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

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# Forfeiture of wrongfully acquired property: no breach of the applicants' right to peaceful enjoyment of their possessions

In today's **Chamber judgment**[1] **in the case of Gogitidze and Others v. Georgia** (application no. 36862/05), the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 1 (protection of property) of Protocol No. 1** of the European Convention on Human Rights.

The case concerned the court-imposed measure of confiscation of property belonging – in particular – to the former Ajarian Deputy Minister of the Interior.

The Court found that a fair balance had been struck between the means employed for forfeiture of the applicants' assets and the general interest in combatting corruption in the public service. The applicants had not been denied a reasonable opportunity of putting forward their case and the domestic courts' findings had not been arbitrary.

The Court also emphasized that the legislative amendment of 13 February 2004 introducing the administrative confiscation procedure had considerably helped Georgia to move in the right direction in combatting the corruption.

## Principal facts

The applicants, Sergo, Anzor, Tengiz and Aleksandre Gogitidze are Georgian nationals who were born in 1951, 1973, 1940, and 1978 respectively. Anzor and Aleksandre Gogitidze are Sergo Gogitidze's sons, and Tengiz Gogitidze is his brother. Sergo, Anzor and Aleksandre Gogitidze live in Moscow.

Following the "Rose Revolution" in Georgia in 2003[2], new political forces came to power in the Ajarian Autonomous Republic (AAR). Sergo Gogitidze, who had previously held the posts of Ajarian Deputy Minister of the Interior – between 1994 and 1997 – and President of the Audit Office – between November 1997 and May 2004 –, was charged, amongst other offences, with abuse of authority and extortion.

Proceedings for forfeiture of property were initiated against the four applicants in 2004 as the AAR public prosecutor's believed that the salaries received by Sergo Gogitidze in his capacity as Deputy Minister of the Interior and President of the Audit Office – 7,667 euros (EUR) for the whole period of service in the two public capacities – could not have sufficed to finance the property, valued 450,000 EUR, which had been acquired during his time in office by himself, his sons and his brother.

On 10 September 2004 the Ajarian Supreme Court gave judgment in the absence of Sergo, Tengiz and Aleksandre Gogitidze, who had been notified twice but had failed to appear. The confiscation of some of the property belonging to Sergo, Anzor and Aleksandre Gogitidze was ordered. The Supreme Court notably stated that the applicants, in particular Sergo, Tengiz and Aleksandre Gogitidze, who had not appeared at the court hearing, had failed to discharge their burden of proof

[1] Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

[2] see *Georgian Labour Party v. Georgia (no. 9103/04)*, judgment of 8 July 2008.

by refuting the public prosecutor's claim. This decision was confirmed on 17 January 2005, with the exception of two properties which were removed from the confiscation list as the Supreme Court was satisfied that they had not been wrongfully acquired, as claimed by Anzor Gogitidze.

Sergo Gogitidze's constitutional complaint was dismissed on 13 July 2005. Addressing in particular his argument that a legislative amendment of 13 February 2004 – introducing the administrative confiscation procedure – had been retroactively applied in his case, the Constitutional Court found that the amendment had not introduced any new concept, but had regulated more efficiently the existing measures aimed at the prevention and eradication of corruption in the public service.

## Complaints, procedure and composition of the Court

Relying on Article 1 (protection of property) of Protocol No. 1 to the European Convention on Human Rights, the applicants complained about the confiscation of their property. Under Article 6 § 1 (right to a fair trial) of the Convention, they complained that the administrative confiscation proceedings had been conducted in breach of the principle of equality of arms. Sergo Gogitidze further complained that the confiscation of his property in the absence of a final conviction establishing his guilt had breached Article 6 § 2 (presumption of innocence).

The application was lodged with the European Court of Human Rights on 4 July 2005.

