

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

FOURTH SECTION

CASE OF GOGITIDZE AND OTHERS v. GEORGIA

(Application no. 36862/05)

STRASBOURG

12 May 2015

FINAL

12/08/2015

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



In the case of Gogitidze and Others v. Georgia,

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

Päivi Hirvelä, *President,*
George Nicolaou,
Ledi Bianku,
Nona Tsotsoria,
Paul Mahoney,
Krzysztof Wojtyczek,
Faris Vehabović, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 14 April 2015,

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

PROCEDURE

1. The case originated in an application (no. 36862/05) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Georgian nationals, Mr Sergo Gogitidze ("the first applicant"), Mr Anzor Gogitidze ("the second applicant"), Mr Tengiz Gogitidze ("the third applicant") and Mr Aleksandre Gogitidze ("the fourth applicant"), on 4 July 2005.

2. The applicants were represented by Mr K. Kobakhidze, a lawyer practising in Tbilisi. The Georgian Government ("the Government") were represented by their Agent, Mr L. Meskhoradze, of the Ministry of Justice.

3. The applicants alleged, in particular, that a court-imposed confiscation measure amounted to a violation of Article 1 of Protocol No. 1 to the Convention.

4. On 9 November 2009 the Government were given notice of the application.

5. On 22 June 2010 the Court was informed for the first time that the third applicant had died on 7 May 2005, prior to the introduction of the present application in his name.

6. On 14 April 2105 the Court decided to dispense with a hearing.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The first, second, third and fourth applicants were born in 1951, 1973, 1940 and 1978 respectively. The second and fourth applicants are the first applicant's sons and the third applicant is his brother. The first, second and fourth applicants live in Moscow, the Russian Federation.

A. The initiation of proceedings for forfeiture of property

8. New political forces came to power in the Ajarian Autonomous Republic ("the AAR") in May 2004, following the so-called "Rose Revolution" which occurred in the country in November 2003 (see *Georgian Labour Party v. Georgia*, no. 9103/04, §§ 11-13, ECHR 2008).

9. On 25 August 2004 the first applicant, who had previously held the posts of Ajarian Deputy Minister of the Interior and President of the Audit Office, was charged, amongst other offences, with abuse of authority and extortion.

10. On 26 August 2004 the Public Prosecutor's Office of the AAR initiated proceedings before the Ajarian Supreme Court to confiscate wrongfully and inexplicably acquired property from the applicants under Article 37 § 1 (1) of the Code of Criminal Procedure ("the CCP") and Article 21 §§ 5 and 6 of the Code of Administrative Procedure ("CAP"); the legislative provisions in question had been adopted on 13 February 2004.

11. The public prosecutor affirmed that he had reasonable grounds to believe that the salaries received by the first applicant in his capacity as Deputy Minister of the Interior between 1994 and 1997 and President of the Audit Office between November 1997 and May 2004 could not have sufficed to finance the acquisition of the property, which had occurred during the same time span, by himself, his sons and his brother.

12. The prosecutor attached to his brief numerous items of evidence (twenty-three documents) which showed that, on the one hand, the first applicant had earned 1,644 and 6,023 euros (EUR) respectively in official salaries when he had occupied the above-mentioned two posts in the Ajarian Government, whilst, on the other hand, the total value of the property that he and the other applicants had acquired corresponded to some EUR 450,000 (1,053,000 Georgian laris (GEL)). The latter figure was based on the expert opinions of two independent auditors who had conducted an assessment of the disputed property on 20 August 2004.

13. The public prosecutor therefore requested the Ajarian Supreme Court to rule that the items of property concerned, which are listed below, should be confiscated from the applicants and transferred to the State.

14. The first applicant's property included:

(a) a house located at 54 Mazniashvili Street, Batumi;
(b) a house located at 13 Griboyedov Street, Batumi;
(c) the first floor of a house located at 60 Gorgasali Street, Batumi;
(d) a share in the capital of the Sanapiro Hotel, Kobuleti;
(e) a Mercedes car;
(f) a flat located at 1 Ninoshvili Street, Kobuleti.

15. The second applicant's property included:

(g) two guest houses located at 32 April 9th Street, Kobuleti.

16. The third applicant's property included:

(h) a house located at 245 Aghmashenebeli Street, Kobuleti.

17. The fourth applicant's property included:

(i) a flat located at 58b Gorgasali Street, Batumi;
(j) a flat located at 4-6 Gudiashvili Street, Batumi;
(k) a flat located at 20 H. Abashidze Street, Batumi;
(l) a house located at 6 General A. Abashidze Close;
(m) a house located at 186 Aghmashenebeli Street, Kobuleti.

B. The proceedings for forfeiture of property before the court of first instance

18. On 30 August 2004 the Ajarian Supreme Court accepted the public prosecutor's request for an examination on the merits. It transmitted the prosecutor's brief together with all the supporting documents to the applicants, inviting them to submit their written replies and attend an oral hearing scheduled for 7 September 2004.

19. As attested by the relevant postal acknowledgements of receipt, the Ajarian Supreme Court's subpoenas were duly served at all four applicants' home addresses, but only the second applicant, represented by legal counsel, filed written comments on 6 September 2004.

20. The second applicant submitted that the property mentioned at (b) above in fact belonged to him and not to the first applicant. To prove it he produced a contract of sale dated 2 December 1997, between himself and a certain G.V., plus a document from the Land Registry. He stated that he had purchased the property for EUR 10,174. His father-in-law, with whom the second applicant and his wife lived after they married, had helped him purchase the property. He produced a certificate from the bank stating that his father-in-law had taken out the loan, as well as statements by different witnesses.

21. The second applicant further explained that the property mentioned at (f) above belonged to Mr N.U., who was neither a close relative nor in any way connected with the first applicant. It was therefore not subject to confiscation.

22. As to the property mentioned at (g) above, the second applicant alleged that the first applicant had had no part in purchasing or renovating it

and that he, the second applicant, was the sole owner. He had bought the property from a lady for EUR 4,069 with the help of his godfather, V.M., who had allegedly lent him 50,000 United States dollars (USD) to renovate the site.

23. In sum, the second applicant requested that the properties mentioned at (b) and (f) and (g) above be removed from the confiscation list, and that due consideration be given to the evidence he had presented showing that the property concerned had not been wrongfully acquired.

24. As the first, third and fourth applicants failed to submit written arguments or appear before the Ajarian Supreme Court on 7 September 2004, the latter decided to postpone the hearing until 9 September 2004. The relevant subpoenas were again duly served at those applicants' home addresses, but none of them appeared before the court, either in person or by designating an advocate, on the second occasion either.

25. The Ajarian Supreme Court opened a hearing on 9 September 2004 which the first, third and fourth applicants and their lawyers failed to attend, without giving reasons. It was attended by the second applicant's lawyer, who additionally pleaded that the property mentioned at (d) above also belonged to him, but that he was giving it to the State as a gift. In response, the Ajarian Supreme Court changed the name of the defendant in that part of the case and named the second applicant as the owner of the property concerned. The second applicant further explained that in addition to the money his godfather had lent him, he had bought and renovated the property mentioned at (g) above with his salary as the director of a company in which he owned a quarter of the shares. According to the minutes of that company's board meeting of 1 July 2004, the profit generated by its activities was EUR 17,987.

26. On 10 September 2004 the Ajarian Supreme Court gave judgment in the absence of the first, third and fourth applicants, who had been notified twice but had failed to appear without good reason (Article 26 § 1 (2) of the CAP).

27. Thus, the Ajarian Supreme Court ordered the confiscation of the property belonging to the first applicant listed under (a), (c) and (e), that belonging to the second applicant listed under (d) and (g), and that listed under (i) to (m) belonging to the fourth applicant. It considered in particular that the sums of EUR 1,644 and EUR 6,023 which the first applicant had earned as Deputy Minister of the Interior and President of the Audit Office respectively could not have sufficed to acquire the property in issue, and that the other applicants did not earn enough either. The salaries the first applicant earned were only enough to provide for the needs of a family of four. The court stated that the applicants, in particular the three who had failed to appear before the court, had failed to discharge their burden of proof by refuting the public prosecutor's claim.

28. As regards the property mentioned at (g) above, the Ajarian Supreme Court concluded that the second applicant had failed to prove the lawful origins of the money he had used to acquire the property, which had been valued by independent auditors who had assessed both the plot of land and the four guest houses situated on it at no less than EUR 94,000.

29. Furthermore, the Supreme Court of Ajara considered it established that the property mentioned at (b) above belonged to the second applicant and that the property mentioned at (f) belonged to a third party. The prosecutor's case concerning these two properties was thus dismissed: concerning the first property, the court accepted the second applicant's arguments as to its lawful origins.

30. As regards the third applicant's property mentioned at (h) above, it was established that this was a family home unrelated to the first applicant's activities. However, as the property had been refurbished while the first applicant was in public office, making it worth EUR 24,418 according to an official valuation, the third applicant was ordered to pay the State compensation in the amount of EUR 10,174.

