



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

SECOND SECTION

CASE OF TCHITCHINADZE v. GEORGIA

(Application no. 18156/05)

JUDGMENT
(merits)

STRASBOURG

27 May 2010

FINAL

27/08/2010

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 (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Nona Tsotsoria,

Kristina Pardalos, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 4 May 2010,

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. Having originally raised the issue of his inability to enjoy the possession of property granted to him by the Batumi City Court's final and enforceable decision of 18 November 2004, the applicant supplemented his application, on 12 August and 6 November 2006, with complaints about the quashing of that decision on 27 October 2005 and the reopening of the civil proceedings.

2. The applicant was granted leave to present his own case in the Georgian language in the written proceedings before the Court, in accordance with Rules 34 § 3 and 36 § 2 *in fine* of the Rules of Court. The Georgian Government were represented by their former Agent, Mr David Tomadze of the Ministry of Justice.

3. On 5 November 2007 the Court decided to give notice to the Georgian Government of complaints under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 concerning the quashing of the aforementioned decision of 18 November 2004. The Russian Government were invited to intervene as a third party (Article 36 § 1 of the Convention and Rule 44 of the Rules of Court). It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

4. The Georgian Government (“the Government”) and the applicant each filed observations on the admissibility and merits of the communicated complaints (Rule 54A of the Rules of Court). The Russian Government informed the Court that they did not wish to intervene as a third party.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The background

5. The applicant was born in 1952 and currently lives in Belgorod, in the Russian Federation.

6. He owned a house located at 54 Mazniashvili Street in Batumi, in the Ajarian Autonomous Republic (“the AAR”), Georgia. The house and its adjacent premises were located on a plot of land of some 284 square meters.

7. Under a contract of 8 April 1994 (“the contract of sale”), the applicant ceded to Mr G., by then the Ajarian Deputy Minister of the Interior, half of his house (“the Mazniashvili estate”) for the price of 150,000,000 coupons (the provisional Georgian currency introduced at the beginning of the 1990s for purposes of monetary reform). According to the case file, the purchasing power of that sum corresponded to some 300 euros (EUR) at the material time. The contract of sale was certified by a notary. As further disclosed by a written statement of a witness to that transaction, after the signing of the contract Mr G. gave the applicant 3,000 United States dollars (EUR 2,199¹) in cash. Shortly after the sale of the Mazniashvili estate, the applicant left Batumi and settled, together with his family, in the Russian Federation. Allegedly, a reason for that hasty departure was Mr G.'s continuous pressure on the applicant to cede the remaining part of the house.

¹ Here and elsewhere, approximate conversions are given in accordance with the exchange rate of the United States dollar (USD), the Georgian lari (GEL) and the Russian rouble (RUB) to the euro on 8 March 2010.

8. As a result of tensions between the central and local authorities (see *The Georgian Labour Party v. Georgia*, no. 9103/04, § 52, 8 July 2008), members of the Ajarian government, including Mr G., fled the country in May 2004.

B. The emergence of the applicant's title to the Mazniashvili estate

9. On 7 June 2004 the applicant brought a civil action against Mr G., requesting that the contract of sale be declared null and void for having been entered into under duress (“the civil case”). In particular, the applicant, referring to the relevant factual circumstances, claimed that the respondent, by then an extremely powerful person in the AAR, had forced him to cede the Mazniashvili estate for a ludicrously small price under threats to his person and family. The applicant also sought an injunction to have the estate attached until after the final resolution of the dispute.

10. In a decision of 30 June 2004, the Batumi City Court granted the injunction and ordered the attachment of the Mazniashvili estate. The City Court transmitted its decision, describing the facts of the dispute, to the Chamber of Notaries of the Ajarian Ministry of Justice for enforcement. In the absence of an appeal, the decision became final after five days, and, as disclosed by the case file, the relevant attachment record was duly entered in the Land Register.

11. On 25 August 2004 the Ajarian Public Prosecutor's Office opened a criminal case against Mr G. for various offences committed in public office. On the basis of those criminal proceedings, the prosecutor requested the Ajarian High Court to confiscate the movable and immovable property of the accused, including the Mazniashvili estate, under Article 37(1) of the Code of Criminal Procedure (“the CCP”, “the confiscation proceedings”). According to the prosecutor's submissions, the Mazniashvili estate measured some 68 square meters and was valued at GEL 50,000 (EUR 21,275).

12. On 10 September 2004 the Ajarian Supreme Court partially allowed the prosecutor's request, ordering the confiscation of some of Mr G.'s property, including the Mazniashvili estate. The prosecutor appealed against that partial confiscation to the Supreme Court of Georgia.

