



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

FIRST SECTION

CASE OF VASILYEV AND KOVTUN v. RUSSIA

(Application no. 13703/04)

JUDGMENT

STRASBOURG

13 December 2011

FINAL

13/03/2012

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

In the case of Vasilyev and Kovtun v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Peer Lorenzen,
Khanlar Hajiyeu,
Mirjana Lazarova Trajkovska,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 November 2011,

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

PROCEDURE

1. The case originated in an application (no. 13703/04) 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 two Russian nationals, Mr Viktor Ivanovich Vasilyev and Mr Vasiliy Grigoryevich Kovtun (“the applicants”), on 22 March 2004.

2. The applicants were represented by Mr P.A. Pursiainen, a lawyer practising in St Petersburg. The Russian Government (“the Government”) were initially represented by Ms V. Milinchuk, and subsequently by Mr G. Matyushkin, the former and current Representatives of the Russian Federation at the European Court of Human Rights respectively.

3. On 19 June 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). On 18 January 2011 the parties were asked to submit further observations under Rule 54 § 2 (c) of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1951 and 1947 and live in St Petersburg and Sosnoviy Bor (Leningrad Region) respectively.

A. Customs proceedings

5. As can be seen from a pro forma invoice dated 7 April 1999 and submitted by the first applicant (Mr Vasilyev), a private company named Nissan Trading Europe Limited offered to undertake to sell him a car and to ship it to him. The invoice indicated the means of shipping (CIF Helsinki) and the details concerning the car, including its price, namely 11,900 United States dollars (USD). The second applicant (Mr Kovtun) submitted a similar invoice dated 30 March 1999 for a car priced at USD 14,900.

6. In July 1999 the applicants submitted customs declarations and the above invoices to the Russian customs authorities for clearance. The applicants applied for a waiver of customs duties, considering that their status under the Chernobyl-related legislation entitled them to such an exemption. On 5 August 1999 the Sosnovoborsk Town Court of the Leningrad Region ordered the customs authorities to release the second applicant's car for use without payment of any customs duties. The President of the Leningrad Regional Court applied for supervisory review of this decision. On 10 December 1999 the Presidium of the Leningrad Regional Court ("the Presidium") granted his request, and set aside the judgment of 5 August 1999. The Presidium considered that on the date of the application for customs clearance, the second applicant had no entitlement to an exemption. It appears that proceedings to the same effect also took place in respect of the first applicant.

7. In the meantime, on 27 July 1999 the national authorities instituted criminal proceedings (case no. 990666) against unspecified persons in relation to numerous unlawful imports of cars from abroad. On 12 and 16 August 1999 an investigator issued charging orders in respect of a large number of cars, including the above-mentioned cars which had been submitted for customs clearance by the applicants. They were interviewed as witnesses. It was established that the applicants' situation was not related to the circumstances of case no. 990666. The said charging orders were accordingly annulled.

8. It appears that in or around September 2000 the applicants were requested to provide additional documents in order to finalise the customs clearance. When they did not comply with this requirement in time, the customs authority impounded the cars and placed them in the hands of a State-owned enterprise.

9. In November 2000 the applicants offered to pay the required customs duty for customs clearance of the cars. They also unsuccessfully sought permission to take the cars out of Russian territory, citing financial hardship.

B. Confiscation orders

10. On 14 and 22 November 2000 customs officers compiled reports on the applicants' alleged violation of applicable customs regulations and applied for confiscation orders on account of the applicants' alleged non-declaration of imported goods, in breach of Article 279 § 1 of the Customs Code.

11. By judgments of 24 July 2002 the Volkhov Town Court, with Judge P. sitting in a single-judge formation, issued confiscation orders in respect of the cars. The judge held as follows:

“[The second applicant] was mentioned as the owner of the car submitted for customs clearance...The customs inquiry and the criminal inquiry concerning forgery of authority forms established that [the second applicant] had been contacted by a certain Sergey, whom he did not know, and had been asked to carry out, for a fee, the customs clearance of a car for him (Sergey). On 17 July 1999 [the second applicant] had forged an authority form for importing a specific car from abroad. He had not signed any other document for the customs authorities, and had not handed over any money to buy the car. As he explained, he indeed had signed an authority form and had submitted the clearance documents, whereas the car had been paid for by Sergey. [The second applicant] had been present during the customs inspection of the car. He claims to be the car owner. However, a handwriting expert report indicates that while [the second applicant] has signed the authority form, the customs declaration has been signed by another person. Thus, [the second applicant] has not properly carried out the customs clearance.

The investigating authorities issued a charging order in respect of the car... On 23 June 2000 the charging order was revoked... On 27 September 2000 [the second applicant] was informed of the need to process the customs clearance ... but he did not comply with the required time-limits. Thus he committed a violation of the customs regulations, in breach of Article 279 § 1 of the Customs Code... No fine can be imposed, owing to the expiry of the liability time-limits... [The second applicant] should be held liable and the car should be seized as the direct object of the customs offence... Such confiscation may be imposed irrespective of the principal or subsidiary nature of the penalty ... and may be imposed within three years of the date of the violation of the customs regulations. Under Article 380 of the Code it does not matter whether the person responsible for the violation owned the vehicle to be seized as the object of the offence. Also, it does not matter whether the owner has been established...”

A judgment in similar terms was issued by the judge also in respect of the first applicant. The applicants had not been notified of the hearing and did not attend it.

12. Having learnt about the above judgments, on 29 July and 2 August 2002 the applicants' representatives lodged appeals.

13. Despite the pending appeal proceedings, on 6 August 2002 the confiscation orders were submitted to the local bailiffs' office for execution. The orders bore the Town Court's stamp, indicating that they had become final, and were signed by Judge P. and the court registrar.

