



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

FIRST SECTION

CASE OF IGOR VASILCHENKO v. RUSSIA

(Application no. 6571/04)

JUDGMENT

STRASBOURG

3 February 2011

FINAL

03/05/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Igor Vasilchenko v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 January 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 6571/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Igor Aleksandrovich Vasilchenko (“the applicant”), on 27 January 2004.

2. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the representative of the Russian Federation at the European Court of Human Rights

3. On 7 December 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

4. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1964 and lives in Shebekino, the Belgorod Region.

6. In March 1994 he signed a five-year serviceman contract with the Ministry of Defence of the Russian Federation. In January 1999 he applied

for his discharge from military service on the grounds that his commander had failed to fulfil its contractual obligations, in particular to pay him certain allowances in due time. His application was refused.

A. Judicial appeals lodged by the applicant and judgments upholding his claims in the main case

7. In October 1999 the applicant instituted judicial proceedings before the Tambov Garrison Military Court. By a judgment of 10 November 1999 the latter upheld his action and ordered his commander to discharge him from service, to pay the amounts that were due to him and “to solve the question of providing the applicant with housing in accordance with law prior to his discharge”.

8. On 24 October 2002 the Tambov Housing Committee (*Тамбовская КЭЧ*) assigned to the applicant and his family (his wife and two sons) a flat in a newly built residence in Chicherina Street in Tambov (“the flat”).

9. On 20 February 2003 the applicant was issued with an occupancy voucher (*ордер на жилое помещение*), a document that entitled him, his wife and their two sons to occupy and use the flat on the basis of a social tenancy agreement with the State.

10. On an unspecified date he brought an action seeking “the suspension of the occupancy voucher”. He alleged that the building had not yet been registered and that this prevented him from disposing of the flat. Besides, there were certain construction defects that had to be fixed. On 26 May 2003 the Sovetskiy District Court of Tambov upheld his action.

11. In November 2004 the applicant brought an action against the Tambov Housing Committee seeking ownership of the flat. By a judgment of 9 December 2004 the Oktyabrskiy District Court of Tambov granted joint title to the applicant and his two sons, whilst his wife waived her possibility to be granted title in respect of the flat.

B. Enforcement of the judgment of 10 November 1999

12. On 25 August 2000 the Bailiff Service of the Sovetskiy District of Tambov opened enforcement proceedings in respect of the judgment of 10 November 1999 (see paragraph 7 above).

13. The proceedings were discontinued and resumed several times. On 25 December 2002 the Bailiff in charge issued a notice stating that the relevant domestic law prohibited the discharge of long-serving servicemen in need of housing if their commander had not provided them with such housing. In reply to an enquiry by the applicant of 30 June 2003 about measures taken in order to enforce the judgment of 10 November 1999, the Bailiff responded that his discharge from military service could not be executed because his commander had not yet provided him with housing.

14. The applicant and his family moved into the flat on 1 November 2004.

15. On 28 February 2005 the unit commander discharged the applicant from military service.

C. Revision proceedings

1. Annulment of occupancy voucher

16. On an unspecified date in 2005 the Prosecutor of the Tambov Garrison instituted proceedings against the applicant before the Tambov Garrison Military Court, seeking annulment of the occupancy voucher (see paragraph 9 above). The prosecutor submitted that the applicant had failed to inform his commander that his wife held joint title in respect of a flat in another town which she had obtained by way of a privatisation measure and that the concealment of this information had resulted in the applicant and his family having been provided with a larger accommodation than that to which they had been entitled.

17. By a judgment of 18 August 2005 the Tambov Garrison Military Court upheld the prosecutor's revision request. The Military Court, referring to section 15 of the Federal Law on the Status of Servicemen and to a Ruling of 22 April 1999 by the Supreme Court of the Russian Federation (summarised below), observed that only those servicemen and members of their families who were "in need of better housing" were entitled to State accommodation. The Military Court found it established that the applicant's wife had indeed possessed housing, albeit in another town, and that he had omitted to inform the Housing Committee of this fact. The Military Court concluded that the applicant's wife had not qualified as a person "in need of better housing", that the applicant could only have claimed housing rights in so far as concerned his own needs and those of his two sons. His concealment of the information important for the assessment of the "housing needs" of the members of his family constituted a sufficient ground under the relevant provisions of the Housing Code to invalidate the occupancy voucher of 20 February 2003.

