



ს ა ქ ა რ თ ვ ე ლ ი
G E O R G I A

იუსტიციის სამინისტრო
MINISTRY OF JUSTICE

№ 0123/15-5310
„22“ 06 2007წ.

Ms Sally DOLLÉ
Section Registrar
European Court of Human Rights



Application no.38342/05
Jugheli and Others v. Georgia

Dear Madam,

Referring to your letters of 20 February 2007 and 21 May 2007, enclosed, please, find the observations of the Government of Georgia on the admissibility and the merits of the above case.

Very truly yours,

Mikheil KEKENADZE

Agent of Government of Georgia
to the European Court of Human Rights

**OBSERVATIONS OF THE GOVERNMENT OF GEORGIA ON THE APPLICATION
LODGED WITH THE EUROPEAN COURT OF HUMAN RIGHTS AGAINST
GEORGIA UNDER ARTICLE 34 OF THE EUROPEAN CONVENTION OF HUMAN
RIGHTS**

Application No. 38342/05

Jugheli and Others v. Georgia

1. Introduction

These are the Observations of the Government of Georgia (hereinafter, "the Government") concerning the application lodged with the European Court of Human Rights (hereinafter, "the Court") by Mr. I. Jugheli, Mr. O. Gureshidze and Ms. L. Alavidze (hereinafter, referred to as either "the first Applicant", "the second Applicant", "the third Applicant" respectively or "the Applicants") against Georgia on 3 October 2005, (Application no. 38342/05).

2. General Information

The first Applicant, the second Applicant and the third Applicant are Georgian nationals who were born in 1946, 1947 and 1957 respectively and live in Tbilisi, at 4 Uznadze Street.

3. The Merits

An Article 8 of the Convention reads as follow:

1. *Everyone has the right to respect for his privet and family life, his home and his correspondence.*

2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health and morals, or for the protection of the rights and freedoms of others.*

The Court in its judgment of *Fadeyeva v. Russia* has held that Article 8 of the Convention has been invoked in various cases involving environmental concern, yet it is not violated every time that environmental deterioration occurs: no right to nature preservation is as such included among the rights and freedoms guaranteed by the Convention (see *Kyrtatos v. Greece*, no. 41666/98, ECHR 2003-VI, § 52). Thus, in order to raise an issue under Article 8 of the Convention the interference must directly affect the applicant's home, family or private life. The Court further pointed out that the adverse effects of environmental pollution must attain a certain minimum level if they are to fall within the scope of Article 8 (see *López Ostra v. Spain*, judgment of 9 December 1994, Series A no. 303-C, p. 54, § 51; see also, *mutatis mutandis*, *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, ECHR 2003-VIII, § 118). The assessment of that minimum is relative and depends on all the circumstances of the case, such as the intensity and duration of the nuisance, its physical or mental effects. The general environmental context should be also taken into account. There would be no arguable claim under Article 8 if the detriment complained of was negligible in comparison to the environmental hazards inherent to life in every modern city. Thus, in order to fall under Article 8 of the Convention, the complaints relating to environmental nuisances have to show, first, that there was an actual interference with the applicant's private sphere, and, second, that a level of severity was attained (See, the *Fadeyeva v. Russia*, judgment of 30 November 2005, Application No. 55723/00, §§ 68-70).

From the very outset the Government would like to state that it cannot be said that the Georgian authorities have directly interfered with the Applicants' private life or

home since the "Tboelectrocentrali" power plant (hereinafter, "the plant") had not been owned, controlled, or operated by the State at the material time.

The Government submit to the Court that the power plant was privatised in 1999. According to the Decree No. 613 of the President of Georgia of 2 November 1999 the power plant was privatised in a form of direct purchase and the 90 % of shares of the company – "Tboelectrocentrali" was bought by the JSC "Saqqazi" (See, Annex 1, the Decree No. 613 of the President of Georgia of 2 November 1999).

On 2 December 1999, following the above decree of the President, the Ministry of Management of State Property of Georgia issued the Order No. 1-3/881 instructing its organs to prepare and conclude the privatisation treaty with the "Saqqazi" (See, Annex 2, the decree No. 1-3/881 of the Ministry of Management of State Property of Georgia of 2 December 1999).

The privatisation treaty between the parties, namely, the Ministry of Management of State Property of Georgia and the JSC "Saqqazi" was concluded on 6 April 2000 (See, Annex 3, the privatisation treaty).

It has to be noted that Georgian Laws on "Environmental Protection Permits Act" and "State Ecological Expertise" entered into force since 1997. According to those laws, they are applicable only to the activities which are being conducted after the entry into force of the said laws. Under the paragraph 2 of Article 15 of the Resolution No.154 of the Government of Georgia of 1 September 2005 the companies which started their activities before the entry into force of the law on "Environmental Protection Permits Act" are required to obtain the environment impact permission until 1 January 2009.

The Court in its judgment of the *Hatton and Others v. The United Kingdom* has held that there is no explicit right in the Convention to a clean and quiet environment, but where an individual is directly and seriously affected by noise or other pollution, an issue may arise under Article 8 (See, the *Hatton and Others v. The United*

Kingdom judgment by the Grand Chamber of 8 July 2003, Application No. 36022/97, § 96).

The Government strongly contest that the Applicants' rights have been directly and seriously affected by the noise or other pollution. The Supreme Court of Georgia in its judgment of 21 April 2005 has held that the Applicants have failed to show what kind of damage were inflicted on them by the air pollution over the last years, what kind of pecuniary damage they sustained in fact, what kind of expenses were borne by them as a result of functioning of the power plant, indicate the expenses which were spent for the medical treatment in past or are foreseen in future; the third Applicant had even refused to undergo the medical examination and the Supreme Court of Georgia rejected the their cassation claims as unsubstantiated and ill-founded.

In view of the arguments put forward above the Government state that the Applicants' claims fall outside the scope of Article 8 of the Convention, are unsubstantiated and manifestly ill-founded and request the Court to declare them inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.