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

FIFTH SECTION

DECISION

Application no. 70619/11
Revaz SAKHVADZE and Givi ZURABISHVILI
against Georgia

The European Court of Human Rights (Fifth Section), sitting on 2 December 2021, as a Committee composed of:

Lətif Hüseynov, *President,*
Lado Chanturia,
Mattias Guyomar, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 70619/11) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 13 November 2011 by two Georgian nationals, Mr Revaz Sakhvadze and Mr Givi Zurabishvili, who were born in 1962 and 1958 respectively ("the applicants") and were represented by Ms L. Mukhashavria, a lawyer practicing in Tbilisi;

the decision to give notice of the complaints under Article 6 §§ 1 and 3 (b) of the Convention concerning the limited access to the case file and the conduct of court hearings in camera to the Georgian Government ("the Government"), represented by their Agent, Mr B. Dzamashvili, of the Ministry of Justice, and to declare inadmissible the remainder of the application;

the observations submitted by the Government and the observations in reply submitted by the applicant;

Having deliberated, decides as follows:

SUBJECT-MATTER OF THE CASE

1. The case concerns the applicants' complaints under Article 6 §§ 1 and 3 (b) of the Convention that they had limited access to the case file and that the criminal proceedings against them were held in camera.

2. The applicants were convicted of fraud in respect of their dealings with the Ministry of Defence. The case-file material was classified immediately after the criminal investigation was opened, on account of its containing State secrets including, but not limited to, confidential military sales contracts and reports concerning the viability of certain weaponry, which served as the foundation for the charges against the applicants. The defence lawyers were imposed a non-disclosure obligation proscribing making copies of any files. No limitation appears to have been set as regards their access to such files or the ability to make and use notes. At the public hearing of 19 May 2009 before the Tbilisi City Court the prosecutor made an application to have the proceedings held in camera for the purposes of protecting important State secrets relating to national security. The applicants, represented by lawyers of their choosing, agreed with the application and it was granted by the trial judge. The proceedings ended with the Supreme Court's inadmissibility decision served on the applicants on 13 May 2011.

3. Relying on Article 6 §§ 1 and 3 (b) of the Convention the applicants complained of limited access to the case file on account of their inability of making copies of case-file materials and the fact that the criminal proceedings were held in camera.

THE COURT'S ASSESSMENT

4. The relevant general principles have been summarised in *Regner v. the Czech Republic* ([GC], no. 35289/11, §§ 146-49, 19 September 2017), *Matanović v. Croatia* (no. 2742/12, §§ 149-59, 4 April 2017), *Yam v. the United Kingdom* (no. 31295/11, §§ 52-57, 16 January 2020), and *Boshkoski v. North Macedonia* (no. 71034/13, §§ 37-39, 4 June 2020).

5. As concerns the holding of the criminal proceedings in camera, the applicants did not dispute the fact that they had agreed, during the Tbilisi City Court's public hearing on 19 May 2009, with the prosecutor's application to that end. While the applicants submitted copies of various applications made before the Tbilisi Court of Appeal, no copy of an application requesting that the trial be opened in whole or in part was provided. They also failed to submit a copy of their appeal before the Supreme Court to demonstrate to what extent they had pursued the relevant complaint before the latter. By contrast, the prosecutor's application, approved by the trial court with the applicants' consent, was reasoned as aimed at avoiding the disclosure of important State interests concerning national security at the core of the criminal proceedings. In such circumstances, the exclusion of the public can, in the particular circumstances of the present case, be considered to have been strictly necessary (see *Welke and Białek v. Poland*, no. 15924/05, §§ 75-77, 1 March 2011).

6. As to the limited access to the case-file material at domestic level, it does not appear that the non-disclosure obligation imposed on the applicants

implied any limitations other than the prohibition of making copies of the relevant documents. This limitation aimed at protecting State secrets concerning national security. An important safeguard in the present case was the fact that the applicants were given a copy of the bill of indictment and no evidence was withheld from the defence, giving the applicants every opportunity to oppose the use of any items of evidence against them (see *Welke and Białek v. Poland*, cited above, § 64; and compare *Regner*, cited above, §§ 150-62). Furthermore, the applicants, assisted by the lawyers of their choosing, do not appear to have used the designated procedure, including the right to appeal to a court, for working with classified materials (see, for instance, *Kighuradze v. Georgia* (dec.) [Committee], no. 9013/12, §§ 27-29, 12 November 2020). What is more, it remains unclear to what extent the applicants pursued the matter before the Supreme Court.

7. Accordingly, it has not been demonstrated in the present case that the fair balance between the parties was affected to such an extent as to impair the very essence of the applicants' right to a fair trial. The application is therefore manifestly ill-founded and must be rejected in accordance with 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 13 January 2022.

Martina Keller Deputy Registrar	Lətif Hüseynov President