C. The proceedings for forfeiture of property before the cassation court

31. All four applicants, represented by legal counsel, as well as the public prosecutor, appealed against the first-instance court's judgment of 10 September 2004.

32. The applicants requested that the confiscation proceedings be suspended pending the termination of the criminal proceedings against the first applicant. They complained that the burden of proof had been shifted onto them in the confiscation proceedings. The first, third and fourth applicants also complained that they had not been given an opportunity to submit their arguments before the first-instance court. The first applicant additionally complained that he had been denied the right to be presumed innocent in the confiscation proceedings.

33. On 22 October 2004 the first applicant's wife asserted before the Supreme Court of Georgia that she and her son, the fourth applicant, were the owners of the property mentioned at (m) above. She explained that she was a Russian national and had sold the family house in the Smolensk region, with her siblings' consent, to buy the property in Kobuleti, where her Russian relatives would spend their summer holidays.

34. On 3 November 2004 a third party, Mr S. Tchitchinadze, applied to the Supreme Court of Georgia, stating that the decision of the Ajarian Supreme Court concerning the property mentioned at (a) above was unlawful because the property had previously belonged to him and was currently the subject of a dispute between himself and the first applicant. On 15 December 2004 Mr Tchitchinadze sent the Supreme Court of Georgia a

decision of the Batumi City Court dated 14 November 2004 recognising him as the owner of the property in question. He requested that his property be removed from the confiscation list submitted by the public prosecutor (for more details, see *Tchitchinadze v. Georgia*, no. 18156/05, § 13, 27 May 2010).

35. At the hearing the four applicants' legal counsel contended that the case concerning the first, third and fourth applicants should be remitted for fresh examination because the three men had not been able to participate in the proceedings at first instance. He further complained that the evidence presented by the second applicant had not been given due consideration.

36. On 17 January 2005 the Supreme Court of Georgia set aside the first-instance decision only in so far as it concerned the property mentioned at (a) above, the house located at 54 Mazniashvili Street in Batumi, acknowledging that the estate was the property of Mr S. Tchitchinadze (for further details see *Tchitchinadze*, cited above, §§ 16-17). For the remainder, it followed the reasoning of the Ajarian Supreme Court, namely that the first applicant's income was not sufficient for him and his family members to have acquired the properties in issue, whilst the other applicants' income was also insufficient. Concerning the arguments of the first applicant's wife, the Supreme Court of Georgia noted that the land register named only the fourth applicant as the owner of the property mentioned at (m) above.

D. Constitutional proceedings

37. On 6 December 2004 the first applicant lodged a constitutional complaint. He argued that Article 37 § 1 (1) of the Code of Criminal Procedure ("the CCP") and Article 21 §§ 5 and 6 of the Code of Administrative Procedure ("the CAP"), adopted on 13 February 2004, were contrary to the following constitutional provisions – Article 14 (prohibition of discrimination), Article 21 (protection of property), Article 40 (presumption of innocence) and Article 42 §§ 2 and 5 (no criminal punishment without law and prohibition of retroactive application of criminal law) of the Constitution of Georgia.

38. In his constitutional complaint the first applicant mostly reiterated the arguments that he had previously submitted before the Supreme Court of Georgia. In particular, he complained that the confiscation of his property and that of his family members amounted to a criminal punishment being imposed on him in the absence of a final conviction establishing his guilt, and that he should not have been made to bear the burden of proving his innocence, that is, the lawfulness of the disputed property. He also complained that the confiscation of the property in such circumstances was in breach of his right to be presumed innocent of the corruption charges. The first applicant also stated that he and his family had acquired the property in question well before the amendments of 13 February 2004 were

enacted and that, consequently, the retroactive extension of those provisions to their situation was unconstitutional. For those reasons, he argued that the confiscation procedure provided for by the impugned provisions of the CCP and CAP had been arbitrary and amounted to a violation of the constitutional guarantee of protection of his private property.

39. By a judgment of 13 July 2005 the Constitutional Court, after having heard the parties' arguments and evidence from a number of legal experts and witnesses, dismissed the first applicant's complaint as ill-founded on the basis of the following reasoning.

40. First, drawing an analogy with Article 1 of Protocol No. 1 to the Convention, the Constitutional Court stated that the Georgian constitutional provision protecting the right to property (Article 21 of the Constitution) likewise did not exclude the possibility of deprivation of property if such a measure was lawful, pursued a public interest and satisfied the proportionality test. The court then went on to emphasise that only lawfully obtained property enjoyed full constitutional protection; in the first applicant's case there had been a legitimate suspicion as to the lawful origins of the property, a suspicion which he and his family members had been unable to refute in the course of the relevant judicial proceedings.

41. The Constitutional Court further stated that the administrative confiscation proceedings provided for in Article 37 § 1 (1) of the CCP and Article 21 §§ 5 and 6 of the CAP, could in no way be equated with criminal proceedings, as no determination of a criminal charge was at stake; on the contrary, such proceedings were a classic example of a civil dispute between the State, represented by the public prosecutor, and private individuals. Given the "civil" nature of the proceedings in question, it was acceptable that the burden of proof in the proceedings should be shifted onto the respondent, the second applicant. Referring to its own comparative legal research and the Court's judgments in the cases of *Raimondo v. Italy* (22 February 1994, §§ 16-20, Series A no. 281-A) and *AGOSI v. the United Kingdom* (24 October 1986, §§ 33-42, Series A no. 108), the Constitutional Court added that such civil mechanisms, involving the forfeiture of the proceeds of crime or otherwise unlawfully obtained or unexplained property, were not unknown in a number of Western democracies, including Italy, the United Kingdom and the United States of America.

42. As to the issue of the alleged retroactivity of the application of the amendment of 13 February 2004 introducing the administrative confiscation procedure, and the second applicant's presumption of innocence, the Constitutional Court ruled that since the proceedings in question had been "civil" and not "criminal", the above-mentioned criminal-law guarantees could not apply. Furthermore, the amendment of 13 February 2004 had not introduced any new concept but rather had regulated anew, in a more efficient manner, the existing measures aimed at the prevention and eradication of corruption in the public service. In particular, the

Constitutional Court referred to the 1997 Act on Conflict of Interests and Corruption in the Public Service, which had required all public officials not only to declare their own property and that of their family and close relatives, but also to show that the declared property had been acquired lawfully.

43. The Constitutional Court concluded that the amendments of 13 February 2004 undoubtedly served the public interest of intensifying the fight against corruption and that the test of proportionality had also been duly satisfied during the confiscation proceedings, which had been conducted fairly before the domestic courts.

II. RELEVANT INTERNATIONAL DOCUMENTS AND DOMESTIC LAW

A. The 1997 Act on Conflict of Interests and Corruption in the Public Service, as in force at the material time

44. On 17 October 1997 the Act on Conflict of Interests and Corruption in the Public Service, the first major piece of legislation in independent Georgia's history setting out the principles and methods for preventing and eradicating corruption in the public service, was adopted by the Parliament of Georgia.

45. Section 1 of the Act proclaimed that its main objective was to prevent, uncover and put an end to instances of corruption, and to hold corrupt public officials liable.

46. Section 3 of the Act defined the notion of "corruption in the public service" as the use by a public official of his or her public post or of the influence associated with that post for the purposes of undue enrichment. The same provision defined the term of "a corruption offence" as an act which contained the elements of "corruption in the public service" and which could be subject to disciplinary, administrative or criminal liability. Section 4 explained what exactly should be understood by a public official's "family members" and "close relatives", a definition which included such categories as siblings, children and parents.

47. Chapter IV of the Act (sections 14 and 19) imposed upon public officials an obligation to declare their property each year (between 1 and 30 April). The declaration had to contain not only a list of the assets owned by the public official personally and by his or her "family members" and "close relatives", and the property's actual market value, but also information accounting for the origins of the property in question. The declarations submitted annually by public officials were public documents.

48. According to section 20(1) and (2) of the Act, a corruption offence or another breach of the requirements laid down by the Act gave rise to liability under the rules laid down for that specific purpose either by the

criminal or the administrative legislation. If neither criminal nor administrative liability arose, disciplinary action, such as dismissal from the post, was to be taken.

B. Domestic law on the forfeiture of wrongfully acquired property or unexplained wealth, as in force at the material time

49. On 13 February 2004 two major legislative amendments aimed at bolstering efforts to combat criminality, with a particular emphasis on economic offences and those committed in the public service, were adopted. One of those amendments introduced plea bargaining into the Code of Criminal Procedure (see *Natsvlishvili and Togonidze v. Georgia*, no. 9043/05, § 49, ECHR 2014 (extracts)), whilst the second one, which concerned both the Code of Criminal Procedure and the Code of Administrative Procedure, regulated the mechanism for the forfeiture of wrongfully acquired property.