2. Quashing of the judgment of 9 December 2004

18. On 14 November 2005 the Garrison prosecutor brought further proceedings against the applicant. He sought to have the judgment of 9 December 2004 (see paragraph 11 above) set aside on the grounds of newly discovered circumstances: such circumstances formed the basis of the judgment of 18 August 2005 that had invalidated the occupancy voucher.

19. On 13 December 2005 the Oktyabrskiy District Court examined the prosecutor's revision request. Considering that the invalidation of the

occupancy voucher was a fact “essential for the dispute”, the District Court decided to re-open the proceedings (Article 392 of the Code of Civil Procedure) and quashed the judgment of 9 December 2004. The prosecutor and the representative of the Tambov Housing Committee attended the hearing and made their oral submissions. The applicant did not appear “for an unknown reason”.

20. On 4 January 2005 the applicant filed his submissions in which he argued that the prosecutor had no standing to request revision and, with a view to a hearing that he thought was to be scheduled in future, asked the District Court to hear the prosecutor's revision request in his absence.

3. New examination after re-opening

21. On 15 February 2006, after having decided to re-open the proceedings on 13 December 2005, the District Court examined anew and dismissed the applicant's claim for ownership of the flat. It further ordered that the applicant and his family be evicted from the flat and that they should be offered their “previous accommodation” (an apartment in a council dormitory in Tambov, see paragraph 23 below). The District Court reached these conclusions on the sole ground that the applicant had obtained the occupancy voucher unlawfully. It did not answer his argument that, pursuant to the judgment of 10 November 1999, his commander was still obliged to provide him with housing in accordance with the law.

22. On 14 June 2006, on an appeal by the applicant, the Tambov Regional Court upheld the judgment of 15 February 2006, endorsing in summary fashion the first-instance court's reasoning. The applicant received a summons for the appeal hearing on 14 June 2006, the day of the hearing. According to the date on the summons and postmarks on the envelope, it was issued on 1 June 2006, despatched by the court's registry on 2 June 2006 and arrived at the applicant's post office on 13 June 2006. Given the long distance between his town of residence at the time and Tambov, he was unable to attend the hearing. It appears from the Regional Court's judgment that the prosecutor had been present and had made his oral submissions to the court.

D. Eviction

23. On 27 November 2006, in accordance with the judgment of 15 February 2006, the applicant and his family were evicted from the flat that they occupied in Chicherina Street in Tambov.

24. On 13 December 2006 the applicant was informed that an apartment in a council dormitory in Tambov – their previous accommodation – had been assigned to him and his family and that they could all move in. The applicant refused. Instead he asked his former commander to put him back on the list of servicemen in need of better housing. By a letter of 17 January

2007 the commander replied that there were no legal grounds for putting him back on that list because he had been discharged from the army.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Law and practice on the provision of housing to servicemen and members of their families

25. Under section 15 § 1 of the Federal Law on Status of Servicemen of 1998, servicemen who qualified as persons in need of better housing and who had served ten or more years were to be provided with State-owned accommodation upon their discharge from service on grounds of poor health, or in connection with structural reorganisations. The housing may be granted in the form of property or be provided under terms of a social tenancy agreement.

Criteria for being considered a person in need of better housing were set out in the relevant provisions of the Housing Code of the Russian Federation.

26. The Supreme Court of the Russian Federation in its Ruling of 22 April 1999 no. 2n-137/98 stated that section 15 of the Law on the Status of Servicemen guaranteed housing for servicemen and their family members living together with them. Family members covered by the Law included a spouse, children and dependants. The law established that, apart from a serviceman, those persons who at the time of the actual allocation of housing were members of his [her] family and had a right to housing from the Ministry of Defence were to be provided with housing. The standing of the person concerned, i.e. the family member status and his or her housing needs, was to be assessed by the relevant housing committee at the time of the actual allocation of accommodation.

27. Under Article 38 of the Housing Code of 1983, in force at the material time, the standard of social housing was twelve square metres per person.

28. According to the Ruling of the Constitutional Court of 30 September 2004 no. 322-O, after expiry of a serviceman's contract and in the absence of his written agreement to discharge without the provision of housing, he should be considered as serving voluntarily only until the date of the provision of housing.

B. Law on the privatisation

29. Under sections 1, 2 and 11 of the Federal Law on the Privatisation of Accommodations of 1991, privatisation consisted of a transfer of ownership of an accommodation from the State or municipal authorities made free of

charge to a private party. Citizens could obtain private ownership in respect of accommodations which they occupied under terms of a social tenancy agreement or a lease and could enjoy their right to free privatisation, as a rule, only once.

