



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

SECOND SECTION

CASE OF GORELISHVILI v. GEORGIA

(Application no. 12979/04)

JUDGMENT

STRASBOURG

5 June 2007

FINAL

05/09/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Gorelishvili v. Georgia,

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

Mrs F. TULKENS, *President*,

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŇ,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Ms D. JOČIENĚ, *judges*,

and Mrs S. DOLLĚ, *Section Registrar*,

Having deliberated in private on 15 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 12979/04) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Ms I. Gorelishvili, a Georgian national, on 10 March 2004.

2. The applicant was represented by Mr L. Tchavtchavadze, a lawyer practising in Georgia. The Georgian Government (“the Government”) were represented by their Agent, Mr M. Kekenadze of the Ministry of Justice.

3. On 8 March 2006 the Court decided to give notice of the applicant's complaint under Article 10 of the Convention concerning an alleged breach of the applicant's freedom of expression as a journalist. On the same date, the Court decided to apply Article 29 § 3 of the Convention and to examine the merits of the application at the same time as its admissibility.

4. The applicant and the Government each filed observations on admissibility and merits (Rule 54A of the Rules of Court).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1969 and lives in Tbilisi. She was a journalist at the material time.

6. In July 2000, the applicant published an article in the newspaper “Meridiani 44” (no. 75 (579), 3-5 July 2000). This article, entitled “The Head of the 'twofold' Ministry does not know where and how much he has

saved”, was a continuation of a regular rubric which informed the public of the financial situation of various political figures in the light of their property declarations. The background to the rubric was the problem of corruption in the public service.

7. In the article, amongst other politicians and government officials, Mr Givi Lominadze, a Member of Parliament at the material time, was criticized for his declared assets.

8. The article began on the first page of the newspaper with a black-and-white photograph (12x11 cm) of the parliamentarian's summer house. The following comment was underneath the picture: “The summer house of the Abkhazia exile and Member of Parliament, Mr Givi Lominadze, does not look that modest. So what? The Georgians who have lost Abkhazia deserve to take a breather somewhere ...”

9. In the article the applicant cited the words of Grigol Robakidze, a 20th century Georgian writer: “the Government is a sacred phenomenon; there is no place for blackguards there”. She further continued: “the main principle of the relationship between the people and the Government – justice – is breached today; we obey arbitrariness ... Let's have a look now at the financial position of the officials suspected of arbitrariness.”

10. The passage of the article describing Mr Lominadze's assets in the light of his latest property declaration was placed on the fifth page of the newspaper:

“... If Mr B.'s pride is his son, Mr Givi Lominadze – Head of the Parliamentary Fraction “Abkhazia” (although, he might soon forfeit this post) – is proud of his son-in-law, Mr P., who is the Head of the President's Security Service (we already spoke about the latter in the previous edition). The son-in-law has probably given a hand to his father-in-law, otherwise the latter could hardly have finished for some 25-35,000 Laris [EUR 11,500-16,170¹] the construction of the summer house (which, in fact, looks like a palace) in the village of Tselsofeli on the banks of Aragvi River.

You all know how difficult the everyday life of the refugees from Abkhazia is, and, as it seems, still missing the sea, they want to be close to the water – Aragvi is undoubtedly a gorgeous river.

Mr Lominadze has also managed to purchase an apartment in Tbilisi for the price of GEL 40-45,000 [EUR 18,500-20,800] (Mr Lominadze gives such approximate, “twofold” prices everywhere). And, with due regard to the price of the Tselsofeli summer house, then Mr Lominadze's Tbilisi apartment should be a truly grandiose construction. Or, maybe Mr Lominadze made a mistake and “could not correctly” assess the price of his riverside summer house?!

In the list of his real property, Mr Lominadze has also cited the house he inherited in the village of Senaki, valued at GEL 20,000 [EUR 9,240], and the family library, valued at GEL 10,000 [EUR 4,640]. Despite the fact that, last year, the parliamentarian's only income was his salary amounting to GEL 6,300 [EUR 2,900] in

¹ Here and elsewhere, approximate conversions are given in accordance with the exchange rate of Georgian laris (GEL) to euros (EUR) on 14 February 2007

total, his savings amount to GEL 7,000 [EUR 3,200]. One can only wonder whether Lominadze and people like him feed on air, without ever spending salaries; how else could they manage to save so much?!"