50. As a result of that second amendment of 13 February 2004, Georgian law provided for two procedures for the forfeiture of property: "criminal confiscation" and "administrative confiscation". Criminal confiscation was of a general nature and dealt with deprivation of the objects of an offence and the instrumentalities of and proceeds from crime, imposed as part of the sentencing proceedings following a final conviction establishing the person's guilt. Meanwhile, the latter procedure, which was governed by Article 37 § 1 of the Code of Criminal Procedure ("the CCP") and Articles 21 §§ 4 to 11 of the Code of Administrative Procedure ("the CAP"), was specifically aimed at recovering wrongfully acquired property and unexplained wealth from a public official, as well as from the latter's family members, close relatives and so-called "connected persons", even without the prior criminal conviction of the official concerned.

51. Although a criminal conviction was not a necessary precondition, administrative confiscation could only be initiated if an official had first been charged with offences (including corruption) committed during his or her term in office against the interests of the public service, the enterprise or organisation concerned, or of one of the following offences: money laundering, extortion, misappropriation, embezzlement, tax evasion or violations of custom regulations, regardless of whether the official in question was still in office or not.

52. Thus, if the public official in question was accused of one or more of the above-mentioned offences, and the public prosecutor in charge of the investigation had a reasonable suspicion that the property in the possession of that public official and/or of his or her family members, close persons and "connected persons" might have been acquired wrongfully, the prosecutor could file "a civil action" (სარჩელი) with the court under

Article 37 § 1 CCP, demanding the confiscation of the "ill-gotten" property and unexplained wealth.

53. Once a public prosecutor had filed a civil action for confiscation, which had to be substantiated with sufficient documentary evidence, the burden of proof would then shift onto the respondent. If the latter failed to refute the public prosecutor's claim by producing documents proving that the property (or the financial resources for the purchase of the property) had been lawfully acquired or that taxes on the property had been duly paid, the court, after having ensured that the prosecutor's claim was properly substantiated, would order the confiscation of the property in question (Article 21 § 6 of the CAP).

54. According to Article 21 § 8 of the CAP, the purpose of administrative confiscation was to restore the situation which had existed prior to acquisition of the impugned property by the public official through wrongful means. In particular, the property confiscated in those administrative proceedings was then to be restored to its legitimate owner(s), which could be a private individual or a legal entity, after the legal claims on the property of all other third parties had been satisfied. If the legitimate owner could not be determined during the confiscation proceedings, the property was forfeited in favour of the State (Article 21 § 8 (1) of the CAP). Value confiscation was also possible under Article 21 § 8 (3) of the CAP, which stated that if the property subject to forfeiture could not be transferred to the State in its original form, the respondent should pay monetary compensation corresponding to the value of the property.

C. The United Nations Convention Against Corruption

55. The 2005 United Nations Convention against Corruption was ratified and entered into force in respect of Georgia on 8 November 2008.

56. Articles 31 and 54 § 1 (c) of this Convention, which set forth the principle of universal recognition of confiscation of property linked to corruption, or proceeds of crime derived from corruption offences, read as follows:

Article 31: Freezing, seizure and confiscation

"1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds; ...

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime. ...

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties. ..."

Article 54. Mechanisms for recovery of property through international cooperation in confiscation

"1. Each State Party, ... , shall, in accordance with its domestic law: ...

(c) consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases."

57. The relevant excerpts from the Technical Guide to the United Nations Convention Against Corruption further clarified a number of key legal notions relating to the confiscation of proceeds of crime related to corruption offences:

"**IV. What to consider as proceeds of crime for purposes of confiscation**

Paragraphs 4, 5 and 6 of article 31 outline the minimum scope of measures to implement the article.

Paragraph 4

This refers to the situation in which proceeds have been transformed or converted into other property. In this case, States Parties are required to subject to confiscation the property transformed or converted, instead of the direct proceeds.

Given that offenders will part as soon as they can with the primary proceeds of crime in order to obstruct investigative efforts to trace such property, the provision is of major relevance when applying an object-based model of confiscation, in order to avoid conflicts with potential *bona fide* third parties and facilitate investigative and prosecutorial activity. The provision reflects the same theory that lies behind a value-based model of confiscation: what matters is not to allow the offender to enrich him or herself by illegal means.

The provision follows the so-called theory of "tainted property," whereby, as tainted property is exchanged for "clean property", the latter becomes tainted. While this may raise issues about receipt in good faith, countries have developed requirements, whereby legislation gives primacy to the irrevocability of the "taint" irrespective of the iterations of transfer, receipt and conversion.

Paragraph 5

This refers to the situation where proceeds of crime have been intermingled with property from legitimate sources. States Parties are required to subject to confiscation any such property up to the assessed value of the proceeds. As stated above, both situations may pose a problem when the confiscation system operates under an object confiscation system, which requires a determination of property obtained through the offence. When operating a value confiscation system these situations do not pose any problem.

Paragraph 6

This requires States Parties to subject to confiscation not only primary but also secondary proceeds of crime. Primary proceeds are those assets directly obtained through the commission of the offence – e.g., a bribe of $100,000. The secondary proceeds, by contrast, refer to benefits derived from the original proceeds, like bank interest or the amount increased as a consequence of investment. In this regard, the Convention requires States Parties to provide mandatory confiscation for both the primary and secondary proceeds.

Though the definition of the proceeds of crime given in article 2 (g) includes property "obtained through a crime" and property "derived from a crime," the paragraph explicitly refers to "[I]ncome or other benefits" derived from the proceeds of crime and applies to benefits coming from any of the situations referred into paragraphs 4 and 5 – property transformed or converted and intermingled property. In other words, any appreciation in value of the proceeds of crime, even when not attributable to any criminal activity must also be liable to confiscation. ...

Paragraph 8

Paragraph 8 recommends that States Parties consider the possibility of shifting the burden of proof in regard to the origin of the alleged proceeds of crime. ...

[I]n addition to the sui generis procedures that accept non-criminal standards of evidence after the conviction is reached, a number of jurisdictions have also adopted civil procedures of confiscation that operate in rem and are governed by a standard of the preponderance of evidence.

VII. Protection of *bona fide* third parties

Paragraph 9 requires States Parties not to construct any of the provisions of that article as to prejudice the rights of *bona fide* third parties. The Convention does not, however, specify to what extent third parties should be provided with effective legal remedies in order to preserve their rights. Thus, in implementing this provision, States Parties may wish to take into account that some jurisdictions have opted to establish a specific procedure for third parties claiming ownership over seized property, in which the prosecution evaluates whether the claimant(s):

- Have acted with the purpose of concealing the predicate offence, or are implicated in any of the ancillary offences;
- Have legal interest in the property;
- Acted diligently according to the law and commercial practice;
- If the property requires a public registration of the transaction or any administrative procedure, such information has conducted (e.g., real estate, or vehicles);
- If the transaction was onerous, whether it followed real market values."

D. The Council of Europe Conventions

1. The 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime

58. The 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141), which entered into force in respect of Georgia on 1 September 2004, proclaimed that one of the "modern and effective methods" in the "fight against serious crime ... consists in depriving criminals of the proceeds from crime" (see the Preamble to the Convention).

59. The Convention called upon the Signatory Parties to "adopt such legislative and other measures as may be necessary to enable it to confiscate instrumentalities and proceeds or property the value of which corresponds to such proceeds" (see Article 2). At the same time, the term "confiscation" was defined as "a penalty or a measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences resulting in the final deprivation of property" (see Article 1).

60. The Explanatory Report to the 1999 Convention further clarified the relevant legal terms:

> "15. ... The experts were also able to identify considerable differences in respect of the procedural organisation of the taking of decisions to confiscate (decisions taken by criminal courts, administrative courts, separate judicial authorities, in civil or criminal proceedings totally separate from those in which the guilt of the offender is determined (these proceedings are referred to in the text of the Convention as 'proceedings for the purpose of confiscation' and in the explanatory report sometimes as '*in rem* proceedings'). It was also possible to distinguish differences in respect of the procedural framework of such decisions (presumptions of illicitly acquired property, time-limits, etc.) ...
>
> 23. The committee discussed whether it was necessary to define 'confiscation' or 'confiscation order' under the Convention. ... The definition of 'confiscation' was drafted in order to make it clear that, on the one hand, the Convention only deals with criminal activities or acts connected therewith, such as acts related to civil *in rem* actions and, on the other hand, that differences in the organisation of the judicial systems and the rules of procedure do not exclude the application of the Convention. For instance, the fact that confiscation in some States is not considered as a penal sanction but as a security or other measure is irrelevant to the extent that the confiscation is related to criminal activity. It is also irrelevant that confiscation might sometimes be ordered by a judge who is, strictly speaking, not a criminal judge, as long as the decision was taken by a judge. The term 'court' has the same meaning as in Article 6 of the European Convention on Human Rights. The experts agreed that purely administrative confiscation was not included in the scope of application of the Convention."

2. The 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism

61. In 2005 the Council of Europe adopted another, more comprehensive, Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS No. 198). It entered into force in respect of Georgia on 1 May 2014.