C. Law on the provision of housing owned by the State or municipal authorities

30. The RSFSR Housing Code of 1983 (effective until 1 March 2005) provided that a Russian citizen was entitled to possess a flat owned by the State, municipal authorities or other public bodies, under the terms of a tenancy agreement. Such flats were granted for permanent use (Article 10).

31. A decision to grant a flat was to be implemented by way of issuing the person concerned with an occupancy voucher from the local municipal authority (Article 47). The voucher served as the legal basis for taking possession of the flat designated therein and for the signing of a tenancy agreement between the housing maintenance authority and the tenant (Article 51 of the RSFSR Housing Code, and also Articles 672 and 674 of the Civil Code of the Russian Federation).

D. Law on the participation of the prosecutor in civil proceedings

32. Article 45 of the Code of Civil Procedure (in force as of 1 February 2003) provides that a prosecutor may bring proceedings for the protection of the rights and lawful interests of citizens, other persons or the Russian Federation (paragraph 1). A prosecutor may also intervene in ongoing proceedings in certain types of cases stipulated in the Code of Civil Procedure and other federal laws (paragraph 3).

E. Law on the reconsideration of the final judgment on the ground of newly discovered circumstances

33. The Code of Civil Procedure provides as follows:

Article 392. Grounds for reconsideration

“1. [Judgments] which have come into force may be reconsidered on the basis of newly discovered circumstances.

2. The grounds for reconsideration ... shall be:

1) essential circumstances that were unknown and could not have been known to the applicant;

4) the annulment of ... a decision of the State authority ... that was the basis of the judgment or decision of the court ...”

Article 394. Lodging of an application

“... [An application for the reconsideration of a [judgment], owing to the discovery of new circumstances], shall be lodged by parties, the prosecutor, other persons who participated in the proceedings within three months of the discovery of the new circumstances.”

Article 397. Decision on the reconsideration of the case

“1. Following examination of an application for the reconsideration of a [judgment] owing to the discovery of new circumstances, the court may either grant the application and quash the [judgment], or dismiss the application.

2. A court decision by which an application for the reconsideration of a [judgment] owing to the discovery of new circumstances is granted shall not be subject to appeal.

3. Provided that a [judgment] is quashed, the case shall be examined in accordance with the rules of this Code.”

F. Law on court notices and summonses to hearings

34. The Code of Civil Procedure provides as follows:

Article 113. Court notices and summonses

“1. Parties to the proceedings, as well as witnesses, experts, specialists and interpreters, shall be summoned to a hearing by letter sent by registered mail with an acknowledgment of receipt, by court summons with an acknowledgment of receipt, by telegram, by phone or fax or by any other means which can guarantee a record of the fact that the summons was sent and was received by the party.

3. A court summons shall be served on the parties in such a way that they have enough time to prepare their case and appear at the hearing.”

Article 116. Receipt of a court summons

“1. A court summons ... to a person shall be served on him or her against his or her signature on a counterfoil of the summons, which shall be returned to the court ...

4. If the current place of residence of an addressee is unknown, an entry to this effect shall be made on the court summons, showing the date and time of the attempted service and the source of the information.”

Article 155. The court hearing

“A civil case shall be heard in a court session; mandatory notification of the place and time of the court session shall be provided to all parties to the case.”

Article 161. Checking attendance of the parties

“The secretary assistant informs the judge of the parties who appeared at a hearing, whether those who failed to appear had been notified, and reasons for the latter's absence.”

Article 167. Consequences of failure to attend

“... 2. If a party to a case fails to appear at a hearing and there is no evidence that the party has been duly summoned, the hearing shall be adjourned...”

4. A court may examine a case in the absence of a defendant who has been notified of the time and place of that hearing if he or she has failed to provide to the court any valid reasons for his or her absence and has not asked that the hearing be held in his or her absence.

5. Parties may ask a court to hold a hearing in their absence and to send them copies of the judgment. ”

G. Law on powers of appeal courts

35. According to Article 347 of the Code of Civil Procedure, the appeal court's role is to review a first instance court's decision with a view to verifying its lawfulness and validity. The appeal court has the power to assess evidence, including additional material submitted by the parties, to confirm the facts as established by the first instance or to establish new facts.

