

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

THIRD SECTION

DECISION

Applications nos. 17092/07 and 22032/07
David KOKHREIDZE and
Shalva RAMISHVILI against Georgia

The European Court of Human Rights (Third Section), sitting on 25 September 2012 as a Chamber composed of:

Josep Casadevall, *President,*
Egbert Myjer,
Corneliu Bîrsan,
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria, *judges,*

and Santiago Quesada, *SectionRegistrar,*

Having regard to the application forms submitted on 16 April 2007,

Having regard to the authority forms submitted on 4 June and 24 July 2007,

Having deliberated, decides as follows:

THE FACTS

1. The applicant in the first case, Mr David Kokhreidze ("the first applicant"), was born in 1961. The applicant in the second case, Mr Shalva Ramishvili ("the second applicant"), was born in 1971. Both applicants are Georgian nationals, currently live in Tbilisi and were represented before the Court by Mrs Lia Mukhashavria and Mr Vakhtang Vakhtangidze, lawyers practising in Georgia.

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

A. Domestic proceedings

3. On 29 March 2006 the Tbilisi City Court convicted the applicants, who were co-founders of and shareholders in a private media company, of conspiracy to commit extortion. The first applicant was sentenced to three years and the second applicant to four years in prison (for more details concerning the criminal proceedings, see *Ramishvili and Kokhreidze v. Georgia*, no. 1704/06, §§ 9-42, 27 January 2009).

4. On 30 June 2006 the Tbilisi Appeal Court upheld the conviction.

5. On 16 October 2006 the Supreme Court of Georgia, sitting privately, declared the applicants' appeal against the conviction on points of law inadmissible on the ground that it lacked significant legal content. The criminal proceedings were thus finally terminated.

6. As submitted by the applicants and confirmed by a postal receipt, the final decision of 16 October 2006 was served on them in Rustavi no. 2 Prison, where they were serving their sentences at that time, on 1 November 2006.

B. The proceedings before the Court

7. On 16 April 2007 application forms were lodged with the Court on behalf of the applicants. The forms were signed only by the applicants' representatives and did not include authority forms issued by the applicants for their representation before the Court.

8. On 23 April 2007 as regards the first applicant's case, and on 30 May 2007 as regards the second applicant's case, the Court, using a standard form of preliminary correspondence, brought the representatives' attention to the fact that the applications could not be considered to be complete, as they had neither been signed by the applicants in person nor supplemented by authority forms issued by them. The Court invited the representatives to submit the missing authority forms without undue delay, on pain of leaving their cases without examination.

9. On 4 June 2007 the representatives submitted an authority form signed by the second applicant, Mr Ramishvili. The accompanying letter did not contain any explanation for the delay.

10. With respect to the first applicant's case, on 4 July 2007 the Court sent a second reminder to the representatives that the registration of the application could not be proceeded with in the absence of an authority form issued by the applicant. In reply, by a letter of 24 July 2007, the representatives finally submitted an authority form signed by Mr Kokhreidze. No explanation for that delay was given either.

COMPLAINTS

11. Relying on Articles 6 §§ 1, 2 and 3 (c) and (d) of the Convention, cited independently and in conjunction with Article 13, the applicants complained about the outcome and fairness of the domestic proceedings. They also complained that their unlawful prosecution and conviction, representing a disguised form of political retribution for the activities of their media outlet, had undermined their personal and professional reputation, in breach of Articles 8 and 10 of the Convention and Article 1 of Protocol No. 1.

THE LAW

12. Pursuant to Rule 42 § 1 of the Rules of Court, the Court first decides to join the two applications, given their common factual and legal background.

13. Having regard to the circumstances surrounding the proceedings before it (see paragraphs 7-10 above), the Court notes that it must first establish the dates of introduction of the applications for the purposes of Article 35 § 1 of the Convention.

14. Article 35 § 1 of the Convention, in so far as relevant, reads:

> "The Court may only deal with the matter ... within a period of six months from the date on which the final decision was taken."

15. Rules 45 and 47 of the Rules of Court read, in the relevant parts, as follows:

Rule 45 - Signatures

> "1. Any application made under Articles 33 or 34 of the Convention shall be submitted in writing and shall be signed by the applicant or by the applicant's representative. ...
>
> 3. Where applicants are represented in accordance with Rule 36, a power of attorney or written authority to act shall be supplied by their representative or representatives."

Rule 47 – Contents of an individual application

> "5. The date of introduction of the application for the purposes of Article 35 § 1 of the Convention shall as a general rule be considered to be the date of the first communication from the applicant setting out, even summarily, the subject matter of the application, provided that a duly completed application form has been submitted within the time limits laid down by the Court. The Court may for good cause nevertheless decide that a different date shall be considered to be the date of introduction."

16. The Court reiterates that whenever an applicant chooses to have his or her application introduced by a representative, it becomes essential for the latter to submit an application together with a duly completed authority form. Otherwise, in the absence of such an authority, the original copy of which should be submitted signed by both the applicant and their representative, the application cannot be considered valid and would be rejected by the Court for want of a "victim" or even as an abuse of the right of application within the meaning of Articles 34 and 35 § 3 (a) of the Convention (see, for instance, *Çetin v. Turkey* (dec.), no. 10449/08, 13 September 2011; *K.M. and Others v. Russia* (dec.), no. 46086/07, 29 April 2010; *Post v. the Netherlands* (dec.), no. 21727/08, 20 January 2009; and *Poznanski and Others v. Germany* (dec.), no. 25101/05, 3 July 2007).

17. Indeed, a duly completed authority form constitutes an integral part of an application within the meaning of Rules 45 and 47 of the Rules of Court, and failure to supply this form may have direct consequences for the date of introduction of the application for the purposes of Article 35 § 1 of the Convention and within the meaning of Rule 47 § 5 of the Rules of Court (see *Kaur v. the Netherlands* (dec.), § 13, no. 35864/11, 15 May 2012). Notably, the Court ascertained that the date of submission of an application form by a representative, which neither bears the applicant's own signature nor includes a completed authority form, cannot be taken as the date of introduction for the purposes of Article 35 § 1 of the Convention unless such a defective application is supplemented by written authority without significant delay and a reasonable explanation for any delay is provided (see, *mutatis mutandis*, *Kaur*, cited above, §§ 14-19).

18. Returning to the circumstances of the present case, the Court observes that, although the representatives submitted the application forms on 16 April 2007, those documents were not signed by the applicants and did not include authority forms. It was not until 4 June and 24 July 2007, the latter action being taken as a result of the Court's repeated reminders, that the signed authority forms were finally submitted (see paragraphs 8-10 above). The Court considers that the delay in the submission of those written authorities, which were indispensable for the completion of the case files, cannot be considered justifiable, as no explanation whatsoever was provided by the representatives for their initial omission.

19. In these circumstances, the Court finds, pursuant to Rule 47 § 5 of the Rules of Court, that the dates of submission of the authority forms, namely 4 June and 24 July 2007, are to be considered as the dates of introduction of Mr Ramishvili's and Mr Kokhreidze's applications respectively (compare with *Kaur*, the decision cited above, § 19). However, since the six-month period started to run on 1 November 2006, the date on which the final domestic decision was served on the applicants in prison (see paragraph 6 above), it follows that the applications have been lodged

out of time and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court by a majority

Decides to join the applications;

Declares the applications inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President