62. Articles 3 and 5 of the 2005 Convention, in so far as relevant, state as follows:

Article 3 – Confiscation measures

"4. Each Party shall adopt such legislative or other measures as may be necessary to require that, in respect of a serious offence or offences as defined by national law, an offender demonstrates the origin of alleged proceeds or other property liable to confiscation to the extent that such a requirement is consistent with the principles of its domestic law."

Article 5 – Freezing, seizure and confiscation

"Each Party shall adopt such legislative and other measures as may be necessary to ensure that the measures to freeze, seize and confiscate also encompass:

(a) the property into which the proceeds have been transformed or converted;

(b) property acquired from legitimate sources, if proceeds have been intermingled, in whole or in part, with such property, up to the assessed value of the intermingled proceeds;

(c) income or other benefits derived from proceeds, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled, up to the assessed value of the intermingled proceeds, in the same manner and to the same extent as proceeds."

63. The Explanatory Report to the Convention of 2005 reaffirmed that:

"39. The definition of 'confiscation' was drafted in order to make it clear that, on the one hand, the 1990 Convention only deals with criminal activities or acts connected therewith, such as acts related to civil *in rem* actions and, on the other hand, that differences in the organisation of the judicial systems and the rules of procedure do not exclude the application of the 1990 Convention and this Convention. For instance, the fact that confiscation in some states is not considered as a penal sanction but as a security or other measure is irrelevant to the extent that the confiscation is related to criminal activity. It is also irrelevant that confiscation might sometimes be ordered by a judge who is, strictly speaking, not a criminal judge, as long as the decision was taken by a judge."

64. The Explanatory Report further stated that:

"71. Paragraph 4 of Article 3 requires Parties to provide the possibility for the burden of proof to be reversed regarding the lawful origin of alleged proceeds or other property liable to confiscation in serious offences. ...

76. This provision underlines in particular the need to apply such measures also to proceeds which have been intermingled with property acquired from legitimate sources or which has been otherwise transformed or converted."

E. Financial Action Task Force

65. The Financial Action Task Force (FATF) was established in July 1989 as an inter-governmental group by a Group of Seven (G-7) Summit in Paris. It has since been globally recognised as an authoritative body setting universal standards and developing policies for combating, amongst other, money laundering. In 2003 it issued a specific recommendation, which was endorsed by Georgia, calling for confiscation even in the absence of a prior criminal conviction (known as Recommendation no. 3):

"*Provisional measures and confiscation*

3. ... Countries may consider adopting measures that allow such proceeds or instrumentalities to be confiscated without requiring a criminal conviction, or which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law."

F. The Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)

66. In its First Evaluation Report on Georgia, which concerned a visit to the country by a team of examiners between 23 and 26 October 2000, MONEYVAL observed and recommended the following:

"2. The main areas generating illegal proceeds and seriously jeopardising the economic development of Georgia are corruption, fraud and tax evasion as well as smuggling in goods. ...

6. The examiners consider that the seizure and confiscation regime should be reviewed and brought up to internationally accepted standards. ...In the view of the examiners, the confiscation procedure should conform to the requirements of the Strasbourg Convention – with the introduction of the possibility of confiscating instrumentalities and proceeds, and if they have been altered into another kind of property, the corresponding value may be confiscated."

67. In the context of a second evaluation visit to Georgia by a MONEYVAL team of examiners, which took place between 21 and 23 May 2003, the Second Round Evaluation Report again criticised the domestic authorities for lacunae in the legal framework concerning the confiscation of proceeds of crime:

"8. ... [V]alue confiscation was not regulated in Georgian legislation at the time of the on-site visit. Indeed, the absence of a real measure of confiscation was given as one of the prime reasons for the lack of money laundering investigations or prosecutions. There needs to be a completion of the legal framework to create an

enabling legal structure to support confiscation in respect of all criminal proceeds (both direct and indirect), and equivalent value based confiscation should be introduced. It is advised that elements of practice which have proved of value elsewhere, including the reversal of the onus of proof regarding the lawful origin of alleged proceeds, should be considered in particular serious proceeds-generating offences."

68. After its visit to Georgia between 23 and 29 April 2006, MONEYVAL made a number of positive comments in its Third Round Detailed Assessment Report about the administrative confiscation scheme introduced on 13 February 2004:

"18. The Georgian legal framework covering ... confiscation has been significantly developed and now there is a basic legal structure in place for ... forfeiture of objects, instrumentalities and criminally acquired assets (proceeds). ...

19. There are also some innovative administrative forfeiture provisions in place in special cases involving public officials and organised crime groups – which incorporates elements of civil standard of proof, which are very welcome developments. ...

239. The procedure for confiscating from third parties property which has been transferred to defeat confiscation orders were first addressed by administrative provisions dealing with family members and close relatives of officials where officials are subject of prosecution. ... These provisions (and the associated changes to the burden of proof for forfeiture in these cases) are very welcome, and should cover many third parties into whose hands illegal assets fall in sensitive cases.

240. ... Clearly the new administrative provisions for confiscation in respect of cases being brought against officials have been successful. ..."

G. The Council of Europe Group of States Against Corruption (GRECO)

69. In its Second Evaluation Report on Georgia, adopted at its 31st Plenary Meeting held from 4 to 8 December 2006 in Strasbourg, GRECO observed and recommended the following:

"31. In the past few years Georgia has adopted a vast array of new legislation, among other things on seizure and confiscation of the instrumentalities and proceeds of crime, including corruption and the laundering of these proceeds. The introduction of an administrative confiscation scheme in 2004, specifically directed at illegally acquired property and unexplained wealth of officials, gave law enforcement authorities an effective tool to deprive officials as well as their relatives and so-called connected persons, of the benefits of their crimes.

Administrative confiscation requires no prior conviction, it explicitly allows for confiscation from third parties as well as of assets of equivalent value and requires a relatively low standard of proof, by providing that once the prosecutor has presented his/her claim to the court that the defendant's property is illegal or cannot be explained the burden of proof shifts to the defendant to show that this property (or the financial resources required for acquiring the property) has been legally obtained.

> The GET [the Group's Evaluation Team] was told that so far property with a value of more than €40 million had been reclaimed which illustrates the commitment of the Georgian authorities not to let officials benefit from crimes committed during their term in office. However, the GET also heard that there have been some concerns about the arbitrariness of the administrative confiscation regime, in that allegedly, only proponents of the previous administration were being targeted.
>
> There was also concern about the lack of transparency in the destination of confiscated property in that it was unclear to whom this property was being transferred (in case of existence of a legitimate owner of the property) or sold (in case of transfer to the State) and as to whether anyone other than the State stood to benefit from it. The Georgian authorities however informed the GET after the visit that the perceived lack of transparency in the destination of the confiscated property had been addressed, inter alia by abolishing the special state fund to which this property was allegedly transferred and that the value of the property confiscated was reflected in the State budget.
>
> Although the GET was not in a position to assess whether the aforementioned concerns are still prevalent, it considers that any doubt about the legitimate use of administrative confiscation must be avoided. The GET therefore observes that the Georgian authorities should ensure the utmost transparency in the use of administrative confiscation to avoid any impression that this mechanism is being misused."

H. The Organisation for Economic Co-operation and Development (OECD) on anti-corruption measures in Georgia and on the global level

70. On 21 January 2004 the OECD's Anti-Corruption Network for Transition Economies ("the ACN") issued the following recommendation, referred to as "Recommendation no. 9", to the Georgian authorities:

> "9. [to] consider amending the Criminal Code to ensure that the confiscation of proceeds applies mandatory to all corruption and corruption-related offences. Ensure that the confiscation regime allowed for confiscation of proceeds of corruption, or property the value of which corresponds to that of such proceeds or monetary sanctions of comparable effect, and that confiscation from third persons is possible. Review the provisional measures to make the procedure for identification and seizure of proceeds from corruption in the criminal investigation and prosecution phases efficient and operational. Explore the possibilities to check and, if necessary, to seize unexplained wealth."

71. In June 2004 the ACN had already commended the Georgian authorities for having promptly undertaken a number of anti-corruption measures, including on the legislative level. The relevant excerpt from the Addendum to the Summary Assessment and Recommendations, which was endorsed on 17 June 2004, reads as follows:

> "Despite a very short time since the January review, Georgian updated report informs of a number of important changes in the national legislation, some of which are related to the January recommendations. The main changes are summarised below: ...

• Confiscation: adoption of legal provisions for the investigation of illegal or unjustified property, introduction of the institution of withdrawal of illegal property;

• Efficiency of investigation and prosecution: introducing plea-bargaining in the criminal procedure; enhancing the possibilities to apply special investigative means in collection of evidence;

• Confiscation of proceeds from crime: Georgia has adopted a new law, which provides legal basis for confiscation of unjustified property, and addresses January recommendation 9 concerning the confiscation of proceeds of corruption; additionally new measures are being introduced outside criminal process to enable confiscation of unexplained wealth (through the reversal of burden of proof) ..."