13. On 18 November 2004 the Batumi City Court, in the absence of the respondent Mr G., allowed the applicant's action of 7 June 2004. The court annulled the contract of sale, confirmed the applicant's title to the Mazniashvili estate and ordered the Batumi Land Registry, which formed part of the Ajarian Ministry of Justice, to proceed with the necessary registration formalities. The decision further noted that it would become final ten days after being served on the respondent. There being no appeal within that statutory period, the decision became final on an unspecified date.

14. On 7 December 2004 the applicant, relying on the already binding decision of 18 November 2004, requested the Supreme Court of Georgia to discontinue the confiscation proceedings with respect to the Mazniashvili estate.

15. Either on 27 December 2004 or 26 January 2005 the Batumi Land Registry recorded the applicant's title to the Mazniashvili estate, amounting to some 68 square meters, on the basis of the final decision of 18 November 2004 (the case file contains a copy of that official record which bears two different dates). On 18 February 2005 the Registry issued another certificate, confirming the applicant's title to the real estate.

16. On 17 January 2005 the Supreme Court of Georgia, after having conducted a hearing in the presence of representatives of both the Prosecutor General's Office ("the PGO") and Mr G., overturned the decision of 10 September 2004 in the part concerning the confiscation of the Mazniashvili estate, and upheld the remainder. The court acknowledged that the estate, valued at GEL 50,000 (EUR 21,275), represented the applicant's property by virtue of the binding decision of 18 November 2004. The Supreme Court instructed the Ajarian High Court to examine the issue of discontinuation of the confiscation proceedings concerning the Mazniashvili estate.

17. On 18 March 2005 the Batumi Land Registry addressed a letter to the Ajarian prosecutor, demanding clarification with respect to the situation of the Mazniashvili estate. The Register appeared to be confused by the fact that the estate represented both the applicant's property by virtue of the binding decision of 18 November 2004 and yet was an object of the pending confiscation proceedings. Furthermore, contrary to what had been confirmed by the record of 27 January 2005 and the certificate of 18 February 2005 (see paragraph 15 above), the Registry informed the prosecutor that the applicant's title to the Mazniashvili estate had not yet been formally recorded.

18. In a letter dated 31 March 2005, the Deputy Minister of Justice confirmed that the applicant was the owner of the Mazniashvili estate on the basis of the final decision of 18 November 2004, adding that the process of registration of his property title had been suspended.

C. The quashing of the final decision of 18 November 2004

19. On 24 March 2005 the Ajarian prosecutor filed with the Batumi City Court a request to quash the final decision of 18 November 2004 and to reopen the civil case, under Article 422 § 1 (b) of the Code of Civil Procedure ("the CCP"). The prosecutor stated that the confiscation of the Mazniashvili estate, indicated by the Ajarian High Court's decision of 10 September 2004, had already been confirmed by the Supreme Court of Georgia. However, the enforcement of the confiscation was impossible

owing to the existence of the conflicting decision of 18 November 2004. The prosecutor complained that the Batumi City Court should have involved him as a third party in the civil case which, moreover, should have been suspended pending the outcome of the confiscation proceedings.

20. On 7 April and 18 June 2005, the applicant submitted written comments in reply to the Ajarian prosecutor's request for quashing. He argued that the prosecution authority, being a party to the confiscation proceedings, had learnt of the decision of 18 November 2004 in the course of the Supreme Court's hearing of 17 January 2005 at the latest. Consequently, the Ajarian prosecutor's request for quashing was belated, as provided by Article 426 §§ 1 and 2 of the CCP. He further noted that the Mazniashvili estate had never been State property and, consequently, the Batumi City Court could not have been expected to join the prosecutor as a third party to the civil case. If the Ajarian prosecutor had acted with minimum diligence, by having consulted, for instance, the Batumi Land Registry prior to the institution of the confiscation proceedings against Mr G. on 25 August 2004, he would have learnt that the Mazniashvili estate had already been attached, by virtue of the injunction of 30 June 2004, in the course of the civil case. The applicant also challenged the prosecutor's misleading assertion that the confiscation of the Mazniashvili estate had been confirmed by the Supreme Court of Georgia.

21. Reiterating the above arguments, the applicant also requested the PGO, on 12 September 2005, to open a criminal case against the Ajarian prosecutor for abuse of power.

22. On 23 September 2005 Judge V. of the Batumi City Court summoned the applicant, who was residing in Belgorod, by telegram to appear on 30 September 2005 as a respondent in the quashing proceedings brought by the Ajarian prosecutor. The applicant telegraphed back on 27 September 2005 to request adjournment of the hearing in view of his health problems.

23. On 17 October 2005 Judge V. summoned the applicant by telegram to appear on 27 October 2005 "as a respondent in the proceedings brought by a notary public of Batumi". The telegram noted that the claimant's submissions were being dispatched by registered post.

