



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

THIRD SECTION

DECISION

Application no. 22026/10
Giorgi AKHVLEDIANI and others
against Georgia

The European Court of Human Rights (Third Section), sitting on 9 April 2013 as a Chamber composed of:

Josep Casadevall, *President*,

Alvina Gyulumyan,

Corneliu Bîrsan,

Luis López Guerra,

Nona Tsotsoria,

Kristina Pardalos,

Valeriu Grițco, *judges*,

and Santiago Quesada, *Section Registrar*,

Having regard to the above applications lodged on 30 March and 15 April 2010,

Having regard to its decision of 6 March 2012,

Having regard to the parties' observations,

Having deliberated, decides as follows:

THE FACTS

1. The applicants¹ are Georgian nationals. They were represented before the Court by Ms Lia Mukhashavria and Mr Nika Kvaratskhelia, lawyers at Human Rights Priority, a non-governmental organisation in Tbilisi. The

¹ The applicants' names are listed in the appendix to the decision.

Georgian Government were represented by their Agent, Mr Meskhoradze, of the Ministry of Justice.

2. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Police raid on Imedi television

3. The applicants were all employed as journalists by Imedi Media Holding, a private television and radio company formerly owned by the late Georgian media proprietor B.P. and by Rupert Murdoch's News Corporation. The applicants were not shareholders in that company.

4. In the autumn of 2007, large-scale demonstrations led by a collection of opposition parties took place in Tbilisi, protesting against the President of Georgia and the Government. These demonstrations, to which B.P. was sympathetic, were initially peaceful but turned violent on 7 November 2007 when the police, using various harsh anti-riot tactics, dislodged the demonstrators from land adjoining the House of Parliament, preventing them from resuming their protests.

5. All major television stations in Georgia, including Imedi, broadcast live footage of the dispersal of the demonstrators on that day.

6. Later in the evening of 7 November 2007, without warning and without possession of a court order, hundreds of police officers armed with automatic weapons broke into the Imedi television station headquarters, causing the station to be taken off the air. According to the applicants' version of events which is disputed by the Government, the police forced the Imedi staff members, including six of the applicants (see paragraph 12 below), to lie on the floor with their hands behind their heads. Some of the captive journalists were verbally insulted and threatened at gunpoint. After holding the staff members, including the applicants, in the above-mentioned conditions for 20-30 minutes, the police forced them out of the building, destroying much of the company's television equipment and its video archive ("the police raid on Imedi"). Many other staff members of the television, including the remaining four applicants, were, in the meantime, gathered in a street adjacent to the building.

7. On the same day, 7 November 2007, a criminal case for attempted *coup d'état* was initiated against B.P. by the General Prosecutor's Office. Furthermore, the President of Georgia declared a nationwide state of emergency later that day which lasted until 16 November 2007.

8. On 8 November 2007 the Georgian National Communications Commission ("the GNCC") suspended Imedi's broadcasting licence, citing violations of broadcasting law by the company.

9. According to the Government, on 10 November 2007 the Tbilisi City Prosecutor's Office opened a criminal probe in the lawfulness of the police

actions during the raid on Imedi. However, the case file does not contain any decision related to those proceedings.

10. On 15 November and 17 December 2007 B.P.'s two newly designated lawyers enquired with prosecution authority about progress in the criminal proceedings which had been initiated against their client on 7 November 2007, requesting to be acquainted with case materials. As disclosed by copies of those enquiries, the two lawyers, who did not possess authority to act from any of the ten applicants, did not voice any grievances and described any facts concerning the police raid on Imedi.

11. On 7 December 2007 the police allowed the Imedi staff members, including the applicants, to re-enter their offices in the television station for the first time. On 12 December 2007 the GNCC lifted the broadcast ban on Imedi.

12. Subsequently, and notably after B.P.'s death on 13 February 2008, a row concerning the question of ownership of Imedi broke out between the late media proprietor's family and certain other persons. The company management's subsequent decision to suspend the television broadcasts again, led most of its leading journalists, including the applicants, to leave their jobs at Imedi in the first half of 2008. In May 2008 Imedi television, already running under new management, started broadcasting again.

