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

FOURTH SECTION

DECISION

Application no. 9289/08
Rolf SCHRADE
against Georgia

The European Court of Human Rights (Fourth Section), sitting on 2 February 2016 as a Committee composed of:
Vincent A. De Gaetano, *President,*
Nona Tsotsoria,
Krzysztof Wojtyczek, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*
Having regard to the above application lodged on 4 January 2008,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Rolf Schrade, is a German national, who was born in 1934 and lives in Berlin-Mahlow. He was represented before the Court by Mr H. von Sachsen-Altenburg and Mr I. Kandashvili, lawyers practising in Tbilisi.

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

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

A. Background

4. The applicant is a photographer. Photographs taken by him in Georgia since 1959 constitute valuable documentary evidence of a great number of Georgian historical monuments. His entire works on the country serve as a reference for researchers and scientists worldwide.

5. In 2004 the applicant discovered that a Georgian company, Neomedia, had unlawfully reproduced and used the applicant's photographs in its publication of an electronic travel guide to Georgia, entitled "Discover Georgia". Neomedia had allegedly copied the photographs from a book featuring the applicant's photographs, published in 1986 in Leipzig – *Georgien Wehrbauten und Kirchen*.

B. As the case stood prior to its communication on 15 January 2009

6. In early February 2005 the applicant filed a complaint with the General Prosecutor's Office, requesting that the criminal responsibility of the director of Neomedia be established in relation to the purported fact of breach of his intellectual property.

7. Between February 2005 and 17 September 2007 the applicant's criminal complaint was circulated between several law-enforcement agencies – the Ministry of the Interior, the Financial Police of the Ministry of Finances, and then back again to the prosecutorial authority – all of which held separate inquiries into the company's activities; a number of investigative measures were undertaken, and the applicant was granted a victim status in the criminal proceedings.

8. During that period, the applicant and Neomedia also conducted, under the supervision of the financial police and the prosecutorial authority, several lengthy rounds of negotiations with the aim of concluding a friendly settlement. Those negotiations, though, eventually failed.

9. In parallel with the above-mentioned criminal proceedings, on 3 October 2007 the applicant sued Neomedia for unauthorised reproduction and using of his photographs, claiming pecuniary and non-pecuniary damages.

10. Between November 2007 and 2 October 2008 the civil proceedings were stayed by the Tbilisi City Court on account of the applicant's failure to communicate to the court the exact postal address of its respondent.

C. Developments of the case as disclosed by the parties' submissions after its communication on 15 January 2009

11. Between 2 October 2008 and 31 March 2009, after the Tbilisi City Court had finally been able to serve summons on Neomedia's postal address, several preliminary hearing were held in the presence of both the applicant and the respondent company.

12. On 13 April 2009 the Tbilisi City Court decided to suspend the civil proceedings pending the result of the parallel criminal proceedings.

13. On 6 May 2009 the General Prosecutor's Office issued a resolution terminating the criminal proceedings instituted on the basis of the applicant's complaint of February 2006. The prosecution authority stated

that the results of the extensive preliminary investigation revealed that the alleged fact of breach of intellectual property could not amount to a criminal offence but rather related to the realm of civil law.

14. The applicant appealed against the prosecutorial resolution of 6 May 2009 resolution to a court, but the Tbilisi City Court rejected his appeal as ill-founded by its decision of 18 June 2009. As the applicant did not file a further appeal against the court decision of 18 June 2009, it became final.

15. On 1 October 2009 the Tbilisi City Court, having regard to the fact that the prosecutorial decision of 6 May 2009 on termination of the relevant criminal proceedings had become final (see the preceding paragraph), renewed the civil proceedings. The first hearing was held on the same date in the presence of both the applicant and the respondent company.

16. By a judgment of 12 November 2009 the Tbilisi City Court allowed the applicant's claim in part. Thus, finding that Neomedia had unlawfully copied from the book *Georgien Wehrbauten und Kirchen* twenty-nine of the applicant's photographs into its CD and the accompanying brochure "Discover Georgia", the City Court entitled the applicant to 3,000 Euros (EUR) and 2,000 Georgian Laris (GEL) in pecuniary and non-pecuniary damages.

17. The applicant appealed against the judgment of 12 November 2009, complaining that the City Court had not properly assessed all the factual circumstances of the case. He claimed that Neomedia had in reality misappropriated 154 of his photographs.

18. On an unspecified date the Tbilisi Court of Appels apparently reversed the judgment of 12 November 2009, remitting the case for an additional examination. Neither a copy of the relevant appellate decision, nor any other additional details about it, has been submitted by the parties.

19. On 20 December 2010 the Tbilisi City Court, after an additional examination of the case and a number of oral hearings, delivered a judgment partially allowing the applicant's claim. Thus, the court, having regard to the results of the various forensic examinations and other items of evidence, confirmed its previous finding that Neomedia had unlawfully used twenty-nine of the applicant's photographs when creating its tourist guide "Discover Georgia". Having regard to the number of copies of the guide which had been sold by the company (some 200 copies), the price of the guide (12 Georgian Laris), the fact that the disputed photographs had constituted 2-3% of the information contained in that guide, the City Court found, by applying equity considerations, that the applicant should be entitled to a compensation in the symbolic amount of 100 Georgian Laris per each unlawfully used photograph. Thus, the applicant was entitled to claim from the respondent GEL 2,900 in non-pecuniary damage, GEL 1,000 in pecuniary damage and GEL 1,500 for reimbursement of legal costs and expenses.