THE LAW**I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL NO.1 AS REGARDS THE DELAY IN PROVIDING THE APPLICANT WITH HOUSING**

36. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 that enforcement of the judgment of 10 November 1999 had been delayed on account of the failure to provide housing. In so far as relevant, these Articles read as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing ... by [a] ... tribunal ...”

Article 1 of Protocol No. 1

“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 or to secure the payment of taxes or other contributions or penalties.”

A. Submissions by the parties

37. The Government submitted that the applicant's commander had taken all measures in order to provide him with housing. The applicant's commander had, on a number of occasions, asked the Ministry of Defence of the Russian Federation to cooperate. The Tambov Housing Committee had twice offered him flats. The last flat had been assigned to the applicant and his family on 30 October 2002. Further enforcement had been stopped because of the applicant's behaviour. He had submitted a claim alleging that the building had not yet been registered and that the authorities' failure to register the building had prevented him from disposing of the flat; besides that, certain construction defects had remained. According to the Government, this claim had been unjustified. The judgment of 10 November 1999 had entitled the applicant only to a tenancy right; the construction defects had been negligible and the flat had been suitable for living in. The Government further asserted that the applicant had failed to lodge his complaint within six months because the enforceable obligation to provide him with housing in accordance with law had been fulfilled by the State authorities on 30 October 2002. Any delays in the enforcement of the judgment should be attributed to the applicant's conduct. In any event, the judgment in question had been enforced by the time when the applicant lodged his complaint with the Court. Accordingly, he cannot claim to be a victim of a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1.

38. The applicant maintained his complaint. He stated that the judgment of 10 November 1999 had not been enforced because the State authorities had failed to take all appropriate measures. He still had not obtained any housing. The Government's allegations of deception on his part had been unjustified.

B. The Court's assessment

39. Pursuant to Article 35 § 1 of the Convention, the Court may only deal with a matter “within six months of the date on which the final decision was taken”. The purpose of the six-month rule is to promote security of law and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. It is also designed to protect the authorities and other persons concerned from being under any uncertainty for a prolonged period of time (see *Blečić v. Croatia* [GC], no. 59532/00, § 58, ECHR 2006-III).

40. Turning to the present case, the Court observes that the judgment of 10 November 1999 obliged the applicant's commander “to solve the question of providing the applicant with housing in accordance with law prior to his discharge”. The relevant domestic law established that citizens may, in particular, be provided with housing on the basis of a tenancy agreement (see paragraphs 25 and 30 above). From the material submitted, it appears that on 24 October 2002 the Tambov Garrison Housing Committee assigned the flat to the applicant and his family and that on 20 February 2003 he received the occupancy voucher (see paragraphs 8 to 9 above). His commander therefore provided him with the opportunity to take possession of the flat in accordance with the final judgment. The Court is not persuaded by the applicant's arguments that the authorities' failure to register the newly built residence by the stated time and the nature of the construction defects had prevented him from occupying and subsequently using the assigned flat. Therefore, the Court considers that the national authorities had fulfilled their obligation to provide the applicant and his family with housing by 20 February 2003.

41. The Court further notes that the applicant lodged his complaint on 27 January 2004, that is more than one year and three months after the Tambov Garrison Housing Committee had assigned the flat to him (24 October 2002) and, in any event, more than eleven months after the occupancy voucher had been issued to him and his family (20 February 2003).

42. It follows that the complaint in respect of the alleged failure of the authorities to provide him and his family with housing without undue delay was introduced after the expiry of the six months time-limit and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

43. As to his allegations that he was subsequently unlawfully dispossessed of the flat, the Court finds it appropriate to examine them below in relation to his complaint under Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE DELAYED DISCHARGE OF THE APPLICANT FROM MILITARY SERVICE

44. The applicant also complained under Article 6 § 1 of the Convention of the delayed enforcement of the final judgment of 10 November 1999 discharging him from military service. It had not been enforced until 28 February 2005, thus more than five years after its delivery.

A. Submissions by the parties

45. The applicant maintained his argument. The Government contested it but offered no specific comments concerning which circumstances had prevented the earlier enforcement of the judgment in question.

