applicants not having suffered a significant disadvantage, it is likewise intrinsically linked to the merits of the applicants' complaint. Accordingly, it must also be joined to the merits.

46. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

3. Merits

(a) General principles

47. As the Court has stated on a number of occasions, Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, *inter alia*, to control the use of property in accordance with the general interest. The three rules are not, however, distinct in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, among other authorities, *James and Others v. the United Kingdom*, 21 February 1986, § 37, Series A no. 98, and *Beyeler v. Italy* [GC], no. 33202/96, § 98, ECHR 2000-I).

48. In order to determine whether there has been a deprivation of possessions within the meaning of the second rule, the Court must not confine itself to examining whether there has been dispossession or formal expropriation, it must look behind appearances and investigate the realities of the situation complained of. Since the Convention is intended to guarantee rights that are "practical and effective", it has to be ascertained whether that situation amounted to a *de facto* expropriation (see, among other authorities, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, pp. 24-25, § 63, and *Vasilescu v. Romania*, judgment of 22 May 1998, Reports of Judgments and Decisions 1998-III, p. 1078, § 51).

49. Nevertheless, the applicable principles are similar, namely that, in addition to being lawful, a deprivation of possessions or an interference such as the control of use of property must also serve a legitimate public (or general) interest, and satisfy the requirement of proportionality (see, among

other authorities, *Bélané Nagy v. Hungary* [GC], no. 53080/13, §§ 112-13, 13 December 2016). As the Court has repeatedly stated, a fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights, the search for such a fair balance being inherent in the whole of the Convention. The requisite balance will not be struck where the person concerned bears an individual and excessive burden (see *Sporrong and Lönnroth*, cited above, §§ 69-74, and *Brumărescu v. Romania* [GC], no. 28342/95, § 78, ECHR 1999-VII).

50. The taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference that cannot be justified under Article 1 of Protocol No. 1. This provision does not, however, guarantee a right to full compensation in all circumstances, since legitimate objectives of "public interest" may call for less than reimbursement of the full market value (see, among other authorities, *The Holy Monasteries v. Greece*, 9 December 1994, §§ 70-71, Series A no. 301-A; *Papachelas v. Greece* [GC], no. 31423/96, § 48, ECHR 1999-II; and *Urbárska Obec Trenčianske Biskupice v. Slovakia*, no. 74258/01, § 115, ECHR 2007-XIII).

(b) Application of the above principles to the present case

51. Turning to the circumstances of the present case, the Court notes that the applicants were not deprived of their title to the plot of land on which the demolished building was located. However, it considers that by demolishing the building, which functioned as a commercial centre and parts of which were lawfully owned by the applicants (see paragraph 7 above), the administrative authorities interfered with the applicants' right to the peaceful enjoyment of their possessions. The Court considers that such demolition amounted to a *de facto* expropriation of the building erected on the relevant plot of land (see *Zammit and Vassallo v. Malta*, no. 43675/16, § 54, 28 May 2019).

52. The Court notes that neither the applicants' ownership of the property (see paragraph 7 above) nor the matter of whether the building had been constructed legally (see paragraph 9 above) was ever disputed at domestic level. Furthermore, the applicants were not officially notified of the demolition (see paragraphs 10-11 above). In this connection, the Court emphasises the domestic courts' unequivocal finding that the demolition of the applicants' property had lacked any legal grounds, and that no documents concerning the proceedings related to the demolition had been provided to the applicants or the domestic courts by the City Hall (see paragraphs 15 and 24 above). Having regard to those conclusions, which were not disputed by the parties in the proceedings before it, the Court considers that the interference with the applicants' right of property was not

lawful and did not pursue any public interest, no such interest having been argued either at domestic level or before the Court.

53. The Court will therefore consider the question at the core of the applicants' complaint before it, namely whether the compensation afforded to them was adequate. While the domestic courts are normally in a better position to determine the existence and quantum of pecuniary damage (see *Scordino*, cited above, § 203), the Court has jurisdiction to assess whether the compensation was appropriate and sufficient within the meaning of Article 1 of Protocol No. 1 to the Convention.

54. In this context, considering what appears to have been a flagrant disregard of the applicants' property rights (see paragraph 52 above), the Court reiterates that no considerations of "public interest" apply in the instant case. Therefore, it was not unreasonable for the applicants to have expected full compensation for the resulting damage. In this regard, the Court is confronted with a situation where the case-file material contains three different calculations made by State experts in respect of the value of the demolished property. However, it is not for the Court to identify which method of calculating pecuniary damage resulting from the demolition would have been more appropriate, or which expert report available in the case-file material was more convincing. Its role is limited to ascertaining two main issues: whether, in making the respective awards, the domestic courts satisfactorily explained their approach in establishing the value of the demolished property and hence the amount of compensation due in the face of the diverging factors and arguments; and whether they considered the resulting award fair and sufficient, considering the unlawfulness of the City Hall's actions.

55. In this regard, the Court notes that when making the respective awards of approximately EUR 1,164 and EUR 617 (see paragraph 24 above) the Tbilisi Court of Appeal set aside the awards made by the first-instance court on the grounds that the expert examination on which the lower court had relied had not been sufficiently reasoned in respect of the method of calculating the damage. The appellate court relied instead on the third NFB report issued by a panel of experts and commissioned by the City Hall with its approval (see paragraphs 18-19 and 24 above), noting that the report in question had integrated the earlier expert examinations. However, in reality the third NFB report only referred to the second NFB report's description of various technical aspects of the demolished building (see paragraph 22 above), rather than its substantive findings.

