

THIRD SECTION

DECISION

Application no. **25678/09**
Omar LANCHAVA and Others
against Georgia

The European Court of Human Rights (Third Section), sitting on 7 February 2012 as a Chamber composed of:

Josep Casadevall, *President*,
Corneliu Bîrsan,
Egbert Myjer,
Ján Šikuta,
Ineta Ziemele,
Nona Tsotsoria,
Kristina Pardalos, *judges*,
and Marialena Tsirli, *Deputy Section Registrar*,

Having regard to the above application lodged on 24 March 2009,

Having deliberated, decides as follows:

THE FACTS

1. The applicants¹ are Georgian nationals. They were represented before the Court by Mr Simon Papuashvili, a lawyer practising in Tbilisi.

A. The circumstances of the case

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

1. Background

3. In 1991-92, the applicants, as members of a State-supported housing construction cooperative, paid various amounts of money in Soviet roubles, the then legal tender, to the Tbilisi municipality in exchange for the local authority's undertaking to provide them, under privileged conditions, with newly built apartments. The payable amounts were calculated according to the prices prevailing on the Georgian real property market at the material time. The validity of that transaction was confirmed by a number of legal acts issued by the municipality during the same period.

4. Owing to financial crises which hit the country in the course of its transition from the old Soviet, State-controlled economy to a market one in the early 90s, the Tbilisi municipality failed to fulfil its contractual obligation. Thus, the construction of the relevant block of flats for the applicants never started.

5. The applicants' case was not an isolated instance of non-fulfilment by the State of its contractual housing obligations. There were many other such housing construction cooperatives all over the country, which, despite having duly paid their contributions to the State, never received any dwellings in exchange. As disclosed by various legal acts contained in the case file, and notably by a Resolution of 9 October 1992 of the Government of Georgia, one of the major reasons for that civil liability of the State was a sudden and drastic depreciation of the Soviet rouble and a consequent rise in the prices of the relevant services and goods, which rendered the monetary contributions of the individual members of various housing cooperatives, such as the applicants, insufficient even for partial funding of house construction work.

6. In April 1993 the Georgian State withdrew the collapsed Soviet rouble from circulation, introducing instead a provisional currency, the so-called coupons, which then also suffered from

hyper-inflation. In October 1995, the provisional currency was finally replaced by the Georgian lari, the current national legal tender.

2. Court proceedings

7. On 4 December 2007 the applicants brought an action against the Ministry of Finance, requesting that the State fulfil its obligations under section 48 § 1 (g) of the Act of 5 March of 1998 on State Debt (“the Act on State Debt”) by paying them compensation for the undelivered apartments in an amount of more than 4 million euros. They explained that the amount claimed corresponded to the overall total value of similar apartments according to the current prices on the Georgian real property market.

8. In a judgment of 22 February 2008, the Tbilisi City Court dismissed the applicants’ action as manifestly ill-founded. At the outset, the court acknowledged that the State’s liability *vis-à-vis* the individual members of housing construction cooperatives constituted domestic public debt under section 48 § 1 (g) of the Act. The court also noted that the State had failed to develop a scheme for the settlement of that debt within the time-limit set by section 48 § 4 of the Act.

9. The City Court then recalled that on 15 November 2004 the Government of Georgia had established, on the basis of section 48 § 1 of the Act, an *ad hoc* ministerial Commission for the purpose of studying and drawing up recommendations for the problems related to the settlement of various forms of domestic public debt, including that owed to the individual members of housing construction cooperatives. However, that Commission was still in the process of working on the problems, without having submitted any specific recommendations to the Parliament and President of Georgia as yet. Consequently, in the absence of a clear legislative mechanism whereby the State should settle the debt, the court was not able to rule on the matter. Without such a mechanism it was not even possible, the City Court emphasised, to calculate amounts which were currently payable to the applicants as compensation for their old deposits.

10. On 11 July 2008 the Tbilisi Court of Appeal fully upheld the first instance court’s judgment of 22 February 2008. The appellate court reiterated that, in the absence of a legislative mechanism regulating the settlement of the relevant domestic public debt, there was no legal basis for the courts to entertain the applicants’ action for the time being. Since the repayment of that debt was intrinsically connected to its indexation and other complex financial calculations, the judiciary could not overstep the competence of the relevant ministerial Commission specifically created for that purpose.