B. The Court's assessment

1. Admissibility

46. The Court, having regard to the criteria established in its case-law (see, in particular, *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, §§ 40 and 62, 19 April 2007) and bearing in mind also its findings in *Yeldashev v. Russia* (no. 5730/03, §§ 15-20, 12 May 2010; and *Crompton v. the United Kingdom*, no. 42509/05, § 54, 27 October 2009), sees no reason to doubt the applicability of Article 6 to the matter complained of. The dispute in question concerned a “right”, which could be said at least on arguable grounds to be recognised under national law, the dispute was genuine and serious and the result of the proceedings was directly decisive for the right in question. Moreover, the right at issue was of “civil” nature. Indeed, this was not disputed before the Court.

47. The Court also notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

48. The Court reiterates that the execution of a judgment given by any court must be regarded as an integral part of the “trial” for the purposes of Article 6 § 1 the Convention (see *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III; and *Hornsby v. Greece*, judgment of 19 March 1997, *Reports* 1997-II, p. 510, § 40). A delay in the execution of a judgment may be justified in particular circumstances, but the delay must not be such as to impair the essence of the right protected under Article 6 § 1 (see *Burdov*, cited above, § 35; *Androssov v. Russia*, no. 63973/00, § 52, 6 October 2005;

and *Gizzatova v. Russia*, no. 5124/03, § 20, 13 January 2005, *Raylyan v. Russia*, no. 22000/03, § 29, 15 February 2007). The reasonableness of the delay in the enforcement proceedings will depend on different factors, such as the complexity of the enforcement proceedings, the applicant's own behaviour and that of the competent authorities, the amount and the nature of court award (see *Raylyan*, cited above, § 48).

49. In the case at hand, the discharge of the applicant from military service was ordered by the judgment of 10 November 1999. It was conditional, however, on housing being provided. In accordance with the relevant domestic law, he was considered as serving voluntarily until the date of the provision of housing (see paragraph 28 above). The State authorities provided the applicant and his family with the flat by 20 February 2003. From the material submitted, it does not appear that he sought the enforcement of the judgment in respect of his discharge before that date (see paragraph 13 above).

50. That being so, the Court considers that the period of enforcement was two years: from the date when the applicant was issued with the occupancy voucher (20 February 2003) to the date when he was discharged from service (28 February 2005) (see paragraphs 9 and 15 above). That period has not been explained by the Government, and in the circumstances of the present case the Court finds no justification for that delay.

51. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE QUASHING OF THE FINAL JUDGMENT OF 9 DECEMBER 2004

52. The applicant moreover complained under Article 6 § 1 of the Convention that on 13 December 2005 the District Court had quashed the final judgment of 9 December 2004. He submitted in particular that the quashing had been obtained at the request of a prosecutor who had not been a party to the initial civil case and that he had not been notified of the date of the hearing and had therefore been unable to attend it.

A. Submissions by the parties

53. The Government did not offer any specific comments regarding the substantive issue of the quashing of the final decision and the participation of the prosecutor in the revision proceedings.

54. As to the failure to notify the applicant of the hearing on 13 December 2005, the Government disputed that his rights had been violated. On 30 November 2005 the District Court had sent him a summons to appear at the hearing. Thus, he had been informed that the prosecutor had

lodged a request to have the final judgment quashed and thus had an opportunity to make his submissions to the court. The problem had rather stemmed from the applicant's failure to duly inform the court about his change of address. Not until 27 December 2005 had he so informed the court. In any event, by having asked the District Court on 4 January 2006 to hear the case in his absence, he had waived his right to an oral hearing. It should also be borne in mind that nothing had prevented him from commenting on the prosecutor's revision request in writing.

55. The applicant maintained his complaint. He submitted in particular that, when he had requested the District Court on 4 January 2006 to dismiss the prosecutor's revision request in his absence, he had been unaware of the court hearing held on 13 December 2005.

B. The Court's assessment

1. Admissibility

56. The Court notes that the present proceedings concerned the quashing of the binding and enforceable decision that established the applicant's title to the flat. The complaints at issue are neither manifestly ill-founded within the meaning of Article 35 § 3 of the Convention nor inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

57. The Court reiterates that the right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares, in its relevant part, the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have finally determined an issue, their ruling should, in principle, not be called into question (see *Brumărescu v. Romania*, judgment of 28 October 1999, *Reports of Judgments and Decisions* 1999-VII, § 61, *Protsenko v. Russia*, no. 13151/04, § 25, 31 July 2008).

