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

FIFTH SECTION

DECISION

Application no. 60249/09
KAVKASIONI LTD
against Georgia

The European Court of Human Rights (Fifth Section), sitting on 7 November 2017 as a Committee composed of:

Síofra O'Leary, *President,*
Nona Tsotsoria,
Lətif Hüseynov, *judges,*

and Anne-Marie Dougin, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 16 October 2009,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Kavkasioni Ltd ("the applicant company"), is a limited liability company, registered in Georgia. It was represented before the Court by Mr A. Chopikashvili, a lawyer practising in Tbilisi.

2. The Georgian Government ("the Government") were represented by their Agent, Mr B. Dzamashvili, of the Ministry of Justice.

3. Relying on Article 1 of Protocol No. 1 the applicant company complained that its right to the peaceful enjoyment of its possessions was breached, and that it was deprived of its property.

The circumstances of the case

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

5. Following a decision of 13 December 2001 Tbilisi City Council put a number of properties owned by Tbilisi City Hall, including a building site adjacent to primary school no. 128, on a privatisation list. The applicant company, which formed at the material time a temporary partnership with Mr D.C., won the privatisation bid. On 24 September 2002 the State property management department delivered the relevant property certificate to the applicant company and Mr D.C. On 25 October 2002 the two partners decided to divide the property acquired. Accordingly, 5,828 sq. m were registered by the Public Registry in the name of the applicant company, while the remaining 1,000 sq. m were registered in the name of Mr D.C.

6. In the meantime, the head teacher of the school brought an action against the State property management department, seeking the invalidation of the results of the privatisation bid. On 5 February 2003 the Tbilisi Krtsanisi-Mtatsminda Court dismissed the head teacher's action as being manifestly ill-founded. On 4 October 2004 Tbilisi City Council overturned in part its decision of 13 December 2001 concluding that the land at issue had been subjected to privatisation in breach of the Privatisation of State Property Act. The applicant company was not informed about the above decision of the City Council.

7. On 17 May 2005 Tbilisi City Hall authorised the applicant company to build a multi-storey residential building on the land at issue. In July 2005 the Tbilisi mayor's office ordered the suspension of the construction and stripped the applicant company of its property rights. The applicant company appealed against the above decision. By a decision of 29 November 2005 the Tbilisi City Court granted the applicant's request in part. In particular, it overruled the decision of 4 October 2004 and ordered the Tbilisi mayor's office to issue a new administrative act with the participation of the interested parties, including the applicant company, in the decision-making process.

8. On 14 February 2006 the Tbilisi mayor's office issued a new administrative act according to which the privatisation of the land at issue back in 2002 was declared unlawful. Among other reasons, the mayor's office referred in its decision to criminal proceedings which had been initiated against the former first deputy head of the State property management department in connection with the respective privatisation. It appeared that he had been charged in that connection with abuse of power and by a court decision of 25 March 2005 had been sentenced to one year's suspended prison sentence.

9. On 5 July 2007 the Tbilisi City Court upheld the decision to revoke the applicant company's property title. That decision was further upheld on appeal by the Tbilisi Court of Appeal on 17 December 2008. Both courts concluded that the privatisation of the land belonging to the school had happened in violation of the Privatisation of State Property Act. By a

decision of 27 May 2009 the Supreme Court of Georgia rejected as inadmissible an appeal on points of law lodged by the applicant company.

COMPLAINT

10. The applicant company complained under Article 1 of Protocol No. 1 of the Convention about the alleged unlawful deprivation of its possessions following the invalidation of the results of the privatisation bid.

THE LAW

11. The Government submitted that the present application had to be dismissed as an abuse of the right of application because the applicant company had knowingly failed to provide all the facts relevant for the examination of the case. In particular, the Government informed the Court that on 21 December 2009 the applicant company had initiated compensation proceedings against the Tbilisi mayor's office and the Ministry for Economic Development. On 14 June 2010 the Tbilisi City Court ruled in the applicant company's favour concluding that those parts of the company's pecuniary claims which were duly supported by relevant documents were to be reimbursed. Eventually, the applicant company produced invoices for the total amount of 14,820 Georgian Laris (GEL) and was paid accordingly. The applicant company did not appeal the above decision, whilst the appeal of the Tbilisi mayor's office and the Ministry for Economic Development were rejected by the Tbilisi Court of Appeal and the Supreme Court of Georgia on 4 November 2010 and 20 April 2011 respectively. The failure of the applicant company to inform the Court about these proceedings amounted, in the Government's view, to an abuse of the right of individual application within the meaning of Article 35 § 3 (a) of the Convention.

12. The applicant company, in its reply, did not explain why it had not informed the Court about the compensation proceedings. It simply argued that the amount of compensation awarded by the national courts was not sufficient to fully reimburse the damage sustained.

13. The Court recalls that incomplete and therefore misleading information may amount to an abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information (see, for instance, *Hadrabova v. the Czech Republic* (dec.), nos. 42165/02 and 466/03, 25 September 2007). The same applies if new, important developments have occurred during the proceedings before the Court and

where, despite being expressly required to do so by Rule 47 § 7 (former Rule 47 § 6) of the Rules of Court, the applicant has failed to disclose that information to the Court, thereby preventing it from ruling on the case in full knowledge of the facts (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, 30 September 2014).

14. Turning to the circumstances of the present case, the Court notes that the relevant compensation proceedings undoubtedly concerned the very core of the application pending before the Court without the knowledge of which it could not have been in a position to properly consider the case (see *Lozinschi v. Moldova* (dec.), no. 33052/05, 4 November 2008; *Khvichia and Others v. Georgia* (dec.), no. 26446/06, 23 June 2009; *Jovanović v. Serbia* (dec.) [Committee], no. 40348/08, 7 March 2014, and *Selina v. Lithuania* (dec.) [Committee], no. 17969/10, §§ 32-34, 5 September 2017; and contrast with *Albertina Carvalho e Filhos Lda v. Portugal* (dec.) [Committee], no. 23603/14, §§ 27-33, 4 July 2017). The applicant company failed to furnish any valid explanation as to why it did not inform the Court of the further developments in its case. While it is true that the compensation proceedings were initiated after the applicant company had submitted its application with the Court, it has to be noted that the application was communicated to the parties on 12 April 2016, that is almost five years after the Supreme Court had issued its final decision on the matter. The applicant company thus failed to update the Court, in line with Rule 47 § 6 of the Rules of Court, about major developments regarding its case.

15. Having regard to the importance of that information for the proper determination of the present case, the Court finds that the either deliberate or negligent conduct of the applicant company was contrary to the purpose of its right of individual petition as provided for in Article 34 of the Convention (compare, amongst many other authorities, with *Stojnić v. Bosnia and Herzegovina* (dec.), no. 24652/09, § 23, 6 October 2015; *S.C. S.E.A.C.I.D. S.R.L. v. Romania* (dec.) [Committee], no. 55365/09, §§ 24-26, 21 February 2017; and *Selina,* cited above, §§ 34-35).

16. The application must accordingly be rejected as abusive, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 30 November 2017.

Anne-Marie Dougin
Acting Deputy Registrar

Síofra O'Leary
President