11. Mr Lominadze sued the applicant and the editor of the newspaper for defamation. He claimed that the facts mentioned in the article were untrue. They indirectly suggested that he had acquired the summer house and the Tbilisi apartment since becoming a parliamentarian in 1993, but in reality the origin of most of those possessions dated back to the 1970-80s.

12. On 23 January 2002 the Vake-Saburtalo District Court in Tbilisi allowed his claim and obliged the respondents to publish a rectification, conceding that the previous publication had been the result of a superficial research of the facts and only reflected the journalist's subjective opinion. The court also ordered each of the respondents to pay to the parliamentarian GEL 100 [EUR 46] for non-pecuniary damage and GEL 500 [EUR 230] for costs and expenses.

13. In its reasoning, the District Court acknowledged that the facts exposed in the article with regard to the parliamentarian's assets were correct, since they were based on the official data submitted in the property declaration and were never disputed by the plaintiff. Nonetheless, the court concluded that the structure of the article, the epithets and artistic expressions were of such a sarcastic and humiliating nature that they would necessarily arouse in readers negative sentiments towards the parliamentarian. The court shared the plaintiff's concern that the article implied that his declared assets were of illegal origin. Since the applicant failed to discharge, under Article 18 § 2 of the Civil Code, the burden of proof by showing that she had not intended to accuse Mr Lominadze of corruption, the District Court found her liable in defamation.

14. On 19 February 2003 the Appeal Chamber of the Tbilisi Regional Court quashed and replaced the judgment of 23 January 2002. The court reasoned that the journalist's criticism was aimed at the private sphere of the parliamentarian's life rather than the political sphere. It concluded that the applicant had failed to bring proof of such statements as "the son-in-law has probably given a hand to his father-in-law, otherwise the latter could hardly have finished ... the construction of the summer house ..." and "one can only wonder whether Lominadze and people like him feed on air, without ever spending salaries; how else could they manage to save so much?!"

15. The Regional Court ordered the journalist and the newspaper to retract those statements as untrue and to pay jointly GEL 100 [EUR 46] in non-pecuniary damages. The President of the Appeal Chamber expressed a dissenting opinion, mostly based on the principles of the case-law of the European Court of Human Rights.

16. Subsequent to the applicant's cassation appeal, on 12 September 2003 the Supreme Court quashed the judgment of the Regional Court and decided the case anew.

17. The Supreme Court recognised that the margin of criticism with regard to political figures was wider than that regarding other persons. However, considering that she had failed to prove the truthfulness of her suggestion that the impugned property had originated during the parliamentarian's political life in the 1990s, the court found, on the basis of Article 18 of the Civil Code, that the applicant's criticism was unfounded and therefore defamatory. It noted that she had indirectly called the parliamentarian a “blackguard” and had gratuitously accused him of “arbitrariness”.

18. The Supreme Court further stated that, “in view of journalists' high degree of responsibility within society, each and every one of their judgments should be based on well-investigated and well-examined facts and not on unfounded assumptions”, as in the applicant's case. The court concluded that the applicant had been negligent when writing about the parliamentarian.

19. The Supreme Court ordered the applicant and the editor to pay jointly GEL 100 [EUR 46] in non-pecuniary damages. The applicant was further ordered to publish a rectification, specifically retracting the two phrases - “the son-in-law has probably given a hand to his father-in-law, otherwise the latter could hardly have finished ... the construction of the summer house ...” and “one can only wonder whether Lominadze and people like him feed on air, without ever spending salaries; how else could they manage to save so much?!” – as untrue statements.

20. According to the applicant, the final judgment of 12 September 2003 was notified to her outside the time-limit prescribed by law and did not bear the stamp or signature of the Registrar of the Supreme Court.

B. Relevant domestic law

21. The Constitution

Article 24 guarantees freedom of thought and expression, together with the freedom of the mass media.