56. Furthermore, and more importantly, the Court notes that the City Hall had asked the panel of experts to determine the value of the demolished building (see paragraphs 18-19 above). By contrast, the resulting third NFB report referred only to the value of the construction material obtained as a result of the demolition (see paragraphs 20-22 above). In this connection, an opinion by a philology expert, obtained by the applicants, indicated that the

third NFB report had essentially left the question about the value of the demolished building unanswered (see paragraph 23 above). Against this background, the appellate court's position that it was obvious from the overall context of the matter that the report had determined the value of the building rather than the value of the construction material (see paragraph 25 above) is not convincing.

57. The Court does not lose sight of the fact that no explanation was provided in the third NFB report to justify or explain how the value of the material left after the demolition could be equated with the value of the building before its demolition. The appellate court's explanation – that the calculation of the pecuniary damage was consistent with how the value of property was routinely calculated in similar cases (see paragraph 24 above, *in fine*), without explicit reference to such other cases or, more importantly, an explanation of how comparable those cases were – cannot be considered sufficient in the circumstances of the present case. In the face of these uncertainties, the Court particularly notes that the appellate court found no need to exercise its statutory right to commission another expert examination to clarify the matter (see paragraphs 24 and 32 above).

58. Moreover, the appellate court proceeded to make the respective awards (see paragraph 24 above) without giving any consideration as to whether such a method of calculation and, more importantly, the resulting awards were fair and sufficient in view of the obvious difference between the value of a functional building and the value of construction materials left after the demolition of such a building. As a result of such an approach, the applicants were not awarded full compensation for the unlawful demolition of their property. No satisfactory explanation was provided for the approach followed or for the level of compensation achieved. Contrary to the Government's submissions, such a serious omission cannot be balanced out either by comparing the respective final awards and the initial price paid by applicants for their shares in the building and the plot of land on which the building was located (compare paragraphs 39, 8 and 24 above), or by considering that the applicants retained their title to the plot of land (measuring 154 sq. m.) on which the building had been located. The Court particularly notes that the possibility of the further use of that land appears to have been somewhat limited as per the explanation given by the Architecture Service of the City Hall that only the underground side could be used (see paragraph 22 above). Moreover, the importance, or even the meaning, of that fact does not appear to have been given any meaningful consideration save for merely noting it.

59. In the light of the foregoing considerations, the Court concludes that the applicants have not been awarded full compensation in respect of the unlawful demolition of their property. The Court therefore dismisses the Government's objection concerning the victim status. Having regard to the Court's findings and the reported significant increase in the value of real

estate in Tbilisi between 2003 and 2007 (see paragraph 8 above), the Government's objection that the applicants had not suffered a significant disadvantage must also be dismissed.

There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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. Damage

61. In their submissions under Article 41 of the Convention, the first applicant and the second applicant claimed 136,800 euros (EUR) each in respect of the alleged loss of income, in relation to the rent which they would have received by renting out their property. They also claimed EUR 200,000 and EUR 143,000 respectively in respect of non-pecuniary damage.

62. The Government submitted that any award had to have a causal link with the violation established by the Court. Furthermore, the applicants' submissions in respect of pecuniary damage were highly speculative and unsupported by evidence. Additionally, the domestic courts had assessed their claims concerning future income and, on the basis of the documents presented before them, had granted only the second applicant's claim. As concerns the applicants' claims in respect of non-pecuniary damage, the Government submitted that they were exaggerated.

63. The Court notes that the applicants' initial complaint under Article 1 of Protocol No. 1 concerned only the compensation in respect of the value of the unlawfully demolished building, rather than the loss of income claimed under Article 41 of the Convention (compare paragraphs 40 and 61 above). Therefore, the Court does not discern a causal link between the violation found and the pecuniary damage claimed in respect of loss of income. By contrast, the Court notes that a finding of a violation of the Convention or its Protocols by the Court is a ground for re-opening of the civil proceedings and review of the domestic judgments in the light of the Convention principles established by the Court, as provided in the Georgian Civil Procedure Code (see paragraph 33 above). The Court considers that a re-opening of the civil proceedings and review of the matter in the light of the principles it has identified in this judgment would be the most appropriate means of affording reparation to the applicants (see *Vulakh and*

Others v. Russia, no. 33468/03, § 54, 10 January 2012, and *Guță Tudor Teodorescu v. Romania*, no. 33751/05, § 57, 5 April 2016) in the particular circumstances of the case where there is a discrepancy between what the applicants have claimed before the domestic courts and before this Court and, additionally, given the insufficiency of the information available to the Court. Accordingly, the Court rejects the applicants' claim in respect of pecuniary damage at this stage.

64. As concerns the applicants' claims in relation to non-pecuniary damage, having regard to all the circumstances of the present case, the Court accepts that the applicants suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicants EUR 3,000 each in respect of non-pecuniary damage, plus any tax that may be chargeable to them.

B. Costs and expenses

65. The applicants also claimed EUR 2,700 for the costs and expenses incurred before the domestic courts, and EUR 948 for those incurred before the Court.

66. The Government contested the claim as unsubstantiated.

67. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the absence of documents in support of the applicants' claims and the above criteria, the Court rejects the claim for costs and expenses.

C. Default interest

68. 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,

1. *Holds* that the first applicant's mother, Ms Luba Khizanishvili, has standing to pursue the application in her daughter's stead;
2. *Joins* to the merits the Government's objections as to the loss of victim status and the alleged lack of a significant disadvantage, and dismisses them;
3. *Declares* the application admissible;

4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned 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;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 December 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Angelika Nußberger
President