

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

FIFTH SECTION

CASE OF KADZANAIA v. GEORGIA

(Application no. 27178/21)

JUDGMENT

STRASBOURG

21 March 2024

This judgment is final but it may be subject to editorial revision.



In the case of Kadzanaia v. Georgia,

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

Carlo Ranzoni*, President*,
Lado Chanturia,
María Elósegui*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 27178/21) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 19 May 2021 by a Georgian national, Ms Aza Kadzanaia ("the applicant"), who was born in 1962, lives in Tbilisi and was represented by Mr T. Kokoshvili, a lawyer practising in Tbilisi;

the decision to give notice of the complaints under Article 6 § 1 and Article 13 of the Convention to the Georgian Government ("the Government"), represented by their Agent, Mr B. Dzamashvili, of the Ministry of Justice, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 22 February 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's complaints under Articles 6 and 13 of the Convention in respect of the length of criminal proceedings in which the applicant was recognised as a civil party.

2. On 15 October 1998 the applicant was robbed at gunpoint. The robber took 22,256 United States dollars (USD) from her currency exchange shop.

3. A criminal investigation was opened on 19 November 1998 and on 24 January 2000 the applicant was recognised as a civil party to the criminal proceedings in respect of pecuniary damage amounting to USD 22,256.

4. On 18 February 2000 Z.J. – a security officer of the United Georgian Bank and an employee of the Ministry of Internal Affairs – was indicted on charges of aggravated robbery and illegal purchase and storage of firearms and ammunition.

5. The ensuing criminal proceedings consisted of six interrelated sets of proceedings as a result of multiple remittals of the case by the Supreme Court, either to the prosecuting authority for additional investigation or to the lower courts on procedural grounds. At different stages of each set of proceedings, Z.J. was both acquitted and convicted. The proceedings ended on 29 January 2021 with Z.J. being acquitted. The trial court's judgment acquitting Z.J. found that there had been insufficient evidence to convict him and that some

of the investigative activities had been implemented defectively and some had been in breach of the procedural legislation, reducing the probative value of the relevant evidence. It was also noted that the bullets seized as part of the investigation had been lost by the authorities and that a separate investigation had been ongoing in that respect. The applicant's civil claim was rejected on account of Z.J.'s acquittal.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

6. Relying on Article 6 § 1 and Article 13 of the Convention, the applicant complained of the excessive length of the proceedings and the absence of an effective domestic remedy in that regard.

7. The Government submitted that the application was inadmissible on account of failure to lodge the application with due expedition, incompatibility *ratione materiae* with the provisions of the Convention, non-exhaustion of domestic remedies, abuse of the right of individual application, or for being manifestly ill-founded. Among other things, they emphasised that the applicant's civil claim submitted as part of the criminal proceedings had been procedurally deficient and the applicant had stood no chance of it being granted, and that she should therefore not have waited for the conclusion of the criminal proceedings to lodge her application with the Court. They also stated that the applicant's involvement in the criminal proceedings had served a purely punitive purpose, as opposed to her genuine effort to obtain compensation. The Government additionally submitted that the applicant had had effective remedies at her disposal: she could have instituted proceedings against the State institutions allegedly responsible for her inability to obtain damages and/or about the length of the criminal proceedings. She could also have pursued disciplinary proceedings against the judiciary in so far as the length of the proceedings was concerned. Alternatively, the Government argued that the applicant had failed to inform the Court about the application she had submitted to a first-instance court in 2021 and withdrawn in 2022 against the prosecutor's office and the Ministry of the Interior requesting compensation of pecuniary damage suffered as a result of a criminal offence. Finally, the Government stated that, in any event, the length of proceedings at domestic level had not been unreasonable in view of the complexity of the case and the systemic reforms carried out at domestic level between July 2005 and January 2009 which had considerably increased the courts' workload. They added, in this regard, that the applicant had contributed to delays in question by having agreed, on two occasions, to the prosecution's motion to postpone the hearings.

8. Turning to the circumstances of the present case, the Court reiterates at the outset that at the time of the events, the domestic legislation enabled the applicant to join criminal proceedings as a civil party with a view to obtaining compensation for damage sustained as a result of an offence. Indeed, she joined the criminal proceedings as a civil party. Article 6 § 1 under its civil head therefore applied to the criminal proceedings joined by the applicant (see, *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 207, 25 June 2019, with further references).