58. This principle insists that no party is entitled to seek re-opening of the proceedings merely for the purpose of a rehearing and a fresh decision of the case. Higher courts' power to quash or alter binding and enforceable judicial decisions should be exercised for correction of fundamental defects. The mere possibility of two views on the subject is not a ground for re-examination. Departures from that principle are justified only when made necessary by circumstances of a substantial and compelling character (see *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-X, and *Kot v. Russia*, no. 20887/03, § 24, 18 January 2007; *Protsenko*, cited above, § 26).

59. The Court notes that the procedure for quashing a final judgment was set out in Articles 392, 394 and 397 of the Russian Code of Civil Procedure (see paragraph 33 above). The Court will examine whether this procedure was applied in a manner which ensured respect for the principle of legal certainty.

60. In the first place the Court observes that the District Court's decision to revise the judgment of 9 December 2004 was motivated by the consideration that the invalidation of the occupancy voucher by the Military Court on 18 August 2005 had constituted an "essential" fact for revision purposes under Article 392 of the Code of Civil Procedure.

61. It is further to be noted that in the said decision of 18 August 2005 the Military Court found it established that the applicant had concealed information about his wife's ownership of other dwellings in another town and that this information would have been decisive for the Housing Committee's assessment of her housing needs. Since she had not qualified as a person "in need of better housing", the applicant could only have claimed housing rights in so far as concerned his own needs and those of his two sons. Referring to section 15 of the Federal Law on the Status of Servicemen and to the Ruling of 22 April 1999 by the Supreme Court of the Russian Federation (see paragraphs 17, 25 and 26 above), the Military Court observed that only those servicemen and members of their families who were "in need of better housing" had been entitled to State accommodation.

62. The applicant did not dispute that he had withheld this information, only that it had been relevant for the Housing Committee's assessment when it issued the occupancy voucher in respect of the flat in question that later enabled him to obtain title to the flat. However, he has not submitted any arguments before the Court calling into doubt the correctness of the domestic courts' above-mentioned interpretation of the relevant national law. In this connection it should be borne in mind that it is in the first place the responsibility of national courts to interpret provisions of national law (see *Waite and Kennedy v. Germany* [GC], no. 26083/94, 18 February 1999, § 54; and *Popov v. Moldova* (no. 2), no. 19960/04, § 47, 6 December 2005).

63. In the Court's view, therefore, in deciding to re-open the proceedings relating to the final judgment of 9 December 2004, the District Court did rely on considerations that could reasonably be viewed as being of a substantial and compelling character.

64. In these circumstances, the Court is satisfied that the notion of legal certainty implied by the right to a court under Article 6 § 1 of the Convention was sufficiently respected when the final judgment of 9 December 2004 was quashed.

65. The Court will not examine the applicant's various complaints regarding the procedure followed by the District Court in examining the revision request since these related to matters which, according to the Court's case-law (see, for instance, *Valentin Gorizdra v. Moldova* (dec.)

no. 53180/99, 2 July 2002; *X v. Austria*, no. 7761/77, decision of admissibility by the Commission, D.R. 14, p. 173), fell outside the scope of applicability of Article 6 § 1.

66. There has therefore been no violation of Article 6 § 1 of the Convention in respect of the District Court decision of 13 December 2005 to quash the final judgment of 9 December 2004.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE FAILURE TO NOTIFY THE APPLICANT OF THE APPEAL HEARING HELD ON 14 JUNE 2006 IN THE NEW PROCEEDINGS CONCERNING OWNERSHIP AND EVICTION

67. The applicant further complained under Article 6 § 1 of the Convention that he had not been informed of the appeal hearing held on 14 June 2006 in the new proceedings concerning ownership and eviction that took place after it had been decided to reopen the case.

A. Submissions by the parties

68. The Government asserted that the applicant had been notified of the appeal hearing in good time, that is, on 1 June 2006.

69. The applicant maintained his complaint. He stated that he had received the appeal court's summons on 14 June 2006 and, given the distance between the town of his residence at the time and Tambov, was unable to attend it.

B. The Court's assessment

1. Admissibility

70. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

71. The Court observes that postmarks on the envelope indicate that the appeal court's summons for the hearing of 14 June 2006 was despatched by the registry of the Tambov Regional Court on 2 June 2006 and arrived at the applicant's post office on 13 June 2006. In the light of these facts and the relevant domestic law (see paragraph 34 above), the Court accepts the applicant's argument that this summons was not served on him in good time.

72. Furthermore, nothing in the judgment of 14 June 2006 suggests that the appeal court examined the question whether the applicant had been duly summoned and, if he had not, whether the examination of his appeal should have been adjourned. In contrast, it appears that the prosecutor, the applicant's opponent, was present and made oral submissions to the Regional Court.

73. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Yakovlev v. Russia*, no. 72701/01, § 19 et seq., 15 March 2005; *Groshev v. Russia*, no. 69889/01, § 27 et seq., 20 October 2005; *Mokrushina v. Russia*, no. 23377/02, § 20 et seq., 5 October 2006; *Prokopenko v. Russia*, no. 8630/03, § 17 et seq., 3 May 2007; *Subbotkin v. Russia*, no. 837/03, § 18 et seq., 12 June 2008; and *Litvinova v. Russia*, no. 34489/05, § 16 et seq., 14 November 2008).

74. Having regard to the facts of the present case, the Court sees no reason to distinguish this from previous cases in which it has found a violation of Article 6 § 1 of the Convention on account of failure to afford a party an opportunity to attend the appeal hearing and to plead his or her case in adversarial proceedings.

75. It follows that there has been a violation of the applicant's right to a fair hearing under Article 6 § 1 of the Convention in the appeal proceedings before the Regional Court.

V. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

76. The applicant further complained that the eviction of him and his family from the flat had infringed his right to respect for their home and that his entitlement to housing established by the judgment of 10 November 1999 had not been honoured. He invoked Article 8 of the Convention which provides as follows:

“1. Everyone has the right to respect for his private 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 or morals, or for the protection of the rights and freedoms of others.”

A. Submissions by the parties

77. The Government argued that, under domestic law, the applicant's family had not been entitled to occupy the flat in question and had consequently been evicted from it.

78. The applicant maintained his complaint.

B. The Court's assessment

1. Admissibility

79. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

80. The Court reiterates that to begin with the flat in question was the property of the State. The applicant and his family were first able to occupy the flat on the basis of a social tenancy agreement with the relevant military authority. Then, by a judgement of 9 December 2004, the applicant and his two sons were granted joint title to the flat free of charge. That judgment was quashed by the District Court on 13 December 2005 after the Military Court had annulled the relevant occupancy voucher on 18 August 2005 on the ground of discovery of a fact that the applicant had concealed, namely that his wife had joint title to a flat in another town. When examining the matter anew, the District Court (in addition to dismissing his ownership claim) ordered that he and his family be evicted from the flat, by a judgment of 15 February 2006. On an appeal by the applicant, that judgment was upheld by the Regional Court on 14 June 2006.

81. It has not been disputed that the judicial proceedings that ended with the decision to evict the applicant from the flat amounted to an interference with his right to “respect for ... his home” within the meaning of paragraph 1 of Article 8. The Court sees no reason to hold otherwise.

82. The Court is also satisfied that the interference was “in accordance with the law”, namely section 15 of the Law on the Status of Servicemen, as interpreted by the Supreme Court of the Russian Federation in its Ruling of 22 April 1999 no. 2n-137/98 (see paragraphs 25 to 27 above), and that it pursued the legitimate aim of “protection of the rights and freedoms of others”, namely other servicemen who, in a situation of scarcity of housing, may claim such benefits from the State.

83. As to the further question whether the interference was “necessary in a democratic society”, the Court will have regard to the principles set out in its case-law (notably in *Connors v. the United Kingdom*, no. 66746/01, §§ 81–84, 27 May 2004; see also *McCann v. the United Kingdom*, no. 19009/04, § 50, 13 May 2008; and *Paulić v. Croatia*, no. 3572/06, §§ 43–45, 22 October 2009) and consider whether the interference answered “a pressing social need” and, in particular, was proportionate to the

legitimate aim pursued. While it is for the national authorities to make the initial assessment of necessity, the final evaluation as to whether the reasons cited for the interference are relevant and sufficient remains subject to review by the Court for conformity with the requirements of the Convention. In this regard a margin of appreciation is left to the national authorities (*Connors*, cited above):

“82. ... The Court has ... stated that in spheres such as housing, which play a central role in the welfare and economic policies of modern societies, it will respect the legislature's judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation ... It may be noted however that this was in the context of Article 1 of Protocol No. 1, not Article 8 which concerns rights of central importance to the individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community ... Where general social and economic policy considerations have arisen in the context of Article 8 itself, the scope of the margin of appreciation depends on the context of the case, with particular significance attaching to the extent of the intrusion into the personal sphere of the applicant ...