20. On 24 March 2011 the Tbilisi Court of Appeals, after having conducted heard both parties' additional oral and written arguments, upheld the judgment of 20 December 2010 in full.

21. On 26 September 2011 the Supreme Court of Georgia rejected the applicant appeal on points of law as inadmissible, thus finally terminating the civil proceedings.

COMPLAINTS

22. In his application form, the applicant complained under Article 6 § 1 of the Convention about the length of the domestic civil and criminal proceedings. He stated that the authorities had been artificially protracting those proceedings, which amounted to a denial of justice in his case.

23. Citing Article and 13 of the Convention and Article 1 of Protocol No. 1, the applicant reiterated his complaint about the authorities' failure to comply with their positive obligations and provide him with an objective forum for determination of his civil rights and pecuniary interests.

THE LAW

24. On 15 January 2009 the Court communicated to the respondent Government the applicant's complaint about the length of the civil proceedings under Article 6 § 1 of the Convention.

A. The parties' arguments

25. The Government objected that the application was premature as the domestic proceedings were still pending at that time. Alternatively, the Government also argued that the complaint about the length of the civil proceedings was inadmissible for non-exhaustion of domestic remedies, as the applicant could have initiated disciplinary proceedings against the allegedly protracting judges. Lastly, the Government submitted, amongst certain other arguments, that the length of the civil proceedings could not be considered to have been unreasonable given the factual and legal complexity of the case.

26. In his observations, the applicant first accounted for the development in the civil and criminal proceedings after the communication of the case (see paragraphs 11-21 above). In the light of that latest information, the applicant reiterated that the already terminated civil and criminal proceedings were unreasonably lengthy. The applicant also introduced two new grievances about the outcomes of the criminal and civil proceedings.

Thus, he complained that the prosecution and law-enforcement authorities had failed to carry an effective investigation, whilst the factual findings of the domestic courts in the civil proceedings were erroneous. In particular, the applicant claimed that the domestic courts should have established the unlawful use by Neomedia of his 154 photographs, rather than of 29 photos only, and should thus have increased the amount of a non-pecuniary compensation payable to him for the breach of his copyright.

B. The Court's assessment

1. The scope of the present case

27. Having regard to the fact that the applicant introduced the complaints about the outcome of the criminal and civil proceedings only after the communication of the case (see paragraphs 22-23 and 26 above), the Court notes that these new grievances cannot be considered as an elaboration of the applicant's original complaints. Consequently, these new matters should not be taken up in the context of the present application which should only focus on the complaints as introduced by the applicant in his original application form (compare, for instance, with *Saghinadze and Others v. Georgia*, no. 18768/05, §§ 71 and 72, 27 May 2010; *Khaylo v. Ukraine*, no. 39964/02, §§ 53 and 54, 13 November 2008, and *Solovey and Zozulya v. Ukraine*, nos. 40774/02 and 4048/03, §§ 45-47, 27 November 2008).

2. As regards the communicated complaint

28. As to the communicated complaint about the length of the domestic civil proceedings, the Court reiterates that the reasonableness of the length of proceedings must always be assessed in the light of all the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

29. In the present cases, after having examined all the materials submitted to it, the Court considers that for various reasons enumerated below the Georgian State cannot be held liable for the non-compliance with the "reasonable time" requirement. Thus, attaching decisive significance to the overall length of proceedings, which lasted less than four years and were spanned over three levels of jurisdiction, some of which were called to examine the case twice, to the conduct of the parties to the proceedings, notably the fact that the applicant himself failed to provide the correct postal address of the respondent company at the initial stage of the proceedings (see paragraphs 9-11 above), that the civil proceedings were then validly

stayed pending the outcome of the associated criminal proceedings (see paragraphs 13-15 above), the factual complexity of the case as well as the overall conduct of the authorities which cannot be blamed for lack of due diligence, the questioned length of the proceedings cannot be said to have been excessive (compare with, among many other authorities, *Văcăruş v. Romania*, no. 1012/02, §§ 71-79, 4 November 2008 and *Farcaş and Others v. Romania*, no. 67020/01, §§ 31-35, 10 November 2005).

30. In these circumstances, the Court finds that the applicant's complaint under Article 6 § 1 of the Convention about the length of the civil proceedings is manifestly ill-founded within the meaning of Article 35 §§ 1 and 3 of the Convention and must be rejected in accordance with Article 35 § 4.

3. As regards the remainder of the application

31. The applicant also complained under Article 6 § 1 the Convention about the length of the proceedings whereby he sought for establishment of the criminal responsibility of the director of the company

32. However, the Court reiterates that Article 6 § 1 does not guarantee the right to institute criminal proceedings against a third party (see, amongst other authorities, *Members (97) of the Gldani Congregation of Jehovah's Witnesses v. Georgia* (dec.), no. 71156/01, 6 July 2004). It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

33. As to the applicant's complaints under Article 13 of the Convention and Article 1 of Protocol No. 1 (see paragraph 23 above), the Court, having regard to all the material in its possession, and in so far as the matters complained of were within its competence, finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is 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 25 February 2016.

Fatoş Aracı
Deputy Registrar

Vincent A. De Gaetano
President