9. As there were several sets of proceedings owing to the remittals of the case by the Supreme Court (see paragraph 5 above), the applicant had had to formulate her claim for damages on more than one occasion. Accordingly, a procedurally deficient formulation of her claim as part of the initial sets of proceedings would not have deprived her of the opportunity to submit a new claim had the accused been convicted as part of the final set of proceedings. By contrast, and at any rate, as the proceedings ended with the acquittal of the accused, the applicant's civil claim was rejected precisely on account of that acquittal and not on the grounds of any procedural defects in her application. Furthermore, and while the domestic legislation changed in 2010 to allow a victim of an offence to claim damages in the civil courts irrespective of any criminal proceedings or a guilty verdict, it has not been suggested, with reference to any domestic case-law, that the applicant would have been able to benefit from this legislative amendment. Accordingly, it was not unreasonable or inappropriate for the applicant to have waited for the conclusion of the proceedings she had joined as a civil party.

10. As regards her apparent opportunity to bring civil proceedings against governmental agencies with a view to obtaining damages on account of their alleged errors in handling the criminal proceedings, this issue falls beyond the scope of the present case, which solely concerns the length of the proceedings in which she had been a civil party. In the same vein, and as regards the Government's argument that the applicant failed to inform the Court that she had submitted and later withdrawn a claim for pecuniary damage against the prosecutor's office and the Ministry of the Interior, those proceedings concerned the damage inflicted on the applicant by the criminal offence allegedly committed against her and not the length of criminal proceedings she had joined as a civil party which is the subject-matter of the present application. What is more, the effectiveness of such a remedy, had it concerned the length-of-proceedings complaint, has not been demonstrated in the present case (see paragraph 11 below). Accordingly, the present application is not based on untrue facts. Having regard to the Court's case-law on the issue (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014, with further references), the applicant's omission cannot, therefore, be regarded as an abuse of the right of application within the meaning of Article 35 § 3 (a) of the Convention.

11. As for the possibility of instituting disciplinary proceedings against the judiciary, the Court has already found that the disciplinary proceedings suggested by the Government is not an effective remedy (see *Schrade v. Georgia* [Committee], no. 15016/07, § 42, 11 March 2021). As regards the compensatory remedy regarding the length-of-proceedings complaints, the Government suggested that the applicant ought to have resorted to ordinary proceedings for damages to obtain compensation. However, their argument was not supported by any specific examples to demonstrate its effectiveness at the material time and specifically in the context of length-of-proceedings complaints.

12. Finally, as regards the substance of the applicant's complaint, the Court does not consider it to be manifestly ill-founded.

13. In the light of the foregoing, the Court dismisses the Government's objections and declares the application admissible.

14. The general principles concerning the length of proceedings have been summarised in *Frydlender v. France* ([GC], no. 30979/96, § 43, ECHR 2000-VII), and *Comingersoll S.A. v. Portugal* ([GC], no. 35382/97, § 19, ECHR 2000-IV).

15. In the present case, the applicant joined the criminal proceedings as a civil party on 24 January 2000. Those proceedings ended with the decision of the Supreme Court dated 29 January 2021. Accordingly, the length of the proceedings in dispute was twenty-one years and five days. While the Court takes note of the procedural complexity of the case and the extensive judicial reform carried out in Georgia between July 2005 and January 2009, and even accepting the possibility that the applicant may have contributed to the delay by having accepted the prosecutor's motions on postponing the hearings on two occasions, this is insufficient to justify the manifestly excessive length of the proceedings in issue. In the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, the Court thus finds that the length of the proceedings complained of failed to satisfy the reasonable-time requirement.

16. As regards the question of whether the applicant had an effective remedy at her disposal in respect of her length-of-proceedings complaint, within the meaning of Article 13 of the Convention, the Court has already noted that the remedies suggested by the Government were not effective (see paragraph 11 above). Accordingly, the Court cannot find that the applicant was provided with an effective remedy, as required under Article 13 of the Convention, in respect of her length-of-proceedings complaint.

17. In the light of the foregoing, the Court concludes that there has been a violation of Article 6 § 1 and Article 13 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. The applicant claimed 22,356 United States dollars in respect of pecuniary damage, 50,000 euros (EUR) as regards non-pecuniary damage, and 4,000 Georgian laris in respect of costs and expenses incurred before the Court.

19. The Government submitted that the claims were unsubstantiated and excessive.

20. The Court does not discern a causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicant EUR 3,800 in respect of non-pecuniary damage, plus any tax that may be chargeable.

21. Having regard to the fact that the applicant's request regarding costs and expenses did not contain supporting documents, the Court rejects her claim.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 of the Convention;

3. *Holds* that there has been a violation of Article 13 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 3,800 (three thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 March 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Carlo Ranzoni President