72. Subsequently, in its First Monitoring Report on Georgia, which was adopted on 13 June 2006, the ACN concluded that the authorities had largely complied with its previous Recommendation no. 9 (compare with paragraph 70 above):

"The legislation of Georgia is compatible with the appropriate requirements of the international legislation, in particular with the relevant Council of Europe Convention, in providing for confiscation not only within a criminal procedure, but also through other means. Thus the Georgian Administrative Code empowers the prosecutor to claim the illegal property and unexplained wealth, the notion of which is described in the Law on Conflict of Interests. There are measures provided by the Criminal Procedure Code, such as the power to make civil claims in relation to the criminal offence. Georgia also supplied information regarding the application of these norms that substantiate the claims for effectiveness. It seems that the procedure for identification and seizure of proceeds of corruption exist and it is efficient and operational."

73. In its Third Monitoring Report on Georgia, which was adopted on 25 September 2013, the ACN made the following observations concerning the results of the anti-corruption measures undertaken in the country:

"Corruption in Georgia has been a significant obstacle to economic development since the country gained independence. Its pervasive nature and high visibility had seriously undermined the credibility of the government. However, the new Georgian government in 2004, which came to power after the 'Rose Revolution', committed to tackle corruption and achieved impressive results in eradicating administrative corruption.

Georgia's Transparency International Corruption Perception Index score increased from 1.8 in 2003 to 5.2 in 2012; Georgia is ranked 51st out of 174 countries (leader in the region of Eastern Europe and Central Asia). This is by far the most significant increase for all Istanbul Action Plan countries. Georgia is now ranking higher than a number of EU member countries (Bulgaria, Croatia, Czech Republic, Greece, Italy, Latvia, Slovakia and Romania). While all studies confirm that corruption has been widely eradicated from the citizens' daily life, many civil society representatives and representatives of international organisations believed that high-level corruption persisted. It is considered to be one of the reasons for the previous governing party's loss at the October 2012 parliamentary elections.

Progress in anti-corruption efforts has made the most significant impact on investment and business climate. In the latest World Bank's Doing Business report (2013) Georgia moved up to 9th spot globally (from 112th in 2006) with the nearest

country from the region being Armenia (32nd) and average regional rank of 73. Georgia was the top improving country since 2005 both in the Eastern Europe and Central Asia and globally with 35 institutional and regulatory reforms carried out."

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

74. After notice of the present application had been given to the Government on 9 November 2009, the Court was informed on 22 June 2010 for the first time that the third applicant, Mr Tengiz Gogitidze, had died on 7 May 2005 (see paragraphs 4 and 5 above). Referring to the above fact, the Government raised an objection of abuse of the right of petition in respect of the deceased applicant. They claimed that the applicants' legal counsel had deliberately concealed from the Court the fact of that person's death when deceitfully submitting the application form on the deceased person's behalf.

75. The applicants did not comment on the Government's objection.

76. The Court reiterates that an application may be rejected as abusive under Article 35 § 3 of the Convention if it was knowingly based on untrue facts (see, among other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, §§ 53-54, *Reports of Judgments and Decisions* 1996-IV, and *Keretchashvili v. Georgia* (dec.), no. 5667/02, 2 May 2006) or if incomplete and therefore misleading information was submitted to the Court (see *Bekauri v. Georgia* (preliminary objection), no. 14102/02, §§ 21 and 24, 10 April 2012, and *Hüttner v. Germany* (dec.), no. 23130/04, 9 June 2006).

77. In this connection the Court observes that whilst Mr Tengiz Gogitidze died on 7 May 2005, a fact confirmed by a death certificate added to the case file after communication of the application, legal counsel lodged the application on behalf of the deceased on 4 July 2005. Indeed, the application form presented Mr Gogitidze as an applicant with full legal capacity, living at that time in Moscow, Russia. Furthermore, on 2 November 2005 legal counsel submitted to the Court an authority form which mentioned that it had been issued and signed by the third applicant in Moscow on 22 October 2005.

78. In such circumstances, the Court considers that the application form was based on the false claim that Mr Gogitidze was alive and willing to lodge an application with the Court, whilst the authority form added to the file on 2 November 2005 and bearing the signature "Tengiz Gogitidze" was necessarily a forged document. Although it is unclear who exactly sought to deceive the Court and falsified the signature on the authority form, and there is no indication that legal counsel was aware of the fraud at the time of the

introduction of the application, the consequence of such misleading procedural manipulations is obviously incompatible with the purpose of the right of individual application (compare, for instance, with *Poznanski and Others v. Germany* (dec.), no. 25101/05, 3 July 2007).

79. That being so, the part of the application lodged in the name of Mr Tengiz Gogitidze is abusive for the purposes of Article 35 § 3 (a) *in fine* of the Convention and must be rejected in accordance with Article 35 § 4.

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

80. The applicants complained under Article 1 of Protocol No. 1 about the confiscation of their property. This provision 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."

A. Admissibility

81. The Court finds that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The Government's submissions

82. At the outset the Government asked the Court to take note of the scale of the corruption phenomenon that had been ravaging the country prior to the launching of a vast array of anti-corruption measures by the authorities in February 2004. The corrupt environment had been particularly apparent in the Ajarian Autonomous Republic, in whose government the first applicant had occupied high-ranking posts at the material time. On the other hand, only a few years after the State had undertaken a number of crucial legislative initiatives to bolster efforts to combat corruption, of which administrative confiscation constituted a major part, a firm trend of significant reduction in corruption could be readily observed, from 2006 onwards. In 2009 the Transparency International Corruption Perception

Index had increased Georgia's score from 1.8 in 2003 to 4.1, thus ranking it 66th out of 174 countries (see paragraphs 69-73 above).

83. The Government emphasised that all those positive results in the fight against corruption could never have been achieved without the mechanism of administrative confiscation which had been applied in the applicants' case. They briefly described the nature of that legal mechanism. In particular, administrative confiscation did not constitute a part of criminal proceedings and was not of a punitive nature but, on the contrary, was of a civil-law, compensatory nature, being aimed at remedying the pecuniary damage caused either to private individuals or to the State (see paragraphs 49-54 above). The Government stated that such a procedure – confiscation of the property in question in the absence of a final criminal conviction, with the burden of proof being shifted onto the respondent – was in full conformity with the relevant international standards. In fact, it was the Council of Europe bodies and the OECD who had been the first to insist that Georgia should introduce such a measure (see paragraphs 66-70 above).

84. Observing that the proceedings for confiscation of the applicants' property had strictly followed the judicial procedure laid down for that purpose by Article 37 § 1 of the CCP and Articles 21 §§ 4 to 11 of the CAP, the Government submitted that the resulting confiscation had been lawful. Those legal provisions were readily accessible to the public and their legal consequences were clear and foreseeable to the public at large, including the applicants. Furthermore, it could not be said that the legislative amendments in question had suddenly introduced revolutionary methods in the fight against corruption in February 2004, as seven years prior to those amendments there had already existed a law providing for the principles of prevention, exposure and eradication of corruption and the need to hold corrupt officials criminally, administratively and disciplinarily liable for their illicit deeds, namely the 1997 Act on Conflict of Interests and Corruption in the Public Service (see paragraphs 44-48 above). The Government then argued, by reference to the Court's judgments in the cases of *AGOSI* (cited above, § 51) and *Raimondo* (cited above, § 29), that confiscation should be considered as a measure to control the use of property.

85. The Government firmly maintained that the introduction of the procedure of administrative confiscation served the public interest of the eradication of corruption in the public service. As to the implication of "relatives" and "connected persons", that particular aspect was intended as a response to the well-known and widespread practice whereby corrupt public officials would hide the proceeds of their illicit deeds by fictitiously registering those proceeds in the names of their friends or relatives. In doing so, corrupt officials attempted to avoid financial accountability before the public, meaning that the legal obligation to submit financial declarations in their own names, as initially provided for by the 1997 Act on Conflict of

Interests and Corruption in the Public Service, was deprived of any real value. The confiscation of the applicants' property had therefore been justified by socio-legal and economic considerations, namely the need to eradicate corruption and to return the illicitly acquired property to the lawful owners or, in the absence of such, to the State budget.

86. As to the proportionality of the confiscation, the Government argued that that requirement was satisfied by the fact that the civil dispute between the State and the applicants had been the subject of a comprehensive judicial review by an independent and objective court. However, the applicants had failed to prove, in the relevant judicial proceedings, that they had had legal incomes that were sufficient to enable them to acquire the property, which had a much higher value. In this connection the Government also stated that, given that the impugned confiscation represented a measure to control the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1, the respondent State enjoyed a particularly wide margin of appreciation in the context of the policy of fighting such a major crime as corruption.

2. The applicants' submissions

87. The applicants' submissions were mostly aimed at criticising the political and legal reforms undertaken by the Georgian Government in general, accusing the ruling forces of anti-democratic methods of governing and of adjusting the law, including the legislation on confiscation, to their own whims.