22. The Civil Code, as it stood at the material time

Article 18 provided that an individual was entitled to request in court a rectification of the “information” (*cnobebi*), which was damaging to his or her honour, dignity or professional reputation, unless the person who had disseminated that information could prove its truthfulness. The aggrieved party could also claim pecuniary and non-pecuniary damages, which he or she had sustained as a result of the dissemination of such information.

23. The Act of 17 October 1997 on the Corruption and Conflict of Interests in Public Service, as it stood at the material time

Section 1 stated that the aim of the Act was to fight corruption in the public service.

Pursuant to section 14, a public official was obliged to file property and financial declarations within a month of taking up office. The declarations had to be regularly submitted (once a year) during his or her public service, as well as upon resignation or dismissal.

Pursuant to sections 15 and 16, the property and financial declarations were to provide comprehensive information about all the public official's immovable and movable assets, securities, savings deposits, bank accounts, currency, participation in business activities, performance of any remunerated work apart from business activities, contractual engagements, gifts and the existence of other income exceeding GEL 1,500 [EUR 693].

Under section 17 § 1, in case the value of a declared asset could not be established without an expert assessment, an approximate value was to be indicated. Section 19 § 1 stated that the official's property and financial declarations, except for certain confidential parts, were public documents.

24. The Press and Media Act of 10 August 1991, in force at the material time

Pursuant to section 24 § 2, a journalist was responsible for verifying the correctness of information before publishing it.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

25. The applicant complained that the defamation proceedings had unjustifiably restricted her journalistic freedom in violation of Article 10 of the Convention, which insofar as relevant reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society ... for the protection of the reputation or rights of others ...”

A. Admissibility

26. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. The Court further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

27. The Government did not dispute the fact that there was an interference with the applicant's freedom of expression. However, they submitted that the applicant had not acted, as a journalist, in "good faith". Insofar as the property declaration did not disclose how and when exactly the impugned assets had been acquired, the applicant, pursuant to section 24 § 2 of the Press and Media Act, should have investigated the issue further before imprudently implying in her article that the plaintiff had obtained the summer house and Tbilisi apartment corruptly during his political life. The Government stated that, contrary to the aim of the newspaper's rubric, the applicant's purpose was not to raise a public debate but to undermine Mr Lominadze's reputation.

28. The Government submitted a copy of the parliamentarian's property declaration. It disclosed the same kind and value of the assets as described by the applicant in her article. Apart from the "twofold" prices, criticised by the applicant, the declaration did not contain any details about the dates of acquisition or the origin of the possessions.

29. The Government also noted that the article had been published when no active public debate was pending. Consequently, as she did not face a risk that her publication might lose its news worthiness, the applicant had had ample time to undertake an investigation. Finally, the Government submitted that the light penalty imposed on the applicant by the Supreme Court was not disproportionate, in breach of Article 10 § 2 of the Convention.

30. The applicant disagreed with the above arguments and maintained that she had a right to criticise the parliamentarian for what was, in her opinion, the defective manner in which the latter had declared his assets. Moreover, the object of her article was a person who had for years represented the legislative branch of the Abkhazian Government in exile. Given the high political sensitivity of any issue related to the breakaway region, her publication could not be said to have been devoid of news value. The targeted politician was under an obligation to show, as a public figure, more tolerance towards her criticism.

2. *The Court's assessment*

31. It is not disputed between the parties that the Supreme Court judgment of 12 September 2003, being the final instance in the defamation proceedings, constituted an “interference” with the applicant's rights under Article 10 § 1 of the Convention. The Court notes that the interference was “prescribed by law” – Article 18 of the Civil Code – and pursued the legitimate aim of protecting the reputation or rights of others. This point was also not disputed by the parties. Consequently, the Court's remaining task is to determine whether the interference was “necessary in a democratic society”.

32. As a matter of general principle, the “necessity” for any restriction on freedom of expression must be convincingly established. It is in the first place for the national authorities to assess whether there is a “pressing social need” for the restriction and, in making their assessment, they enjoy a certain margin of appreciation. However, in cases concerning the media, the national margin of appreciation is circumscribed by the interests of a democratic society in ensuring and maintaining a free press. Similarly, that interest will weigh heavily in the balance in determining, as must be done under paragraph 2 of Article 10, whether the restriction was proportionate to the legitimate aim pursued (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 45, ECHR 1999-I).

