

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

FOURTH SECTION

CASE OF SAGHINADZE v. GEORGIA

(Application no. 18768/05)

JUDGMENT
(Just satisfaction)

STRASBOURG

13 January 2015

FINAL

01/06/2015

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Saghinadze v. Georgia,

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

Ineta Ziemele, *President,*
Päivi Hirvelä,
Ledi Bianku,
Nona Tsotsoria,
Zdravka Kalaydjieva,
Paul Mahoney,
Faris Vehabović, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 2 December 2014,

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

PROCEDURE

1. The case originated in an application (no. 18768/05) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Georgian national, Mr Batalbi Saghinadze ("the applicant"), who was born in 1937, on 27 April 2005.

2. In a judgment delivered on 27 May 2010 ("the principal judgment"), the Court decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). Amongst other findings, it held that the taking of a cottage which had been the applicant's home for more than ten years by the Ministry of the Interior on 1 November 2004, in addition to giving rise to a breach of Article 8 of the Convention, also constituted a violation of Article 1 of Protocol No. 1 (see *Saghinadze and Others v. Georgia*, no. 18768/05, § 108, 117-118 and 122, 27 May 2010).

3. In the principal judgment the Court made an award to the applicant in respect of non-pecuniary damage and costs and expenses. As regards pecuniary damage, the Court, considering that the question of the application of Article 41 of the Convention in that particular respect was not ready for decision, reserved it and invited the parties to submit their further written observations and, in particular, to notify the Court of any agreement they might reach (ibid., § 160, and point 8 of the operative provisions).

4. The applicant and the Government each filed observations.

THE LAW

5. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary Damage

1. The parties' submissions

(a) First set of submissions

6. In their initial set of submissions dated 28 February 2011, the Government submitted that it was no longer possible to return the cottage to the applicant's possession, given that the Ministry of the Interior, after spending some 46,000 euros (EUR) on various renovation works, had turned the building, situated in the Zahesi district on the outskirts of Tbilisi, into a local police station. In exchange, the Government, recalling that the applicant was an internally displaced person from Georgia's conflict-stricken region of Abkhazia, expressed their readiness to grant him title to an apartment, which comprised four rooms with an overall surface area of 112 square metres, in a building situated in the Mingrelia region of western Georgia, near the administrative border with the region of Abkhazia.

7. The applicant turned the Government's offer of alternative accommodation in the Mingrelia region down in a categorical manner. He considered it to be unacceptable that the Government had wanted to forcibly resettle him and his wife, both older people, more than 300 kilometres away from Tbilisi. The applicant insisted that the most appropriate form of redress under Article 41 of the Convention would be for the State to return the cottage, together with its adjacent plot of land, to his possession. However, if the Court found that restitution to be impossible, the applicant requested that a monetary compensation corresponding to the current market value of the entirety of that property be awarded to him. Highlighting that the cottage had consisted of twenty rooms with an overall surface area of 660 square metres, whilst the area of the adjacent land had been 15,208 square metres, the applicant estimated the value of the property to be no less than 1,000,000 United States dollars (USD), equivalent to 750,000 euros[1].

[1] Here and elsewhere, approximate conversions are given in accordance with the exchange rate of the United States dollar to the euro on 12 August 2014.

8. In reply, the Government commented that, although the cottage itself had consisted of twenty rooms, each of them being of more or less a similar size, the applicant and his family had occupied only three of those rooms.

(b) Second set of submissions

9. On 21 February 2014 the Government informed the Court that they wished to amend their previous proposals in part. In particular, whilst maintaining the objective impossibility of returning the cottage to the applicant as it had been transformed into a local police station, the Government submitted that, in the light of the applicant's comments about the initially offered apartment in the Mingrelia region, they were ready to propose an alternative solution. Notably, the Government stated that they could grant the applicant full property title to two two-room apartments, which measured 50 and 60 square meters, in a recently constructed block situated in a populous district of Tbilisi, the so-called Temka Settlement. Those apartments currently represented property of the State, were managed by the Ministry of Refugees and Internally Displaced Persons (IDPs) and formed part of the national program aimed at providing homeless internally displaced persons from the conflict-stricken regions of Georgia with housing. In support of their undertaking, the Government submitted a letter from the Deputy Minister of Refugees and IDPs dated 24 February 2014 which confirmed the latter agency's readiness to grant the two apartments to the applicant.