B. Legal steps undertaken by the applicants

13. For more than two years after the police raid on Imedi on 7 November 2007, the applicants did not complain about the actions of the police before any of the domestic authorities. In early December 2009, Human Rights Priority, a human rights advocacy centre known in Georgia for specialising in bringing applications to the Court, publicly declared its readiness to assist victims of the police raid on Imedi. Subsequently, on 4 and 22 December 2009, all ten applicants simultaneously filed complaints with the Tbilisi City public prosecutor's office requesting the initiation of a criminal investigation into the circumstances of that raid.

14. On 14 December 2009 the prosecution authority informed the applicants that their criminal complaints had been transmitted to the investigative unit of the Chief Public Prosecutor's Office for further action.

COMPLAINTS

15. Relying on Articles 3 and 8 of the Convention, invoked separately and in conjunction with Article 13, all ten applicants complained that they had been subjected to various forms of ill-treatment during the police raid on Imedi on 7 November 2007 which had had a deleterious effect on their

personal and professional life, and that the relevant domestic authorities had failed in their positive obligation to investigate the incident in a timely and efficient manner. Some of the applicants (Mr Moseshvili, Mrs Trapaidze, Mr Kalandadze, Mrs Sitchinava, Mr Mezurnishvili and Mrs Gochashvili) also complained under Article 5 of the Convention, invoked separately and in conjunction with Article 13, of the unlawful deprivation of their liberty by the riot police in the Imedi television building on that day.

THE LAW

A. As regards the complaints under Articles 3, 5, 8 and 13 of the Convention

16. Relying on Articles 3, 5 § 1, 8 and 13 of the Convention, the applicants complained about the circumstances surrounding the police raid on Imedi 7 November 2007, making a particular emphasis on the alleged instances of their ill-treatment by police officers.

1. The Government's arguments

17. The Government submitted that, contrary to a requirement contained in the six month rule under Article 35 § 1 of the Convention, the applicants had failed to act with due expedition. They referred in this regard to the relevant case-law of the Court, and in particular to its decision in a recent case of *Manukyan v. Georgia* ((dec.), no. 53073/07, 9 October 2012), according to which an applicant claiming a violation under Articles 2 and 3 of the Convention must timely take the steps necessary for keeping track of the investigation's progress, or lack thereof, and to lodge their applications with due expedition once they are, or should have become, aware of the lack of any effective criminal investigation (see *Bayram and Yıldırım v. Turkey* (dec.), no. 38587/97, ECHR 2002-III).

18. Informing the Court that the Tbilisi City Prosecutor's Office had duly opened on 10 November 2007 a criminal probe into the lawfulness of the police actions during the raid on Imedi (see paragraph 9 above), the Government reproached the applicants for their total lack of interest towards that investigation for a period exceeding two years. The Government stated that the information regarding that investigation had always been within the public domain and any person who deemed him- or herself to have been negatively affected by the police raid on Imedi could have easily filed a request with the prosecutor's office for involvement in those proceedings in the capacity of victim. The applicants' failure to express their interest towards the investigation in due time was attributable, in the Government's

view, to their own negligence. Alternatively, if the applicants considered that no effective investigation could have been conducted into the police raid on Imedi, they should then have lodged their applications with the Court within six months after the incident had taken place on 7 November 2007.

19. In addition, the Government also submitted various arguments in support of their objection that the applicants' complaints under Articles 3, 5, 8 and 13 of the Convention were either manifestly ill-founded or unsubstantiated.

2. The applicants' arguments

20. The applicants replied that the reason why they had not immediately requested the initiation of a criminal investigation for abuses of power by the police during the police raid on Imedi was their lack of confidence towards the prosecution and judicial authorities in the context of such a high-profile, politically sensitive case. They asked the Court to draw parallels between their cases and the Court's findings concerning the ineffectiveness of the criminal investigation examined under Article 2 of the Convention in the case of *Enukidze and Girgylani v. Georgia* (no. 25091/07, §§ 244-277, 26 April 2011). To substantiate further the alleged political sensitivity of their cases, the applicants accounted in detail for numerous circumstances concerning the tensed relations between the entourage of the President of Georgia and the late media proprietor B.P. In the aftermath of the police raid, when even B.P. had felt himself insecure in the hands of the Georgian authorities, ordinary staff members of Imedi had obviously appeared to be in a much more vulnerable position. In such circumstances, the chances that an objective and thorough investigation into the police abuses could be conducted were negligible.