24. On 18 October 2005 the Ajarian Prosecutor's Office replied to the applicant's criminal complaint of 12 September 2005 in the following terms:

"As you already know, the Batumi City Court has granted the Ajarian prosecutor's request and reopened the case. Consequently, your allegations of abuse of power by the prosecutor are ill-founded, ... and you have the right to plead before the court as a respondent".

25. On 25 October 2005 the applicant notified Judge V. by telegram of his inability to travel from the Russian Federation to Georgia for the forthcoming hearing on 27 October 2005 in view of his health problems. He noted that he was sending the supporting medical documentation by post and that the notary public's submissions had not reached him so far.

26. On 1 November 2005 the applicant received the Batumi City Court's dispatch of 17 October 2005 (see paragraph 23 above). He learnt that the notary public who had certified the contract of sale on 8 April 1994 had requested, on 10 October 2004, the quashing of the binding decision of 18 November 2004 under Article 422 § 1 (b) of the CCP. The notary complained that she should have been involved in the civil case as a respondent, in so far as, pursuant to the Notaries Public Act of 3 May 1996, she had been personally responsible for the validity of the contract in question. As to compliance with the statutory time-limit of one month, the notary claimed that she had first learnt of the existence of the decision of 18 November 2004 from a local newspaper, *Batumelebi*, on 28 September 2005. The relevant article, published on the latter date, had described the details of the confiscation proceedings and the civil case, noting the existence of the conflicting interests of the applicant and of the Ajarian prosecutor over the Mazniashvili estate.

27. On 9 November 2005 Judge V. summoned the applicant by telegram to appear on 14 November 2005 as a respondent "in the proceedings brought by the notary public." The applicant telegraphed back on the following day, requesting an adjournment of the hearing in view of his state of health. He also informed Judge V. that he was dispatching by post his comments on the notary's request for quashing. As disclosed by those comments, received at the City Court on 8 December 2005, the applicant denounced the notary as lacking the requisite *locus standi* to call into question the outcome of the terminated civil case.

28. On 25 November 2005 the applicant requested the initiation of disciplinary proceedings against Judge V. He complained that, by summoning him by telegraph only a few days before the scheduled hearings, without giving him an opportunity to obtain knowledge of and comment on the claimant's submissions, the judge had breached the principle of the equality of arms.

29. On 30 November 2005 Judge V. once again requested the applicant to appear at a hearing on 6 December 2005 in the reopening proceedings brought by the notary public. Another request for an adjournment followed from the applicant on 5 December 2005.

30. On 14 March 2006 the applicant received by parcel two decisions of the Batumi City Court dated 30 September and 27 October 2005. As shown by the postmark on the envelope, the parcel had been dispatched by Judge V. on 2 March 2006.

31. In a decision of 27 October 2005, Judge V. ruled that the notary public's request for quashing of 10 October 2005 was well-founded and that the decision of 18 November 2004 ought to be annulled and the civil case reopened under Article 422 § 1 (b) of the CCP. The judge based her decision on the notary's written and oral pleadings only and did not explain the reason for having dispensed with the need for submissions from the applicant. Without giving any additional reasons, the judge endorsed the notary's procedural and substantive arguments, in particular that the request for quashing had been lodged in due time and that the notary should indeed have been involved in the civil case. The operative part of the decision noted that no appeal lay against it.

32. As to the decision of 30 September 2005, it concerned the request for quashing of 24 March 2005 from the Ajarian prosecutor. Judge V. first noted that, despite having been properly summoned to the oral hearing, the applicant had failed to appear and that his explanation in that regard – the reference to health problems – was not substantiated by medical documentation. However, the judge took into account the applicant's written submissions (see paragraph 20 above), and concluded that the prosecutor's request for quashing should be rejected as time-barred.

D. The subsequent proceedings

33. On 24 March 2006 Judge V. summoned the applicant by telegram to appear as a claimant in the reopened civil case. The judge specified that Mr G. and the notary were co-respondents in the case, whilst the Ajarian prosecutor had been admitted as a third party. In a telegram dated 28 March 2006, the applicant requested an adjournment in view of his persistent health problems. He noted that the supporting medical documents as well as his request for the replacement of Judge V. were being dispatched by post.

34. On 19 April 2006 the applicant lodged with the Kutaisi Regional Court an appeal against the decision of 27 October 2005. Referring to the fact that Judge V. had summoned him to the relevant quashing proceedings even after 27 October 2005, the applicant accused her of having forged the decision in question by backdating it. On the same day he also requested the Batumi City Court to send him a copy of the ruling by which the notary and the Ajarian prosecutor had been permitted to participate in the reopened civil case. As disclosed by the case file, no reply was forthcoming from either court.