33. In exercising its supervisory function, the Court does not take the place of the national authorities, but rather reviews under Article 10 the decisions which they have taken pursuant to their power of appreciation. In so doing, the Court must look at the “interference” complained of in the light of the case as a whole and determine whether the reasons adduced by the national authorities to justify it were “relevant and sufficient” and whether they based their decisions on an acceptable assessment of the relevant facts (see *Grinberg v. Russia*, no. 23472/03, §§ 26-27, 21 July 2005; *Vogt v. Germany*, judgment of 26 September 1995, Series A no. 323, pp. 25-26, § 52). Moreover, the Court will take the following elements into account: the position of the parties to the defamation proceedings, the subject matter of the impugned publication and the qualification of the contested statements by the domestic courts (see *Jerusalem v. Austria*, no. 26958/95, § 35, ECHR 2001-II).

34. As regards the applicant's position as a journalist, the Court reiterates that the press fulfils an essential function in a democratic society. Although it must not overstep certain bounds, particularly as regards the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest (see *De Haes and Gijssels v. Belgium*, judgment of 24 February 1997, *Reports of Judgments and Decisions* 1997-I, § 37; *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 59, ECHR 1999-III). Moreover, journalistic freedom covers possible recourse to

a degree of exaggeration, or even provocation (see *Prager and Oberschlick v. Austria (no. 1)*, judgment of 26 April 1995, Series A no. 313, § 38).

35. As to Mr Lominadze, the Court observes that he was an exiled parliamentarian from the Abkhazian legislature at the material time. It is to be recalled, in this regard, that the limits of acceptable criticism are wider as regards a politician, than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself or herself open to close scrutiny of every word and deed by journalists and the public at large. Therefore, such persons must display a greater degree of tolerance (see, for example, *Incal v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV, p. 1567, § 54).

36. The subject matter of the impugned publication was the applicant's assessment of Mr Lominadze's financial situation in the light of his property declaration. None of the parts of that document criticized by the applicant was confidential and its publication was not prohibited (cf., *a contrario*, *Fressoz and Roire*, cited above, §§ 52 and 53). It is to be noted that the applicant's article contributed to a regular rubric which informed readers of the material welfare of different political figures. The specific concern with this particular parliamentarian's assets was heightened by his association with the sensitive "Abkhazian problem" (paragraphs 8, 10 and 30 above). Also taking also into account the problem of corruption in the public service at the material time (paragraphs 6 and 9 above) – a fact not disputed by the Government – the Court has no doubt that the applicant's freedom of expression was exercised in the context of a matter of important public interest (c.f., *a contrario*, *Katamadze v. Georgia* (dec.), no. 69857/01, 14 February 2006). Consequently, an interference with the exercise of press freedom cannot be compatible with Article 10 of the Convention unless it is justified by another overriding requirement of public interest (*Fressoz and Roire*, cited above, § 51).

37. The Court further observes that the scope of the interference imposed by the Supreme Court judgment of 12 September 2003 extended not to the publication in its entirety but solely to the two following phrases: "the son-in-law has probably given a hand to his father-in-law [the Parliamentarian], otherwise the latter could hardly have finished ... the construction of the summer house ..." and "one can only wonder whether Lominadze and people like him feed on air, without ever spending salaries; how else could they manage to save so much?!".

38. The Supreme Court found these phrases defamatory since they were, in its view, untrue. Thus, without examining the question whether they could be considered to be value-judgments (see, *a contrario*, *Katamadze* (dec.), cited above), the Supreme Court concluded that they were statements of fact, since only the latter are susceptible of proof (see *Grinberg*, cited above, § 30). The state of the Georgian law on defamation at the material time led to this incomplete analysis. Notably, Article 18 of the Civil Code

made no distinction between value-judgments and statements of fact, referring uniformly to “information” (*cnobebi*), and required that the truth of any such “information” be proved by the respondent party. Such an indiscriminate approach to the assessment of speech is, in the eyes of the Court, *per se* incompatible with freedom of opinion, a fundamental element of Article 10 of the Convention (see, *Zakharov v. Russia*, no. 14881/03, §§ 29 and 30, 5 October 2006; *Karman v. Russia*, no. 29372/02, §§ 42 and 43, 14 December 2006).