Judgment was given by a Chamber of seven judges, composed as follows:

Päivi **Hirvelä** (Finland), *President*,
George **Nicoalou** (Cyprus),
Ledi **Bianku** (Albania),
Nona **Tsotsoria** (Georgia),
Paul **Mahoney** (the United Kingdom),
Krzysztof **Wojtyczek** (Poland),
Faris **Vehabović** (Bosnia and Herzegovina), *Judges,*

and also Françoise **Elens-Passos**, *Section Registrar.*

## Decision of the Court

### Article 1 of Protocol No. 1

The Court first observed that the forfeiture order concerning the applicants' movable and immovable assets had amounted to interference with their right to peaceful enjoyment of their possessions.

The forfeiture of their property had been ordered on the basis of the relevant sections of the Code of Criminal Procedure and the Code of Administrative Procedure. As to the applicants' argument that applying retroactively in their case the legislative amendment of 13 February 2004 had been unlawful, the Court observed that this amendment had merely regulated afresh the pecuniary aspects of the existing anti-corruption legal standards - as far back as 1997 the Act on Conflict of Interests and Corruption in the Public Service had already addressed such issues as corruption offences. Furthermore, member States could control the use of property via new retrospective provisions regulating continuing factual situations or legal relations anew. Therefore, the forfeiture of the applicants' property had been lawful.

As concerned the legitimacy of the aim pursued by the measure of forfeiture of property, the Court observed that it formed an essential part of a larger legislative package aimed at intensifying the fight against corruption in the public service. This application of this measure had been in

accordance with the general interest in ensuring that the property in question had not procured advantage for the applicants to the detriment of the community.

The Court then turned to the question of the proportionality of the interference and whether a fair balance had been struck between the means employed for forfeiture of the applicants' assets and the general interest in combatting corruption in the public service.

First looking at whether the procedure for forfeiture had been arbitrary, the Court noted that the amendment of 13 February 2004 had been adopted following the reports by international expert bodies[3] who had noticed the alarming levels of corruption in Georgia. The Court emphasised that the new legislative measures had considerably helped Georgia to move in the right direction in combatting the corruption. As in previous similar cases, the Court found concerning the applicants that it had not been contrary to Article 1 of Protocol No. 1 to order the forfeiture of their assets on the basis of a high probability of the illicit origins of property, all the more so that the owners had failed to prove the contrary. Consequently the Court found with the Constitutional Court of Georgia that the administrative confiscation proceedings in the applicants' case could not be considered as arbitrary, considering in particular that member States had to be given a lot of room for manoeuvre ("wide margin of appreciation") when choosing how to deal with proceeds of crime.

The Court secondly examined the applicants' argument that the domestic courts had acted with arbitrariness. It noted that Sergo and Aleksandre Gogitidze had failed to appear before the Ajarian Supreme Court, while some of Anzor Gogitidze's arguments and evidence led the removal of certain assets from the forfeiture list. As to the cassation proceedings, the applicants had not claimed that there had been any procedural unfairness before the Supreme Court of Georgia. Furthermore, it was only after a careful examination of evidence and of the applicants' financial situation, that domestic courts had confirmed the existence of a considerable discrepancy between their income and wealth and taken the decision on forfeiture. It could therefore not be said that the applicants had been denied a reasonable opportunity of putting forward their case or that the domestic courts' findings had been tainted with manifest arbitrariness. Accordingly, a fair balance had been struck between the means employed for forfeiture of the applicants' assets and the general interest in combatting corruption in the public service. There had therefore been no violation of Article 1 of Protocol No. 1.

## Article 6 §§ 1 and 2

The Court rejected the applicants' complaint under Article 6 § 1 as manifestly ill-founded, considering that they had themselves chosen to waive their right to take part in the proceedings and that there had been nothing arbitrary to expect them to discharge their part of the burden of proof by refuting the prosecutor's substantiated suspicions.

The Court also rejected Sergo Gogitidze's complaint under Article 6 § 2 as this provision was not applicable to the forfeiture of property ordered as a result of civil proceedings (as it was not of a punitive but of a preventive and/or compensatory nature).

*The judgment is available only in English.*

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[3] The Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), Group of States Against Corruption (GRECO) and the OECD's Anti-Corruption Network for Transition Economies.

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.