35. Between February and December 2006, the applicant filed numerous letters with the PGO and the judicial and other authorities, complaining that the quashing of the final decision of 18 November 2004 had violated his property rights. He also requested that Judge V. and the notary be prosecuted for abuse of power or that, at least, the judge be removed from further examination of his civil case. Those letters were either left

unanswered or, in so far as the criminal complaints were concerned, rejected by the PGO as ill-founded.

36. In February 2007, the applicant learnt from his sister, who lived in Batumi and had frequent contacts with the Registry of the Batumi City Court, that Judge V. had ruled, on an unknown date, to leave his reopened civil case without examination. On 2 February 2007 he requested the Batumi City Court and the Supreme Court of Georgia to provide him with a copy of that ruling. According to the case file, the courts did not reply.

37. In a letter of 7 February 2007, the Batumi Land Registry informed the applicant that the Mazniashvili estate had been registered as State property on the basis of a writ of enforcement issued by the Ajarian High Court on 10 March 2006. The applicant then requested, on 4 March 2007, additional clarification with respect to that writ, but no reply followed.

38. By a letter of 21 April 2008, the Batumi Land Registry, contrary to the information contained in its previous letter (see the preceding paragraph) informed the applicant's sister that, according to the available records, the Mazniashvili estate had been registered as Mr G.'s property on the basis of the contract of sale.

II. RELEVANT DOMESTIC LAW

A. The Code of Civil Procedure as it stood at the material time

39. The relevant provisions of the Code concerning the quashing of final and enforceable decisions and the reopening of civil cases, read as follows:

Article 421 § 1 – Types of reopening

“Proceedings terminated by a final judgment (decision) may be reopened only if there are grounds for bringing either a request to render the final judgment null and void (Article 422) or a request to reopen the proceedings in view of newly discovered circumstances (Article 423).”

Article 422 §§ 1 (a) and (b) and 2 - Request to render a final judgment (decision) null and void

“1. A final and binding judgment (decision) may be quashed at the request of the interested party, if:

(a) A judge who participated in the deliberations in the case was barred from doing so by operation of law;

(b) One of the parties, or its representative in law, had not been invited to participate in the examination of the case.

2. The request to render a final judgment null and void on the above-mentioned grounds shall not be entertained if the requesting party could have referred to those grounds during the proceedings, before the first instance, appeal or cassation courts.”

Pursuant to Article 426 §§ 1 and 2 of the CCP, a request for reopening of proceedings should be lodged within one month after the party concerned learns of the grounds which might either render the final decision null and void or represent newly discovered circumstances within the meaning of Article 421 § 1. That period was not extendable. Article 426 § 3 further specified that, in a situation envisaged by Article 422 § 1 (b), the period of one month started to run following the formal notification of the decision to the party to the proceedings or, if appropriate, its representative in law.

Article 429 § 2 of the CCP stated that an appeal lay against a decision dismissing a request for quashing. However, neither that Article nor any other provision in the Code provided for the possibility of appealing against a decision granting such a request. Pursuant to Article 430, the merits of a request for quashing must be examined at an oral hearing.

B. The Code of Criminal Procedure as it stood at the material time

40. Article 37(1), inserted into the Code of Criminal Procedure on 13 February 2004, stated that, if there was a reasonable suspicion about the origins of property of a person charged with misconduct in public office, a prosecutor was entitled to bring an action for confiscation of that property.

C. The Notaries Public Act of 3 May 1996 as it stood at the material time

41. Pursuant to sections 1 and 5 of the Notaries Public Act, notaries public formed a public-law institution which was directed by the Ministry of Justice.

According to section 3 §§ 1 and 6, a notary public, whilst being an independent professional, exercised State authority. However, the State could not be held liable for any harm caused by a notary's actions.

Pursuant to sections 4 § 1 and 32-33, all notaries public were obliged to be members of the Chamber of Notaries, a public-law association, created for the purposes of protecting its members' interests and coordinating their activities, and which had its own legal personality.

Section 11 described the system of supervision of the professional activities of individual notaries public by the Minister of Justice, through the Chamber of Notaries.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

42. The applicant complained that the quashing of the final decision of 18 November 2004 by the Batumi City Court on 27 October 2005 had violated his rights under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. Those provisions read, in their relevant parts, as follows:

Article 6 § 1

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

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....”

A. Admissibility

43. The Government submitted that the applicant had not exhausted domestic remedies with respect to his complaint under Article 1 of Protocol No. 1, as he had failed to pursue the reopened civil case concerning the determination of his property rights (see also paragraph 67 below).