88. With regard to the subject matter of the present case, the applicants confined their arguments to complaining about the major constituent elements of the administrative confiscation procedure as such. In particular, they stated that the confiscation of their property had been arbitrary, the authorities having claimed that it had been obtained as a result of the first applicant's corrupt activities, without first having a final conviction against him proving his involvement in the commission of the impugned activities. In that regard they stated that the first applicant had been convicted of the offences with which he had been charged on 25 August 2004 (see paragraph 9 above); the launching of that criminal case had acted as a spur to the initiation of the administrative confiscation proceedings, as late as January 2010, that is, five years after the confiscation order had become final (see paragraph 36 above; no copy of the first applicant's conviction was submitted). The applicants also complained that the burden of proof in the confiscation proceedings had been shifted onto them, arguing that, according to the general principles of criminal procedure, it was always the public prosecutor who should carry the burden of proving a defendant's guilt beyond reasonable doubt.

89. The applicants also argued that the confiscation of their property had not been a provisional measure but, on the contrary, an irreversible act,

which thus could not be characterised as control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1, but should be treated as *de facto* expropriation of their property. Maintaining that the confiscation measure in their case amounted to a criminal sanction, the applicants also complained that the amendments of 13 February 2004 to the Code of Administrative Procedure had been applied retroactively in their case, since the property confiscated had in reality been acquired between November 1997 and May 2004. In that connection they added that the amendments in question had not been sufficiently clear and understandable to them as persons without any meaningful legal education.

90. The applicants' further submissions were aimed at calling into question the factual findings of the domestic courts. In particular they asserted, without submitting any evidence in that regard, that the majority of the confiscated property had in reality been financed from the personal savings of the first applicant's wife, a Russian national, and her distant relatives living and doing business in Russia. They complained that those facts had not been taken into account by the Supreme Court of Georgia during the relevant cassation proceedings. As to the reasons for the first, third and fourth applicants' failure to attend the court hearings, the applicants explained that the first applicant had by that time already fled from Georgia to Russia for fear of criminal prosecution, whilst the remaining two applicants had simply had no trust in the country's judicial system.

3. The Court's assessment

(a) General observations

91. The subject matter of the applicants' complaints is the compatibility of the so-called administrative confiscation procedure, under which some of their property was forfeited in favour of either third persons or the State, with the right to protection of property. Having regard to the relevant domestic legislative framework (see paragraphs 49-54 above) and comparing it with the relevant legal concepts employed by the international community (see paragraphs 55-64 above), the Court notes that the disputed procedure, despite the terminology used to describe it in domestic law, is far from being a purely administrative confiscation but, on the contrary, is linked to the prior existence of a criminal charge against a public official and thus represents by its nature a civil action *in rem* aimed at the recovery of assets wrongfully or inexplicably accumulated by the public officials concerned and their close entourage.

(b) The applicable rule of Article 1 of Protocol No. 1

92. The Court reiterates that Article 1 of Protocol No. 1 to the Convention, which guarantees in substance the right to property, comprises

three distinct rules. The first one, which is expressed in the first sentence of the first paragraph, lays down the principle of peaceful enjoyment of property in general. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, among other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, must be construed in the light of the general principle laid down in the first rule (see, among many authorities, *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 44, ECHR 1999-V).

93. The Court first observes that it is not in dispute between the parties that the confiscation order concerning the applicants' movable and immovable assets amounted to interference with their right to peaceful enjoyment of their possessions, and that Article 1 of Protocol No. 1 is therefore applicable.

94. As to which exactly of the three above-mentioned property rules should apply to the applicants' situation, the Court reiterates that where a confiscation measure has been imposed independently of the existence of a criminal conviction but rather as a result of separate "civil" (within the meaning of Article 6 § 1 of the Convention) judicial proceedings aimed at the recovery of assets deemed to have been acquired unlawfully, such a measure, even if it involves the irrevocable forfeiture of possessions, constitutes nevertheless control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 (see, amongst many other authorities, *Air Canada v. the United Kingdom*, 5 May 1995, § 34, Series A no. 316‑A; *Riela and Others v. Italy* (dec.), no. 52439/99, 4 September 2001; *Veits v. Estonia*, no. 12951/11, § 70, 15 January 2015; and *Sun v. Russia*, no. 31004/02, § 25, 5 February 2009).

95. Accordingly, the Court considers that the same approach must be followed in the present case.

(c) Compliance with the second paragraph of Article 1 of Protocol No. 1

96. An essential condition for interference to be deemed compatible with Article 1 of Protocol No. 1 is that it should be lawful: the second paragraph recognises that States have the right to control the use of property by enforcing "laws". Furthermore, any interference by a public authority with the peaceful enjoyment of possessions can only be justified if it serves a legitimate public (or general) interest. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to decide what is "in the public interest". Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures interfering with the

peaceful enjoyment of possessions (see *Terazzi S.r.l. v. Italy*, no. 27265/95, § 85, 17 October 2002, and *Wieczorek v. Poland*, no. 18176/05, § 59, 8 December 2009).

97. Article 1 of Protocol No. 1 also requires that any interference be reasonably proportionate to the aim sought to be realised. In other words, 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 requisite balance will not be found if the person or persons concerned have had to bear an individual and excessive burden (see, amongst many other authorities, *The Former King of Greece and Others v. Greece* [GC], no. 25701/94, §§ 79 and 82, ECHR 2000-XII, and *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, §§ 81-94, ECHR 2005-VI). Furthermore, a wide margin of appreciation is usually allowed to the State under the Convention when it comes to general measures of political, economic or social strategy, and the Court generally respects the legislature's policy choice unless it is "manifestly without reasonable foundation" (see *Azienda Agricola Silverfunghi S.a.s. and Others v. Italy*, nos. 48357/07, 52677/07, 52687/07 and 52701/07, § 103, 24 June 2014).

(i) Lawfulness of the interference

98. The Court notes that the forfeiture of the applicants' property was ordered by the domestic courts on the basis of Article 37 § 1 of the Code of Criminal Procedure and Chapter IV (Articles 21 §§ 4 to 11) of the Code of Administrative Procedure, introduced by the amendment of 13 February 2004. Having regard to the wording of those provisions, the Court considers that there cannot be any doubt about their clarity, precision or foreseeability (see, for instance, *Khoniakina v. Georgia*, no. 17767/08, § 75, 19 June 2012, and *Grifhorst v. France*, no. 28336/02, § 91, 26 February 2009).

99. As to the applicants' argument that it was arbitrary to extend retrospectively the scope of the confiscation mechanism to the property that they had acquired prior to the entry into force of the amendment of 13 February 2004, the Court observes at the outset that the amendment in question was not the first piece of legislation in the country which required public officials to be held accountable for the unexplained origins of their wealth. Thus, as far back as 1997 the Act on Conflict of Interests and Corruption in the Public Service had already addressed such issues as corruption offences and the obligation of public officials to declare and justify the origins of their property and that of their close entourage, subject to possible criminal, administrative or disciplinary liability the exact nature of which was to be regulated by separate laws governing breaches of those anti-corruption requirements (see paragraphs 44-48 above). That being so, it is clear that the amendment of 13 February 2004 merely regulated afresh the pecuniary aspects of the existing anti-corruption legal standards.

Furthermore, the Court reiterates that the "lawfulness" requirement contained in Article of Protocol No. 1 cannot normally be construed as preventing the legislature from controlling the use of property or otherwise interfering with pecuniary rights via new retrospective provisions regulating continuing factual situations or legal relations anew (see *Azienda Agricola Silverfunghi S.a.s. and Others*, cited above, § 104, 24 June 2014; *Arras and Others v. Italy*, no. 17972/07, § 81, 14 February 2012; *Huitson v. the United Kingdom* (dec.), no. 50131/12, §§ 31-35, 13 January 2015; and *Khoniakina*, cited above, § 74). It finds no reason to find otherwise in the present case.

100. The Court therefore finds that the forfeiture of the applicants' property was in full conformity with the "lawfulness" requirement contained in Article 1 of Protocol No. 1.

(ii) Legitimate aim

101. As regards the legitimacy of the aim pursued by the impugned confiscation, the Court observes that the measure formed an essential part of a larger legislative package aimed at intensifying the fight against corruption in the public service (see paragraphs 49, 82 and 83 above). Having regard to the domestic legal framework (see paragraphs 52-54 and 85 above), it is evident that the rationale behind the forfeiture of wrongfully acquired property and unexplained wealth owned by persons accused of serious offences committed while in public office and from their family members and close relatives was twofold, having both a compensatory and a preventive aim.