11. On 14 January 2009 the Supreme Court of Georgia rejected the applicants’ cassation appeal as inadmissible, finally terminating the dispute.

B. Relevant domestic law

12. On 5 March 1998 the Act on State Debt was enacted. Pursuant to its section 1 (b), domestic debt, which resulted from various types of Government liabilities, was represented by sums in fiat currency.

13. Pursuant to section 48 § 1 (g) of the Act on State Debt, the contractual obligations undertaken but not fulfilled by the State *vis-à-vis* individual members of housing construction cooperatives were recognised, amongst other Government liabilities, as a form of domestic public debt. According to paragraph 4 of the same section, the Ministry of Finance was supposed to devise a mechanism for the repayment of that particular debt by 1 September 1998.

14. On 15 November 2004 the Prime Minister of Georgia issued Resolution no. 108, establishing an *ad hoc* Commission to address the problem of the settlement of the various forms of domestic public debt under section 48 § 1 of the Act. The Commission was composed of different Ministers and was initially supposed to submit specific recommendations for the resolution of the problem by 1 January 2009. Subsequently, that deadline was postponed several times. Pursuant to the Resolution as it currently stands, after having been amended for the last time on 1 December 2011, the Commission is expected to submit such recommendations by 1 January 2013.

COMPLAINT

15. Relying on Article 1 of Protocol No. 1, the applicants complained that the State failed to settle the debt which it owed to them on the basis of section 48 § 1 (g) of the Act on State Debt.

THE LAW

16. The present application concerns, under Article 1 of Protocol No. 1, the respondent State's alleged failure to fulfil the obligation which it undertook *vis-à-vis* the applicants under section 48 § 1 (g) of the Act on State Debt. Article 1 of Protocol No. 1 reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest...”

17. The Court notes that section 48 § 1 (g) of the Act on State Debt transformed the State civil liability *vis-à-vis* the individual members of State-supported housing construction cooperatives into a form of domestic public debt. Pursuant to section 1 of the Act, public debt was represented and payable by sums in fiat currency (see paragraph 12 above). Consequently, as the applicants' complaint can only be understood in the light of these domestic provisions, their aim was to retrieve the moneys they deposited with the State in 1991-92. The same follows from the formulation of the applicants' statement of claim lodged with the domestic courts, in which they explicitly sought to have their housing deposits returned in the new currency (see paragraph 7 above).

18. The Court further observes that the applicants' housing deposits were made with the State in 1991-92 in Soviet roubles, the amounts of their contributions being dependent, amongst other things, on the prices of the goods and services necessary for the construction of the relevant apartments at the material time. However, following the demise of the Soviet Union, it proved to be impossible to maintain the Soviet rouble as the legal tender between and within the newly independent States. Georgia had no influence over the operation of the Soviet rouble, which consequently led to its withdrawal from the circulation and introduction of a provisional currency, coupons, in 1993, which in its turn also suffered from hyper-inflation. Consequently, with the prices of construction work skyrocketing due to inflation, the applicants' deposits in Soviet roubles necessarily lost their initial purchasing power. Then, more than fifteen years later, during which period various significant financial and economic changes occurred in the country, the applicants attempted to retrieve their depreciated housing deposits already in a new currency, the euro, making their calculations according to the currently prevailing real property prices. In other words, the applicants' wish is to have the purchasing power of their initial, depreciated deposits restored (contrast with *Ališić and Others v. Bosnia and Herzegovina and Other Member States* (dec.), no. 60642/08, §§ 53-55, 17 October 2011).

19. However, the Court reiterates that the right to have the purchasing power of monetary deposits secured from inflation and other types of financial crises is not guaranteed by Article 1 of Protocol No. 1. This provision cannot oblige the State to compensate for financial losses caused by a rise in the level of prices of goods and services or by any other type of recession in an economy over a period of time (see, among many other authorities, *Appolonov v. Russia* (dec.), no. 67578/01, 29 August 2002; and *Kireev v. Moldova and Russia* (dec.), no. 11375/05, 1 July 2008). Indeed, the repayment of sums deposited with the Georgian State in Soviet roubles, a currency which first depreciated and was then abolished altogether, is intrinsically contingent on the existence of precise legal rules on indexation adjustment, currency conversion and other complex financial calculations. However, since no such rules have been adopted in Georgia to date, with the relevant ministerial Commission currently working on the issue, the applicants cannot legitimately argue, solely on the