44. The applicant disagreed.

45. The Court notes that the issue in the present case is not the determination of the applicant's claim in the course of the reopened civil case but the quashing of the final and enforceable decision of 18 November 2004. Having due regard to its well-established case-law on the matter, the Court reiterates that, owing to the very nature of the act of quashing, the ensuing reopened proceedings, even if they result in the reiteration of the quashed decision, cannot provide a relevant remedy for the purposes of either Article 6 § 1 of the Convention or Article 1 of Protocol No. 1 (compare, for instance, *The Mrevli Foundation v. Georgia* (dec.), no. 25491/04, 5 May 2009, and *Popov v. Moldova* (no. 2), no. 19960/04, § 35, 6 December 2005). Consequently, the Government's objection must be dismissed.

46. The Court thus concludes that the applicant's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 are neither manifestly ill-founded within the meaning of Article 35 § 3 of the Convention nor inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

47. The Government submitted that the quashing of the final decision of 18 November 2004 had been a lawful and justifiable measure. The lawfulness followed from the fact that the quashing was based on Article 422 § 1 (b) of the CCP, which directly stated that the failure to have one of the parties to the proceedings properly summoned to the examination of the case would render the final decision null and void. Furthermore, the legitimate purpose of that legislative mechanism was to protect the principle of equality of arms. In the present case, the Government stated, the quashing was aimed at the protection of the notary's right to have that principle upheld.

48. The Government further submitted that the quashing decision of 27 October 2005 could not be said to have been based on arbitrary reasoning. Thus, the Batumi City Court had duly examined both the procedural criterion of the notary's request for quashing – compliance with the statutory period of one month – and its substantive well-foundedness. Whilst examining the latter element, the City Court had found that the notary had had a legitimate interest in the civil case. Since she had been directly responsible for the validity of the transaction in question, the finding of the nullity of the contract of sale could have tarnished the notary's professional reputation by suggesting that she had participated in Mr G.'s unlawful deeds. The Government also argued that, if the Batumi City Court had rejected the notary's request for quashing, it would have unjustifiably limited her right of access to a court. Moreover, the notary's participation could have provided additional information allowing a better adjudication of the civil case.

49. The Government also asked the Court to pay attention to the fact that the quashing in the present case had not occurred either at the request of a State official (see, *a contrario*, *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-IX) or on the basis of subsequently emerging, new circumstances. Rather, the quashing of the final decision of 18 November 2004 was genuinely aimed at the correction of a judicial mistake and could not thus amount to a violation of either Article 6 § 1 of the Convention or Article 1 of Protocol No. 1.

50. The applicant replied that the quashing of the final decision of 18 November 2004 under Article 422 § 1 (b) had clearly been unlawful and arbitrary, in so far as the notary had never been a party to the civil case in question. The only parties to the dispute over the contract of sale were himself, as the claimant, and Mr G., as the respondent. The applicant added that he had had no contention against the notary whatsoever, as the latter could hardly have been aware of the duress exercised by Mr G. on him at the time of the disputed contract. However, if the notary had felt offended by the applicant's actions, she could always have lodged a separate civil action against him.

51. If the notary had been so concerned about the fate of the contract of sale of 8 April 1994, on the basis of which Mr G. had become the owner of the Mazniashvili estate, then, the applicant continued, it was not clear why she had never attempted to become involved in the confiscation proceedings as well. The applicant also claimed that the Ajarian prosecutor had induced the notary public to request the quashing of the final decision of 18 November 2004 and that the publication in the local newspaper had also been staged (see paragraph 26 above). He further argued that, pursuant to the relevant provisions of the Notaries Public Act of 3 May 1996 (see paragraph 41 above), a notary should be treated as a State official.

52. The applicant also complained that Judge V. had quashed the final decision of 18 November 2004 on the basis of the notary's submissions only, without giving him a chance to submit written or oral comments in reply. He further claimed that, in reality, no hearing had ever been held on 27 October 2005 at the Batumi City Court and that the relevant decision had been backdated by the judge in February or March 2006. The applicant referred in that connection to the suspicious fact that the same judge had continued summoning him to the relevant proceedings even after the above-mentioned date and had dispatched the decision of 27 October 2005 in early March 2006 (see paragraphs 27 and 28 above).

2. The Court's assessment

53. The Court reiterates that the right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which, in its relevant part, declares the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have finally determined an issue, their ruling should not be called into question (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII). This principle underlines that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. Review by higher courts should not be treated as an appeal in disguise, and the mere possibility of there being two

views on the subject is not a ground for re-examination. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character (see *Ryabykh*, cited above, § 52). In addition, the existence of a property interest confirmed by a binding and enforceable judgment constitutes the judgment beneficiary's "possession" within the meaning of Article 1 of Protocol No. 1. Quashing of such a judgment amounts to an interference with his or her right to the peaceful enjoyment of possessions (see, among other authorities, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III).