102. The compensatory aspect consisted in the obligation to restore the injured party in civil proceedings to the status which had existed prior to the unjust enrichment of the public official in question, by returning wrongfully acquired property either to its previous lawful owner or, in the absence of such, to the State. This was, for instance, a consequence of the proceedings *in rem* in the present case, where one of the houses in the first applicant's wrongful possession turned out to have been obtained from a third party as the result of duress; that third party, a private individual, then acquired entitlement to benefit from the confiscation of that particular property (see paragraphs 34 and 36 above, as well as the Court's judgment in the case of *Tchitchinadze*, cited above, §§ 9, 13 and 16). The aim of the civil proceedings *in rem* was to prevent unjust enrichment through corruption as such, by sending a clear signal to public officials already involved in corruption or considering so doing that their wrongful acts, even if they went unpunished by the criminal justice system, would nevertheless not procure pecuniary advantage either for them or for their families (see, *mutatis mutandis*, *Raimondo*, cited above, § 30; *Veits*, cited above, § 71; and *Silickienė v. Lithuania*, no. 20496/02, § 65, 10 April 2012).

103. The Court accordingly finds that the forfeiture measure in the instant case was effected in accordance with the general interest in ensuring

that the use of the property in question did not procure advantage for the applicants to the detriment of the community (compare also with *Phillips v. the United Kingdom*, no. 41087/98, § 52, ECHR 2001-VII).

(iii) Proportionality of the interference

104. As regards the requisite balance to be struck between the means employed for forfeiture of the applicants' assets and the above-mentioned general interest in combatting corruption in the public service, the Court notes that the tenor of the applicants' submissions in this respect was limited to calling into question the two major constituent elements of the civil proceedings *in rem*. They considered it to be unreasonable (i) that the domestic law allowed for confiscation of their property as having been wrongfully acquired and/or being unexplained, without the first applicant's guilt on corruption charges having first been proved and (ii) that the burden of proof in the associated proceedings had been shifted onto them.

(α) Whether the procedure for forfeiture of property was arbitrary

105. Having regard to such international legal mechanisms as the 2005 United Nations Convention against Corruption, the Financial Action Task Force's (FATF) Recommendations and the two relevant Council of Europe Conventions of 1990 and 2005 concerning confiscation of the proceeds of crime (ETS No. 141 and ETS No. 198) (see paragraphs 55-65 above), the Court observes that common European and even universal legal standards can be said to exist which encourage, firstly, the confiscation of property linked to serious criminal offences such as corruption, money laundering, drug offences and so on, without the prior existence of a criminal conviction. Secondly, the onus of proving the lawful origin of the property presumed to have been wrongfully acquired may legitimately be shifted onto the respondents in such non-criminal proceedings for confiscation, including civil proceedings *in rem*. Thirdly, confiscation measures may be applied not only to the direct proceeds of crime but also to property, including any incomes and other indirect benefits, obtained by converting or transforming the direct proceeds of crime or intermingling them with other, possibly lawful, assets. Finally, confiscation measures may be applied not only to persons directly suspected of criminal offences but also to any third parties which hold ownership rights without the requisite *bona fide* with a view to disguising their wrongful role in amassing the wealth in question.

106. It was on the basis of those internationally acclaimed standards for combatting serious offences which entail unjust enrichment that the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), Group of States Against Corruption (GRECO) and the OECD's Anti-Corruption Network for Transition Economies, noticing the alarming levels of corruption in the country at all levels, repeatedly advised the

Georgian authorities that they undertake legislative measures to ensure that the confiscation of proceeds, including value confiscations, applied mandatorily to all corruption and corruption-related offences and that confiscation from third parties should also be possible. The Court observes that the domestic authorities put the received instructions into practice by adopting the amendment of 13 February 2004. As far back as April and June 2006, and then again in September 2013, the above-mentioned international legal expert bodies commended the authorities for having largely complied with their instructions. They noted that, thanks to the introduction of civil proceedings *in rem* in addition to the possibility of confiscation through criminal proceedings, the Georgian legislation had been brought into line with the appropriate requirements of the international legislation, and in particular with the relevant Council of Europe Conventions, although they still warned the Georgian authorities against possible misuse of that procedure, calling for the utmost transparency in that regard (see paragraphs 66-73 above). Indeed, the Court considers it important to emphasise that those legislative measures considerably helped Georgia to move in the right direction in combating the corruption (see paragraph 73 above).

107. The Court also recalls previous cases in which it was required to examine, from the standpoint of the proportionality test of Article 1 of Protocol No. 1, broadly similar procedures for the forfeiture of property linked to the alleged commission of various serious offences entailing unjust enrichment. As regards property presumed to have been acquired either in full or in part with the proceeds of drug-trafficking offences or other illicit activities of mafia-type or criminal organisations, the Court did not see any problem in finding the confiscation measures to be proportionate even in the absence of a conviction establishing the guilt of the accused persons. The Court also found it legitimate for the relevant domestic authorities to issue confiscation orders on the basis of a preponderance of evidence which suggested that the respondents' lawful incomes could not have sufficed for them to acquire the property in question. Indeed, whenever a confiscation order was the result of civil proceedings *in rem* which related to the proceeds of crime derived from serious offences, the Court did not require proof "beyond reasonable doubt" of the illicit origins of the property in such proceedings. Instead, proof on a balance of probabilities or a high probability of illicit origins, combined with the inability of the owner to prove the contrary, was found to suffice for the purposes of the proportionality test under Article 1 of Protocol No. 1. The domestic authorities were further given leeway under the Convention to apply confiscation measures not only to persons directly accused of offences but also to their family members and other close relatives who were presumed to possess and manage the ill-gotten property informally on behalf of the suspected offenders, or who otherwise lacked the necessary

bona fide status (see *Raimondo*, cited above, § 30; *Arcuri and Others v. Italy* (dec.), no. 52024/99, ECHR 2001-VII; *Morabito and Others v. Italy* (dec.), 58572/00, ECHR 7 June 2005; *Butler v. the United Kingdom* (dec.), no. 41661/98, 27 June 2002; *Webb v. the United Kingdom* (dec.), no. 56054/00, 10 February 2004; and *Saccoccia v. Austria*, no. 69917/01, §§ 87-91, 18 December 2008; compare also with the more recent case of *Silickienė*, cited above, §§ 60-70, where a confiscation measure was applied to the widow of a corrupt public official).

108. Having regard to all the above considerations the Court finds, by analogy, that the civil proceedings *in rem* in the present case, conducted under the procedure regulated by Article 37 § 1 of the CCP and Article 21 §§ 4 to 11 of the CAP, can likewise not be considered to have been arbitrary or to have upset the proportionality test under Article 1 of Protocol No. 1. In this connection the Court also attaches importance to the similar conclusions of the Constitutional Court of Georgia, which found the civil proceedings *in rem* to be devoid of any arbitrariness (see paragraphs 37-43 above) Indeed, it was only reasonable to expect all three applicants – one of whom had been directly accused of corruption in a separate set of criminal proceedings, whilst the remaining two were presumed, as the accused's family members, to have benefited unduly from the proceeds of his crime – to discharge their part of the burden of proof by refuting the prosecutor's substantiated suspicions about the wrongful origins of their assets. Moreover, those civil proceedings for confiscation clearly formed part of a policy aimed at the prevention and eradication of corruption in the public service, and the Court reiterates that in implementing such policies, respondent States must be given a wide margin of appreciation with regard to what constitutes the appropriate means of applying measures to control the use of property such as the confiscation of all types of proceeds of crime (see, for instance, *Yildirim v. Italy* (dec.), no. 38602/02, ECHR 2003-IV, and *Butler*, cited above).

(β) Whether the domestic courts acted without arbitrariness

109. Notwithstanding the above finding, the Court observes that it must also ascertain whether the applicants, as the respondents in the civil proceedings for confiscation, were afforded a reasonable opportunity of putting their arguments before the domestic courts (see, *Veits*, cited above, §§ 72 and 74, and *Jokela v. Finland*, no. 28856/95, § 45, ECHR 2002-IV).

110. In this connection the Court notes that the Ajarian Supreme Court, as well as transmitting the public prosecutor's claim together with all the supporting documents, duly summoned all three applicants to make written submissions in reply and to take part in an oral hearing (contrast with *Silickienė*, cited above, § 48, and *Veits*, cited above, § 58). Those summonses were served at the applicants' postal addresses twice, with the domestic court even postponing a hearing on one occasion, but the first and

fourth applicants still failed to avail themselves of their procedural rights (see paragraphs 18, 19, 24 and 25 above). The first applicant's reference to the fact that he was seeking to evade the criminal investigation at that time (see paragraph 90 above) is irrelevant in this regard, since he and the fourth applicant could have designated lawyers to represent their interests at first instance, as they did subsequently before the cassation court (compare with *Bongiorno and Others v. Italy*, no. 4514/07, § 49, 5 January 2010). In such circumstances, the Court considers that the first and fourth applicants merely chose to exercise their freedom to waive their procedural right to submit arguments before the first-instance court (see *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 135, 17 September 2009), with the result that they failed to refute the prosecutor's claim. As to the second applicant, who was represented by a lawyer of his choice before the first-instance court, it is noteworthy that some of his arguments and evidence relating to the lawful origin of certain assets were accepted by the Ajarian Supreme Court, leading to the removal of those assets from the confiscation list.