And the scope of the margin of appreciation may depend on the existence of procedural safeguards (*ibidem*):

“83. The procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. In particular, the Court must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 ...”

The Court further reiterates that in paragraph 43 of the above-cited *Paulić* judgment it held:

“[A]ny person at risk of an interference with his right to home should in principle be able to have the proportionality and reasonableness of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 of the Convention, notwithstanding that, under domestic law, he or she has no right to occupy a flat (see *McCann v. the United Kingdom*, no. 19009/04, § 50, 13 May 2008). The Court, however, emphasises that such an issue does not arise automatically in each case concerning an eviction dispute. If an applicant raises an Article 8 defence to prevent eviction, it is for him to do so and for the opponent to rebut the claim. As previously held, the Court does not accept that the grant of the right to an occupier to raise an issue under Article 8 would have serious consequences for the functioning of the domestic systems or for the domestic law of landlord and tenant (see, *McCann v. the United Kingdom*, cited above, §§ 28 and 54).”

84. In the present instance, after the case had been re-opened, new proceedings took place in which the applicant's eviction from the flat was ordered by final judgment (see paragraphs 21 to 22 above). In those proceedings, the Regional Court, as had the District Court, omitted to deal with the applicant's claim that pursuant to the judgment of 10 November 1999 the national authorities still were obliged to provide him with housing in accordance with the law applicable to servicemen discharged from

military service (see paragraphs 7, 25 and 29 above). The Regional Court summarily endorsed the District Court's reasoning confining itself to observing that the applicant had obtained the occupancy voucher unlawfully and making no assessment of the proportionality of the eviction of him and his family from the flat. In addition, the Regional Court reached this conclusion in proceedings in which it failed to give the applicant, unlike his opponent, an opportunity to attend the appeal hearing and to plead his case in adversarial proceedings (see paragraph 22 above), in breach – as found above – of the fair hearing guarantee in Article 6 § 1 of the Convention (see paragraphs 71 to 75 above).

85. Against this background, it appears that in the proceedings under consideration the applicant was dispossessed of his home without any possibility to have determined his claim to the effect that his commander was still obliged to provide him with other housing in accordance with the law. In these circumstances, it can hardly be said that the “procedural safeguards” required by Article 8 for the assessment of the proportionality of the interference were met in the said proceedings (see *Paulić*, cited above, §§ 44 and 45; and *McCann*, cited above, §§ 53 and 54). Accordingly, because of the lack of adequate procedural safeguards, there has been a violation of Article 8 of the Convention.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

86. In addition, the applicant raised other numerous complaints under Articles 4 and 6 of the Convention, Article 1 of Protocol No. 1 to the Convention and Article 2 of Protocol No. 4 to the Convention.

87. Having considered his submissions in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

88. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

89. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

90. The applicant claimed 7,500 euros (EUR) in respect of non-pecuniary damage.

91. The Government contested the claim as unsubstantiated.

92. The Court notes that it has found a combination of violations in the present case and considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on it.

B. Costs and expenses

93. The applicant also claimed 1,134.60 Russian roubles (RUB) in respect of costs and expenses. In support of his claim he submitted a number of postal receipts.

94. The Government submitted that the applicant had failed to substantiate his claim for costs and expenses.

95. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the above criteria and in so far as the applicant's claims were supported by the relevant documents, the Court awards the applicant EUR 28 for costs and expenses in the proceedings before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

96. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the delayed enforcement of the final judgment of 10 November 1999 in respect of the applicant's discharge from military service, quashing of the final judgment of 9 December 2004, the domestic authorities' failure to notify the applicant of the hearing on 14 June 2006 and, lastly, the violation of his right to respect for his home admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention regarding the delayed enforcement of the judgment of 10 November 1999 in respect of the applicant's discharge from military service;
3. *Holds* that there has been no violation of Article 6 § 1 of the Convention on account of the quashing of the binding and enforceable decision in the applicant's favour of 9 December 2004;
4. *Holds* that there has been a violation of Article 6 §1 of the Convention on account of the domestic authorities' failure to notify the applicant of the appeal hearing of 14 June 2006;
5. *Holds* that there has been a violation of Article 8 of the Convention in respect of the applicant's eviction from the flat in Chicherina Street in Tambov;
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable on the date of settlement:
 - (i) EUR 7,500 (seven thousand and five hundred euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage;
 - (ii) EUR 28 (twenty-eight euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 3 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President