54. The Court first notes that the final and enforceable decision of 18 November 2004 established the applicant's title to the Mazniashvili estate. Consequently, by quashing that decision on 27 October 2005, the Batumi City Court interfered with the applicant's right to legal certainty and to the peaceful enjoyment of the estate. It remains to be seen whether that double interference was justifiable within the meaning of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

55. The Court considers that the procedure for the re-opening of finally settled civil proceedings under Article 422 § 1 of the CCP cannot, as such, be deemed to be incompatible with the Convention, as it aims at the correction of two fundamental judicial errors (see, *mutatis mutandis*, *Popov (no. 2)*, cited above, §§ 46 and 47). The first of these errors, which affects, in the Court's view, the principle of a trial "by an independent and impartial tribunal established by law", is the fact of a judge's unlawful or otherwise undue participation in the case (Article 422 § 1 (a) of the CCP). The second judicial error negates, as the Government noted, the principle of equality of arms, since it concerns the situation where a final decision has been delivered in the unjustified absence of one of the parties to the proceedings (Article 422 § 1 (b) of the CCP). The Court's task is thus to determine whether, on the facts of the present case, the procedure was exercised in an appropriate manner, that is to ensure that the quashing was not applied for a purpose other than those for which it had been prescribed under the relevant provisions of the CCP.

56. The Court finds it untoward that the Batumi City Court contented itself, in its decision of 27 October 2005, with the notary public's arguments alone, without seeking the applicant's submissions in reply, as required by Article 430 of the CCP, at an oral hearing or, at least, by way of a written procedure. The City Court did not even take the trouble to give reasons for that serious procedural irregularity which, as made clear by the relevant circumstances, was attributable to its own conduct (see paragraphs 23 and 25-27 above). Consequently, the applicant was placed in an unjustifiably disadvantageous position *vis-à-vis* his opponent in the proceedings, which directly affected his rights under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 (see, *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274; *Hentrich v. France*, 22 September 1994, § 56,

Series A no. 296-A). Furthermore, whilst the case file does not contain sufficient proof to allow the conclusion that the decision of 27 October 2005 was, as asserted by the applicant, fabricated, the Court cannot overlook the vexing fact that the Batumi City Court summoned the applicant to the relevant proceedings even after the above-mentioned date (see paragraphs 27 and 28 above).

57. The Court further observes that the Batumi City Court did not critically address the notary public's assertion that she had learnt of the final decision of 18 November 2004 for the first time from the local newspaper on 28 September 2005. By analogy to its similar case-law about the quashing of final decisions and the reopening of proceedings, and noting that such a rule was also explicitly contained in Article 422 § 2 of the CCP, the Court considers that the notary's assertion should have been examined in the light of the relevant "due diligence" rule. Notably, the notary should have shown that, despite having acted with due diligence, she could not have obtained knowledge of or referred to the facts allegedly constituting a limitation of her right under Article 422 § 1 (b) of the CCP earlier (see, for instance, *Pravednaya v. Russia*, no. 69529/01, §§ 17 and 27, 18 November 2004, and *Popov (no. 2)*, cited above, §§ 26-28 and 49-51). In this connection, the Court notes that, pursuant to the Notaries Public Act of 3 May 1996, individual notaries, united in the Chamber of Notaries, were directly supervised by the Ministry of Justice (see paragraph 41 above). However, the facts of the case clearly show that the Ministry, acting through its two subordinate agencies – the very same Chamber of Notaries and the Land Registry – was duly aware of the existence of the applicant's civil case, both whilst it was still pending before the Batumi City Court as well as shortly after the decision of 18 November 2004 became binding and the applicant obtained an enforceable title to the Mazniashvili estate (see paragraphs 10, 13 and 17-18 above). In such circumstances, the Court finds it difficult to accept that the notary discharged, in her request for the quashing of the final decision of 18 November 2004, the requisite burden of proof under Article 422 § 2 of the CCP, by showing that it would have been objectively impossible for her to obtain knowledge of the civil case earlier. It is particularly regrettable that, in its decision of 27 October 2005, the Batumi City Court omitted to examine this important issue prior to arriving at the conclusion that the request for quashing was timely and well-founded (see *Eugenia and Doina Duca v. Moldova*, no. 75/07, § 35-37, 3 March 2009; *Popov (no. 2)*, cited above, § 50; *Kumkin and Others v. Russia*, no. 73294/01, § 33, 5 July 2007).