111. As regards the proceedings before the cassation court, the Supreme Court of Georgia, all three applicants availed themselves of the opportunity of presenting their arguments on points of law both in writing and at an oral hearing. The proceedings were conducted, like those at first instance, in an adversarial manner. The applicants did not claim before the Court that there had been any procedural unfairness in the cassation proceedings, limiting their arguments to calling into question the findings of fact (see paragraph 90 above). However, the Court reiterates that it is not within its province to substitute its own assessment of the facts for that of the domestic courts, who are better placed to assess the evidence before them (see *Grayson and Barnham v. the United Kingdom,* nos. 19955/05 and 15085/06, § 48, 23 September 2008).

112. As to the applicants' argument that the domestic courts ordered the confiscation of their property on the ground of a mere, unsubstantiated suspicion put forward by the public prosecutor, the Court finds it ill-founded. The domestic courts duly examined the public prosecutor's claim in the adversarial proceedings in the light of the numerous supporting documents available in the case file (see paragraph 12 above). That evidence led the domestic courts to the finding that the considerable assets acquired by the Gogitidze family during the tenure of the first applicant in public office could not have been financed by his official salaries alone, whilst the remaining applicants had had no other significant sources of income either. A careful examination of the applicants' financial situation confirmed the existence of a considerable discrepancy between their income and their wealth, and that discrepancy, which was a well-documented factual finding, then became the basis for confiscation.

113. The Court thus finds that there is nothing in the conduct of the civil proceedings *in rem* to suggest either that the applicants were denied a

reasonable opportunity of putting forward their case or that the domestic courts' findings were tainted with manifest arbitrariness (contrast, *mutatis mutandis*, *Denisova and Moiseyeva v. Russia*, no. 16903/03, §§ 59-64, 1 April 2010).

(d) Conclusion

114. In the light of the foregoing, having regard to the Georgian authorities' wide margin of appreciation in their pursuit of the policy designed to combat corruption in the public service and to the fact that the domestic courts afforded the applicants a reasonable opportunity of putting their case through the adversarial proceedings, the Court concludes that the civil proceedings *in rem* for the forfeiture of the applicants' property, based on a procedure which was moreover in line with the relevant international standards, did not upset the requisite fair balance.

115. Accordingly, there has been no violation of Article 1 of Protocol No. 1.

III. ALLEGED VIOLATIONS OF ARTICLE 6 §§ 1 and 2 OF THE CONVENTION

116. All three applicants complained that the confiscation proceedings had been conducted in breach of the principle of equality of arms contained in Article 6 § 1 of the Convention. The first applicant complained that the confiscation of his property in the absence of a final conviction establishing his guilt amounted to an encroachment upon the principle of presumption of innocence.

117. The relevant provisions read as follows:

Article 6

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

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

A. Admissibility

1. The parties' submissions

118. The Government contested the applicants' arguments. They first submitted that the administrative confiscation proceedings represented a "civil" dispute within the meaning of Article 6 § 1 of the Convention. During the examination of that dispute, the domestic courts had given ample opportunity to the first, second and fourth applicants to submit their written

and oral arguments. However, only one of them, the second applicant, had availed himself of that opportunity, whilst the remaining applicants had ignored the domestic court's two summonses. As to the second applicant, his arguments had been duly heard by the domestic courts; as a result of the courts' thorough examination, some of his property had eventually been removed from the confiscation list. In general, the judicial examination, in which the burden of proof was placed on the respondent applicants by law, had been fair, and the court decisions had been sufficiently reasoned. As to the first applicant's complaint under Article 6 § 2 of the Convention, the Government submitted that the provision in question could not apply to the administrative confiscation proceedings, as the latter had not involved the determination of any criminal charge against the applicant. All in all, the Government concluded that the applicants' complaints under Articles 6 §§ 1 and 2 were manifestly ill-founded.

119. The applicants reiterated that the administrative confiscation proceedings had been in breach of the principle of equality of arms contained in Article 6 § 1 of the Convention, given that the hearing before the court of first instance had been conducted in the first and fourth applicants' absence. As to the reasons for that absence, the applicants explained that the first applicant had been obliged to leave Georgia for fear of criminal prosecution, whilst the fourth applicant had been distrustful towards the Georgian judiciary in general. The applicants' submissions did not contain any explanation as to why their lawyers had not attended the hearing. The applicants also called into question the outcome of the proceedings, accusing the domestic courts of an erroneous assessment of the factual circumstances of the case. As to his complaint under Article 6 § 2 of the Convention, the first applicant reiterated that by requiring him to prove the lawful origins of his property prior to establishing his guilt on corruption charges, the domestic authorities had infringed his right to be presumed innocent.

2. The Court's assessment

(a) The applicants' complaints under Article 6 § 1 of the Convention

120. Having regard to the applicants' submissions, the Court observes that it is not clear under which limb of Article 6 § 1 of the Convention ("civil" or "criminal"), they intended to complain of.

121. Be that as it may, the Court reiterates its well-established case-law to the effect that proceedings for confiscation such as the civil proceedings *in rem* in the present case, which do not stem from a criminal conviction or sentencing proceedings and thus do not qualify as a penalty but rather represent a measure of control of the use of property within the meaning of Article 1 of Protocol N. 1, cannot amount to "the determination of a criminal charge" within the meaning of Article 6 § 1 of the Convention and

should be examined under the "civil" head of that provision (see, amongst many other authorities, *Arcuri and Others*, cited above; *Butler*, cited above; *Veits*, cited above, § 58; and *Silickienė* cited above, §§ 45 and 56; contrast with, for instance, *Phillips*, cited above, § 39).

122. As regards the first and fourth applicants' complaint that the judicial proceedings at first instance had been conducted in their absence, the Court reiterates its previous finding that the applicants themselves chose to waive their procedural right to take part in the proceedings (see paragraph 110 above). As to the applicants' argument that they should not have been made to bear the burden of proving the lawfulness of the origins of their property, the Court reiterates there can be nothing arbitrary, for the purposes of the "civil" limb of Article 6 § 1 of the Convention, in the reversal of the burden of proof onto the respondents in the forfeiture proceedings *in rem* after the public prosecutor had submitted a substantiated claim (see, among other authorities, *Grayson and Barnham*, cited above, §§ 37-49, as well as the Court's findings at paragraphs 103 and 104 above). As to the calling into question by the applicants of the domestic courts' findings of fact, the Court reiterates that it cannot act as a fourth instance and will not therefore question those domestic findings (see, for instance, *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 61, 5 February 2015).

123. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

(b) The first applicant's complaint under Article 6 § 2 of the Convention

124. The Court reiterates that the question of the applicability of Article 6 § 2 of the Convention is normally to be examined under two aspects: a narrow aspect relating to the conduct of the relevant criminal trial as such, and a more extensive one which can go beyond the scope of the trial under certain conditions (see, for instance, *Vanjak v. Croatia*, no. 29889/04, § 67, 14 January 2010).

125. In this connection the Court observes that the forfeiture proceedings *in rem* in the present case did not take place after the criminal prosecution of the first applicant, but on the contrary preceded it. Consequently, the second, more extensive, aspect of Article 6 § 2 of the Convention, the role of which is to prevent the principle of presumption of innocence from being undermined after the relevant criminal proceedings have ended with an outcome other than conviction (such as acquittal, discontinuation of the criminal proceedings as being statute-barred, the death of an accused, and so on), is of no relevance in the present case (see *Allen v. the United Kingdom* [GC], no. 25424/09, §§ 103 and 104, ECHR 2013; *Geerings v. the Netherlands*, no. 30810/03, §§ 43-50, 1 March 2007; *Phillips*, cited above, § 35; and *Lagardère v. France*, no. 18851/07, §§ 58-64, 12 April 2012).

126. As to the first, more limited aspect of Article 6 § 2, the role of which is to protect an accused person's right to be presumed innocent exclusively within the framework of the pending criminal trial itself (see *Allen*, cited above, § 93, with further references mentioned in the same paragraph), the Court reiterates, in the light of its well-established case-law, that the forfeiture of property ordered as a result of civil proceedings *in rem*, without involving determination of a criminal charge, is not of a punitive but of a preventive and/or compensatory nature and thus cannot give rise to the application of the provision in question (see, amongst other authorities, *Butler*, cited above; *AGOSI*, cited above, § 65; *Riela*, cited above; and *Arcuri*, cited above).

127. It follows that the first applicant's complaint is incompatible *ratione materiae* with Article 6 § 2 of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

128. The applicants, citing Articles 7 and 14 of the Convention, reiterated their complaints about the outcome of the domestic proceedings.

129. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court, noting its previous findings (see paragraphs 121, 123 and 127 above), considers that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the first, second and fourth applicants' complaints under Article 1 of Protocol No. 1 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 12 May 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Päivi Hirvelä
Registrar	President