21. Nevertheless, despite the feelings of insecurity and vulnerability, the applicants claimed that they had not remained totally passive in the aftermath of the raid on Imedi. In this respect, they referred to the fact of involvement of B.P.'s two lawyers in the criminal proceedings against the media proprietor in November and December 2007 (see paragraph 10 above), considering that fact to have been sufficient for the purposes of representation of their own interests. Notably, the applicants expressed their belief that B.P.'s lawyers should normally have voiced before the authorities all the grim circumstances surrounding the raid on Imedi on their behalf. All in all, the applicants argued that they had done everything that could reasonably have been expected from them to exhaust the available domestic remedies at the material time.

22. The applicants further emphasised that they should be exempted, in their particular situation, from the obligation to wait endlessly for the final outcome of the criminal investigation which they had duly requested the public prosecutor to open on 4 and 22 December 2009. Without giving any

particular explanation in this respect, the applicants merely stated that, prior to March-April 2010, they could not have realised that the criminal investigation into the police raid had been ineffective; however, as soon as they had started doubting about its effectiveness in the spring of 2010, they had immediately lodged their applications with the Court, thus discharging their obligation to act with due expedition.

3. *The Court's assessment*

(a) **General principles**

23. The Court reiterates that the primary purpose of the six-month rule is to promote security of law and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. Furthermore, it ought also to protect both the authorities and other persons concerned from being under any uncertainty for a prolonged period of time (see, among many other authorities, *Aydinlar and Others* (dec.), no. 3575/05, 9 March 2010; and *Kınış v. Turkey* (dec.), no. 13635/04, 28 June 2005). One of the corollaries of the above-mentioned purposes is that an applicant who claims to be the victim of a serious criminal offence committed by the authorities in breach of a provision of the Convention is expected, under Article 35 § 1 of the Convention, to display a certain amount of diligence and initiative by taking the steps necessary for keeping track of the investigation's progress, or lack thereof, and to lodge their applications with due expedition once they are, or should have become, aware of the lack of any effective criminal investigation (see *Finozhenok v. Russia* (dec.), 3025/06, 31 May 2011; and also *Ekrem Baytap v. Turkey* (dec.), no. 17579/05, 29 April 2010).

24. Where time is of the essence in resolving the issues in a case, there is a burden on the applicant to ensure that his or her claims are raised before both the relevant domestic authorities and the Court with the necessary expedition to ensure that they may be properly, and fairly, resolved (see, amongst others, *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002; *Aydin and Others v. Turkey* (dec.), no. 46231/99, 26 May 2005; and, *mutatis mutandis*, *Narin v. Turkey*, no. 18907/02, § 42, 15 December 2009). Indeed, with the lapse of time, memories of witnesses fade, witnesses may die or become untraceable, evidence deteriorates or ceases to exist, and the prospects that any effective investigation can be undertaken will increasingly diminish, and the Court's own examination and judgment may be deprived of meaningfulness and effectiveness (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 et seq., § 161, 18 September 2009).

(b) **Application of these principles to the circumstances of the present cases**

25. The Court observes that the police raid on Imedi took place on 7 November 2007, whereas the applicants filed complaints with

the Tbilisi City public prosecutor, expressing their interest towards the investigation, for the first time as late as 4 and 22 December 2009. Thus, for more than two years the applicants did not show the slightest interest in having the relevant facts elucidated through a criminal investigation at the domestic level, despite the fact that they, as main witnesses and victims of the alleged ill-treatment, were never summoned and questioned throughout this long period (compare with a very similar factual situation in the case of *Manukyan*, the decision cited above, § 30; see also *Deari and Others v. “the former Yugoslav Republic of Macedonia”* (dec.), no. 54415/09, 6 March 2012). As to the applicants’ assertion that B.P.’s lawyers might have voiced grievances on their behalf before the prosecution authority in the course of the criminal proceedings initiated against the late media proprietor for an attempted *coup d’état* and thus exhausted the relevant domestic remedy on their behalf (see paragraphs 10 and 21 above), which was not substantiated by a copy of any relevant procedural document, the Court notes that this reference to the separate and unrelated criminal proceedings is wholly irrelevant for the purposes of an effective investigation of the police abuse allegedly committed against the applicants.