10. Submitting photographs of the apartments, the Government added that each of the two apartments was in a perfectly refurbished, new condition and comprised an entrance hall, a kitchen, a bathroom, a living room and a bedroom. Both apartments had all the necessary amenities, such as drinking water, canalisation, electricity and so on. The Government emphasised that, whilst the cottage had never been in the applicant's registered ownership but rather had remained in his qualified possession within the meaning of the Act of 28 June 1996 on Internally Displaced Persons and Refugees ("the IDPs Act"), the Government was ready to grant the applicant full property titles over the two apartments in the Temka Settlement.

11. Moreover, to complement their offer of the two apartments, the Government additionally proposed to pay 3,000 (three thousand) Euros (EUR) to the applicant in respect of pecuniary damage.

12. By a letter of 16 April 2014, sent by registered post, the Court transmitted the Government's amended proposals of 21 February 2014 to the applicant, inviting him to submit his comments, if any, by 14 May 2014. The Court's letter was served on the applicant on 28 April 2014, but he never replied.

2. The Court's assessment

13. The Court recalls that, when inviting the parties to reach an agreement with respect to the issue of pecuniary damage, it held, at paragraph 160 of the principal judgment, as follows:

> "160. [...] Having due regard to its findings in the instant case, and without prejudice to other possible measures remedying the violations of the [...] applicant's rights under Article 8 of the Convention and Article 1 of Protocol No. 1, the Court considers that the most appropriate form of redress would be *restitutio in integrum* under the IDPs Act, that is, to have the cottage restored to the [...] applicant's possession pending the establishment of conditions which would allow his return, in safety and with dignity, to his place of habitual residence in Abkhazia, Georgia. Alternatively, should the return of the cottage prove impossible, the Court is of the view that the [...] applicant's claim could also be satisfied by providing him, as an internally displaced person, with other proper accommodation or paying him reasonable compensation for the loss of the right to use the cottage [...]."

14. As regards the option of *restitutio in integrum*, the Court, having regard to the transformation of the cottage into a police station, considers that its return to the applicant's possession is not a feasible solution.

15. As to the Government's alternative offer of the two apartments situated in Tbilisi, the Court is ready to accept that their cumulative size – 110 square metres – can provide sufficient living space for the applicant's family. According to the case materials, prior to their eviction from the cottage, the applicant's family had been living in a somewhat similar space, occupying three out of twenty rooms, which represented approximately one-sixth of the cottage's total living area of 660 square metres (see paragraphs 8 and 9 above). The Court is further satisfied that the Government have provided assurance that the two apartments are immediately fit for living as they come with all the necessary amenities. It further takes note of the geographic situation of the two apartments, notably that they are located in a populous district Tbilisi, which resolves the senior applicant's initial concern about a possible resettlement (see paragraph 7 above). The Court also notes the Government's undertaking to pay a sum of EUR 3,000 in addition to the transfer of full ownership of the two apartments to the applicant (see paragraph 11 above).

16. All in all, the Court considers that, in the particular circumstances of the instant case, the most appropriate reparation for the actual pecuniary loss suffered by the applicant as a result of a breach of his rights under Article 8 of the Convention and Article 1 of Protocol No. 1 would be the fulfilment of the Government's latest undertakings.

B. Default interest

17. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds*
   (a) that the respondent State shall ensure, by appropriate means, and within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, transfer of full ownership of the two two-room apartments in Tbilisi, which are currently owned by the State, to the applicant;
   (b) that the respondent State is to pay the applicant, within the same three months, EUR 3,000 (three thousand euros) in respect of pecuniary damage, plus any tax that may be chargeable, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
   (c) 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.

2. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 January 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Ineta Ziemele
Deputy Registrar	President