58. The most disturbing point for the Court is the fact that the notary public, who had never been a party to the initial civil case, obtained the quashing of the final decision of 18 November 2004 on the basis of Article 422 § 1 (b) of the CCP. In reality, that provision was strictly tailored for the actual parties to the proceedings, to ensure, as the Government noted

themselves, that their procedural right to the equality of arms and adversarial proceedings was protected. Logically, a person who was not a party to the proceedings could not subsequently claim to have been a victim of a breach of procedural rights in the course of those proceedings. Even assuming that the applicant's civil action had offended the notary's professional reputation, then, instead of such a harsh measure as the quashing of the final and enforceable decision, a more proportionate course of action would have been for the Batumi City Court to advise the notary to sue the applicant in a separate set of proceedings. The Court reiterates in this regard that the power to quash a final decision should be exercised by the authorities with extreme caution, so that a fair balance between the various interests at stake is always struck to the maximum extent possible (see, for instance, *Mitrea v. Romania*, no. 26105/03, § 25, 29 July 2008, and, *mutatis mutandis*, *Nikitin v. Russia*, no. 50178/99, § 57, ECHR 2004-VIII).

59. Having regard to the above considerations, the Court concludes that the quashing of the final decision of 18 November 2004, which infringed the principle of legal certainty and interfered with the applicant's right to the peaceful enjoyment of the Mazniashvili estate, was a misuse of the reopening procedure under Article 422 § 1 of the CCP, not being justified by circumstances of a substantial and compelling character, and that it imposed an excessive and disproportionate burden on the applicant (see, *Smirnitskaya and Others v. Russia*, no. 852/02, §§ 45 and 53, 5 July 2007; *Gavrilenko v. Russia*, no. 30674/03, §§ 37 and 41, 15 February 2007; *Rahmanova v. Azerbaijan*, no. 34640/02, §§ 65 and 73, 10 July 2008).

60. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

61. Relying on Articles 6 § 1 and 13 of the Convention, the applicant challenged the length of the reopened proceedings and complained that he had not had an effective domestic remedy against the quashing decision of 27 October 2005.

62. The Court first notes that, given the finding of a violation of Article 1 of Protocol No. 1 on account of the quashing of the final decision of 18 November 2004, the length of the consequently reopened proceedings becomes just one element of the applicant's prolonged inability to enjoy possession of the property granted to him by the quashed decision. Consequently, there is no call to take up this issue separately under Article 6 § 1 of the Convention (see *Vrioni and Others v. Albania*, no. 2141/03, § 64, 24 March 2009).

63. Nor is it necessary to rule on the applicant's complaint under Article 13 of the Convention, in so far as this matter has been absorbed by the

complaint about the principle of legal certainty (see, among other authorities, *Popov (no. 2)*, cited above, § 55, and *Nikolay Zaytsev v. Russia*, no. 3447/06, § 24, 18 February 2010).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicant claimed compensation in respect of the Mazniashvili estate. He relied on expert opinions issued by Economics-Audit Ltd, a private Georgian firm specialised in auditing. The first opinion, dated 29 November 2007, valued the whole house at 54 Mazniashvili Street, with a total surface area of 212.7 square meters, at USD 180,000 (EUR 132,752). The second opinion, dated 15 April 2008, stated that the value of the whole house, which measured some 207.94 square meters, was EUR 320,000. The applicant explained that the difference in price was caused by the fact that the first expert opinion had omitted to include in its assessment the value of the land on which the house was situated. In addition, the applicant claimed that there had been a boom in real estate prices in Batumi in the period between the first and second expert assessments. Relying on advertisement information from a real estate agency, the applicant further asserted that the price of flats in the relevant district in Batumi started at USD 2,200 (EUR 1,622) per square meter.

66. In addition, the applicant claimed EUR 50,000 in respect of non-pecuniary damage.

67. The Government stated that the expert opinions submitted were not reliable and that the applicant's claims for pecuniary and non-pecuniary damage were unsubstantiated and highly excessive. They argued that, for the purposes of Article 41 of the Convention, the value of the Mazniashvili estate at the time of the alleged violation should be taken into account. The Government also asked the Court that, if a violation of the applicant's rights under the Convention was found, the question of the application of Article 41 of the Convention be reserved. They explained in that regard that, after the quashing of the final decision of 8 November 2004 and the reopening of the proceedings, the applicant's case against Mr G. had been left without examination owing to the parties' continuous inability to appear before the Batumi City Court. However, the applicant could always bring a fresh

action for recovery of possession of the Mazniashvili estate, in which case the respondent State might be ready to reach a friendly settlement with him.