26. Alternatively, if the applicants were as confident about the authorities’ inability to conduct a meaningful criminal investigation in the aftermath of the police raid on Imedi as they presented it before the Court (see paragraph 20 above), they could then have applied to the Court within six months of the alleged incident, that is on 7 May 2008 at the latest (compare with *Manukyan*, cited above, § 29; and *Hazar and Others v. Turkey* (dec.), no. 62566/00, 10 January 2002). All in all, the applicants’ submissions do not reasonably explain why they had waited for so long before requesting the domestic authorities to initiate the investigation. Even if the authorities launched of their own motion a criminal probe into the police actions on 10 November 2007 (see paragraphs 9 and 18 above), this fact could not have relieved the applicants of their own, individual obligation to undertake elementary steps and seek information from the relevant authorities about the investigation’s progress or the lack thereof (see *Manukyan*, the decision cited above, § 30; *Bayram and Yıldırım*, the decision cited above; and *Gasyak and Others v. Turkey*, no. 27872/03, § 58, 13 October 2009).

27. In the absence of any explanation in this respect, and having regard to the particular circumstances of the present cases, the Court considers that the applicants must be considered to have been aware of the possible lack of an effective criminal investigation into the police raid on Imedi of 7 November 2007 long before they petitioned the public prosecutor on 4 and 22 December 2009. In the alternative, even if they had not been aware of that fact before December 2009, the Court considers that this was due to their own negligent lack of initiative (compare with *Bulut and Yavuz* and *Aydin and Others*, both cited above). It cannot be excluded that the

applicants' belated decision to file complaints with the public prosecutor, which were not supported by reference to any new information or items of evidence warranting the interruption of the initial six month period (contrast with *Brecknell v. the United Kingdom*, no. 32457/04, § 70-71, 27 November 2007), might have also been an attempt, unjustifiable in the circumstances of the present case, to revive the two-year-old events in order to become eligible under Article 35 § 1 of the Convention to bring their applications to the Court (compare with *Finozhenok*, the decision cited above, and also *Nasirkhaeva v. Russia* (dec.), no. 1721/07, 31 May 2011). However, this can hardly be considered to be compatible with the principle of legal certainty and the expectation that applicants act with due diligence and expedition at the domestic level.

28. In view of all the above, the Court considers, that irrespective of any time-limits that might be envisaged by the relevant national law for bringing criminal complaints about police abuses, the unexplained inactivity of the applicants and indifference on their part towards the possible investigation for over two years fell foul of a major purpose of the six-month rule under Article 35 § 1 of the Convention (see *Manukyan*, the decision cited above; and *Baybora and Others v. Cyprus* (dec.), no. 77116/01, 22 October 2002).

29. It follows that these ten applications have been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court by a majority

Declares the applications inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President

APPENDIX

List of the applications

No.	Application no.	Lodged on	Applicant name Date of birth Place of residence
1.	22026/10	30/03/2010	Mr Giorgi AKHVLEDIANI 07/01/1974 Tbilisi
2.	22043/10	30/03/2010	Mr Irakli MOSESHVILI 25/07/1971 Tbilisi
3.	22078/10	30/03/2010	Mrs Diana TRAPIDZE 26/04/1976 Tbilisi
4.	22097/10	30/03/2010	Mr Joni KALANDADZE 03/05/1972 Tbilisi
5.	22128/10	30/03/2010	Mrs Thea SITCHINAVA 22/12/1977 Tbilisi
6.	27480/10	15/04/2010	Mrs Nino TSKHVARASHVILI 11/12/1975 Tbilisi
7.	27534/10	15/04/2010	Mr Tengiz MEZURNISHVILI 22/10/1974 Tbilisi
8.	27551/10	15/04/2010	Mrs Ana GOCHASHVILI 13/06/1983 Tbilisi
9.	27572/10	15/04/2010	Mrs Nino SAKVARELIDZE 29/05/1979 Tbilisi
10.	27583/10	15/04/2010	Mr Giorgi RUKHADZE 15/04/1975 Tbilisi