basis of the generally worded provisions of section 48 § 1 (g) of the Act on State Debt, that any *specific* amounts of money denominated in the current national or foreign currencies may qualify as their “existing possessions” (see, among many other authorities, *Boyajyan v. Armenia*, no. 38003/04, § 55, 22 March 2011; *Rudzińska v. Poland* (dec.), no. 45223/99, ECHR 1999-VI; and *Gayduk and Others v. Ukraine* (dec.), nos. 45526/99 et al., ECHR 2002-VI (extracts)). Nor can the nebulous wording of the above-mentioned provision of the Act on State Debt be interpreted, in the absence of underlying rules on the necessary financial calculations, as giving the applicants at least a “legitimate expectation” to claim any such specific sums (compare with, *mutatis mutandis*, *Klaus and Yuri Kiladze v. Georgia*, no. 7975/06, §§ 57-60, 2 February 2010).

20. It follows that the present application is incompatible *ratione materiae* with Article 1 of Protocol No. 1 within the meaning of Article 35 § 3 (a) of the Convention and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

Marialena Tsirli Josep Casadevall Deputy Registrar President

Appendix to the decision

List of the applicants

No.	Name	Date of birth
1.	Mr Omar Lanchava	14 October 1946
2.	Mr Ilia Chkuaseli	19 January 1950
3.	Mr Levan Gavasheli	25 December 1950
4.	Mrs Liza Ediberidze	25 March 1954
5.	Mr Zurab Lebanidze	1 November 1952
6.	Mrs Nana Khutsishvili	7 June 1962
7.	Mrs Kato Mumladze	5 October 1956
8.	Mr Yasha Katamadze	3 December 1949
9.	Mr Alexander Kartvelishvili	26 October 1939
10.	Mr Nugzar Bulia	15 July 1951
11.	Mrs Eteri Okhanashvili	3 April 1944
12.	Mr Yuri Davlianidze	6 April 1961
13.	Mr Murad Bitsadze	10 December 1955
14.	Mrs Nino Simonishvili	24 December 1955
15.	Mrs Manana Korghanashvili	6 November 1958
16.	Mr Giorgi Nozadze	11 September 1962
17.	Mr Zurab Imerlishvili	29 December 1942
18.	Mrs Leila Marjanidze	5 January 1959
19.	Mr Omar Samkharadze	1 September 1941
22.	Mr Teimuraz Kalandadze	17 January 1947
23.	Mr Mamuka Maisuradze	28 October 1962
24.	Mrs Tamar Gotsiridze	3 May 1977
25.	Mrs Nani Goginashvili	6 August 1958
26.	Mr Grigol Gabrichidze	1 January 1930
27.	Mr Tariel Elizbarashvili	2 January 1940
28.	Mrs Nana Giorgobiani	1 March 1960
29.	Mr Guram Chavchanidze	30 January 1930
30.	Mrs Ekaterine Bidzinashvili	29 September 1949
31.	Mr Revaz Chkhubianishvili	6 August 1947
32.	Mrs Tamara Maghalashvili	26 June 1952
33.	Mrs Neli Guliashvili	11 July 1956
34.	Mrs Manana Machavariani	24 February 1949
35.	Mrs Guranda Popkhadze	2 January 1940

No.	Name	Date of birth
36.	Mr Nugzar Ter-Oganov	29 November 1947
37.	Mrs Dali Ioseliani	19 January 1950
38.	Mr Guram Gvelesiani	23 February 1928
39.	Mrs Manana Gusharashvili	19 February 1958
40.	Mrs Maia Chikovani	10 February 1964
41.	Mrs Nanuli Khotenashvili	14 April 1941
42.	Mrs Roza Burjanadze	23 June 1956
43.	Mrs Otari Tchkadua	8 March 1953
44.	Mrs Lili Omaidze	3 August 1953
45.	Mrs Darejan Kvashilava	16 April 1958
46.	Mr Mikheil Nikoleishvili	3 August 1957
47.	Mr Vladimer Togonidze	5 May 1954
48.	Mr Teimuraz Gamtsemlidze	23 December 1955

¹ The applicants' names are listed in the appendix to the decision.

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