68. The Court first notes that the applicant cannot be expected to exhaust domestic remedies anew with respect to his claims for just satisfaction under Article 41 of the Convention (see *De Wilde, Ooms and Versyp v. Belgium* (Article 50), 10 March 1972, § 16, Series A no. 14, and *Mancheva v. Bulgaria*, no. 39609/98, § 72, 30 September 2004). As to the expert opinions submitted, the Court notes that they concern the value of the whole house which measured either 207.94 or 212.7 square meters. However, what is at stake in the present case is not the entire house at 54 Mazniashvili Street in Batumi but only part of it, representing an area which, according to the material before the Court, is limited to some 68 square meters (see paragraphs 7, 11 and 15-16 above). Furthermore, whilst assuming that there might indeed have been an increase in prices on the Batumi property market, the fact that two valuations of the same real estate within a period of only five months gave a difference in price of EUR 188,000 (see paragraph 65 above) casts legitimate doubt on the qualification and good faith of the assessing experts. Having duly examined the two opinions, the Court further notes that they do not indicate with sufficient clarity how the valuations were determined. Consequently, the Court cannot accept these expert opinions as reliable evidence. Nor could the applicant's reference to the advertisements of a private real estate agency be confirmed as a legitimate source of information about the genuine price of real property in Batumi.

69. In any event, the Court reiterates that, normally, the priority under Article 41 of the Convention is *restitutio in integrum*, as the respondent State is expected to make all feasible reparation for the consequences of the violation in such a manner as to restore as far as possible the situation existing before the breach (see, among other authorities, *Apostol v. Georgia*, no. 40765/02, § 71, ECHR 2006-XIV; *FC Mretebi v. Georgia*, no. 38736/04, § 61, 31 July 2007; *Assanidze v. Georgia* [GC], no. 71503/01, § 198). Consequently, having due regard to its findings in the instant case, the Court considers that the most appropriate form of redress would be to restore to the applicant his title to the Mazniashvili estate, as established by the Batumi City Court decision of 18 November 2004. Alternatively, should this prove impossible, the Court is of the view that the applicant's claim could also be satisfied by paying him reasonable compensation for the loss of the property title to the Mazniashvili estate, the amount of which should be agreed on by the parties within six months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention. However, should the parties fail to reach agreement within that period, the Court reserves the right to fix the further procedure under Article 41 of the Convention, in order to determine itself the amount of such compensation (Rule 75 §§ 1 and 4 of the Rules of Court).

70. In addition, the Court has no doubt that the applicant suffered distress and frustration on account of the quashing of the final decision of 18 November 2004. The resulting non-pecuniary damage would not be adequately compensated by the mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 5,000 under this head.

B. Costs and expenses

71. The applicant also claimed RUB 120,000 (EUR 2,956) for the costs and expenses incurred before the domestic courts and this Court on account of his representation by a certain Mr S. Kuznetsov, a Russian lawyer practising in Belgorod.

72. The Government submitted that the claim was unsubstantiated.

73. 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 were reasonable as to quantum (see, amongst others, *Donadze v. Georgia*, no. 74644/01, § 48, 7 March 2006; *Gurgenidze v. Georgia*, no. 71678/01, § 83, 17 October 2006). As disclosed by the materials in the present case, the applicant personally drafted all his pleadings, both in the domestic and Court proceedings. Furthermore, having been granted leave to present his own case before the Court (see paragraph 2 above), the applicant did not explain the manner in which Mr Kuznetsov had purportedly assisted him; the case file does not contain any document showing the volume and nature of the work actually completed by this person. Consequently, the Court does not find it established that Mr Kuznetsov has ever worked on the case and that the applicant is under an obligation to remunerate him in this regard (see, *a contrario*, *Ghavitadze v. Georgia*, no. 23204/07, § 120, 3 March 2009). As to other various procedural costs, the applicant did not make any claim under this head.

74. In these circumstances, the Court concludes that there is no ground upon which to award the applicant the reimbursement of costs and expenses

C. Default interest

75. 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* admissible the complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the quashing of the decision of 18 November 2004;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of the quashing of the final decision of 18 November 2004;
3. *Holds* that there is no need to examine the remaining complaints under Articles 6 § 1 and 13 of the Convention;
4. *Holds*
 - (a) that should the return of the Mazniashvili estate prove impossible, the respondent State is to pay the applicant, under a mutual agreement (see paragraph 69 above), reasonable compensation in the national currency of the respondent State, plus any tax that may be chargeable on this amount, within six months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention;
 - (b) should the parties fail to reach agreement on the amount of the monetary compensation, the Court will determine itself the sum to be paid by the Government (see paragraph 69 above); accordingly,
 - (i) *reserves* the question of the application of Article 41 of the Convention in part;
 - (ii) *invites* the Government and the applicant to submit, within six months from the date on which the judgment becomes 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 which they may reach;
 - (iii) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be;
5. *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 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national 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 amount 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President