39. The Court considers that the expressions condemned by the Supreme Court in the present case amounted to an opinion, albeit expressed provocatively, as they represented the applicant's subjective assessment of the credibility of the parliamentarian's property declaration. The burden of proof in respect of such an assessment is obviously impossible to satisfy.

40. Sarcastic and cynical as the applicant's phrases were, in the Court's view, they did not constitute a gratuitous personal attack upon the parliamentarian (cf., *a contrario*, *Katamadze v. Georgia* (dec.), no. 69857/01, 14 February 2006), since they were not devoid of any factual basis (*De Haes et Gijssels*, cited above, § 47), e.g. the kind and value of the parliamentarian's declared property, his salary level, his kinship with the Head of the President's Security Service, etc. In other words, there was a sufficiently close link between the applicant's contested phrases and the circumstances of the case (see *Feldek v. Slovakia*, no. 29032/95, § 86, ECHR 2001-VIII).

41. The Court is not convinced by the argument that the applicant was under a duty to enquire when and how exactly the impugned property had been acquired by the parliamentarian. It notes in this regard that, as acknowledged by the Government, no such information was contained in Mr Lominadze's property declaration. The Court further observes that the applicant's article described the kind and value of the assets exactly as disclosed by the parliamentarian's declaration (paragraph 28 above). Consequently, whilst the applicant could not be said to have either knowingly distorted or recklessly disregarded the publicly available information about the origin of the parliamentarian's assets, the Court finds that she, as a journalist, was entitled, when contributing to the public debate on a matter of legitimate concern, to rely on the contents of the property declaration - an official document - without having to undertake independent research. To hold otherwise would undermine the vital role of public-watchdog which the press fulfils in a democratic society (see *Colombani and Others v. France*, no. 51279/99, § 65, ECHR 2002-V).

42. In the light of the above, the Court concludes that the standards applied by the Supreme Court were not compatible with the principles embodied in Article 10, since it did not adduce relevant and sufficient reasons justifying the interference with the applicant's right to impart

information and ideas on matters of public concern. Therefore, the Court concludes that the interference was not necessary in a democratic society.

43. There has accordingly been a violation of Article 10 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

44. The applicant complained of a violation of 6 § 1 of the Convention on account of the Supreme Court's failure to communicate to her a reasoned copy of the judgment of 12 September 2003 in a timely fashion. She contended that, as a result, she almost missed the six months' time-limit for applying to the Court.

The relevant provisions of Article 6 § 1 read as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

45. However, the Court finds that the case file does not disclose any appearance of violation of Article 6 § 1 of the Convention during the domestic proceedings assessed as a whole (see *Mialhe v. France (no. 2)*, judgment of 26 September 1996, *Reports* 1996-IV, p. 1338, § 43). This part of the application is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed 20,000 euros (“EUR”) in respect of non-pecuniary damage. No claim for pecuniary damage was made.

48. The Government submitted that the applicant's claim was unsubstantiated and excessive.

49. The Court considers that the applicant must have suffered some non-pecuniary damage for which the finding of a violation would not constitute sufficient compensation. Making its assessment on an equitable basis, the Court awards the applicant EUR 1,500 under this head.

B. Costs and expenses

50. The applicant also claimed EUR 5,800 for the costs and expenses incurred before the Court, without submitting any document in support.

51. The Government considered that the claimed amount was unsubstantiated and excessive.

52. The Court observes that the applicant failed to submit itemised particulars of this claim or any relevant supporting documents, although she was invited to do so. She did not therefore comply with the requirements set out in Rule 60 § 2 of the Rules of Court. In these circumstances, the Court makes no award under this head (see, among many other authorities, *Boulougouras v. Greece*, no. 66294/01, § 34, 27 May 2004).

C. Default interest

53. The Court considers it appropriate that the default interest 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. *Declares* the complaint under Article 10 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 10 of the Convention;
3. *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 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, which sums are to be converted into the currency of the respondent State at the rate applicable on 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.
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

F. TULKENS
President