14. On 8 August 2002 the bailiff handed over the cars to a State enterprise, which subsequently sold them.

15. On 27 November 2002 the Leningrad Regional Court examined the applicants' appeals against the confiscation orders of 24 July 2002 and annulled them on the ground that the Volkhov Town Court had had no jurisdiction to hear the case. The case was remitted for examination by the Primorskiy District Court of St Petersburg.

16. On 5 February 2003 the Primorskiy District Court held the following:

“As follows from Article 4.5 of the Code of Administrative Offences in force since 1 July 2002, a decision concerning a customs offence cannot be issued after the expiry of one year from the date on which the offence was committed. Under Article 24.5 § 6 of the Code, administrative offence proceedings cannot be initiated or continued if the time-limits for liability have expired. Since the offence was committed more than one year ago, the proceedings should be discontinued...”

The car ... and the documents should be returned to the lawful holder after the necessary customs clearance. If the holder cannot be identified, what should be done with the car should be considered in civil court proceedings...”

No appeal was lodged against this decision, which accordingly became final.

C. Attempts to obtain compensation

17. The applicants sought the institution of criminal proceedings against Judge P., who had wrongly allowed the enforcement of the confiscation orders to proceed before the appeal proceedings against these orders had been determined. By a letter of 7 May 2003 the Prosecutor's Office of the Leningrad Region dismissed their request, noting that the confiscation orders had been annulled. The regional Judges Qualifications Board also refused to deal with the applicants' complaint.

18. In addition, the applicants, acting through Mr Pursiainen, brought civil proceedings against the Judicial Department of the Supreme Court of the Russian Federation, the Ministry of Justice and the customs office. They claimed compensation for the pecuniary loss caused to them by the premature execution of the confiscation orders. The applicants complained that the reports of 14 and 22 November 2000 (see paragraph 10 above) had been unlawfully compiled in their absence, that they had not been notified of those reports and that the customs office had applied to the wrong court for the confiscation orders. According to the applicants, the bailiffs had unlawfully initiated enforcement proceedings and should have declined jurisdiction in favour of another bailiffs' office. The applicants contended as follows:

“The disposal of the cars was rendered possible owing to the violation of the legislation by the officials of the customs office, the judge of the Town Court and the

bailiff. An individual violation by one of those public officials could not have, in itself, resulted in the unlawful disposal of the cars which caused pecuniary damage... The actions of the above authorities, taken in their entirety, have caused significant pecuniary damage.”

The applicants relied on Article 6 of the Convention, Article 53 of the Constitution and the Constitutional Court’s ruling of 25 January 2001, as well as Article 322, Article 1064 and Article 1070 § 2 of the Civil Code (see paragraphs 25 and 28-30 below).

19. By a procedural decision of 30 June 2003 the Oktyabrskiy Court of the Admiralteyskiy District of St Petersburg held that the case could not be examined. Referring to Articles 132 and 136 of the Code of Civil Procedure, the court held that the action for damages required evidence of a prior criminal conviction of a judge. Thus, the applicants were required to submit a copy of such a judgment.

20. In November 2003 the applicants wrote to the above court, inquiring about the state of the proceedings in their case. The District Court replied, restating the contents of the decision of 30 June 2003. Considering that the applicants had not received a copy of that decision, the court allowed them to submit the required documents by 11 December 2003. Alternatively, they were informed of their right to lodge an appeal against the decision of 30 June 2003, also seeking that the expired time-limit for an appeal be extended on account of a valid reason.

21. The applicants’ lawyer appealed, relying on the ruling of the Constitutional Court of 25 January 2001 (see paragraph 29 below), and arguing that a criminal court judgment was not indispensable in the circumstances.

22. On 28 January 2004 the St Petersburg City Court examined the appeal and endorsed the reasoning of the decision of 30 June 2003.

23. On 1 March 2004 the District Court established that the applicants had not complied with the decision of 30 June 2003, and thus discontinued the case. The applicants did not appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Procedural requirements concerning examination of a civil case

1. *Code of Civil Procedure of 2002*

24. Article 132 of the Code of Civil Procedure of 2002 (“the CCP”) provides that a statement of claim is to be accompanied by, *inter alia*, documents confirming the circumstances underlying the claims. The claimant’s failure to comply with the requirements of Article 132 would result in the court refraining from examining the case and affording the

claimant a time-limit for remedying the shortcoming. If the shortcoming has not been remedied within the time-limit provided, the statement of claim should be treated as never having been lodged and should be returned to the claimant (Article 136).

2. Subsequent jurisprudence of the Russian Constitutional Court

25. The Constitutional Court of Russia considered that a judge had a discretionary power, including a power to establish a reasonable time-limit for remedying shortcomings in such claims. The judge's discretionary power was aimed at ensuring the correct and timely examination of civil cases, and did not violate a claimant's rights. In any event, the claimant could resubmit his statement of claim in new proceedings (see, among others, decision no. 1463-O-O of 25 November 2010). The judge should issue a reasoned decision concerning a refusal to process a case (see, among others, decision no. 68-O-O of 25 January 2007).

26. The Constitutional Court has also held, with reference to Articles 134 and 13 of the CCP, that the absence of a special statute concerning jurisdictional matters for claims against unlawful actions or inaction on the part of a judge did not imply that this type of cases should not be governed by the general jurisdictional rules of the CCP (see, among others, decision no. 431-O-O of 19 June 2007, and decision no. 233-O-O of 19 March 2009). Any other interpretation would result in a denial of access to court, and a denial of compensation for damage (see decision no. 210-O of 27 May 2004). In the absence of a special legal regulation (concerning the grounds and procedure for claiming compensation from the State in respect of damage caused by unlawful actions or inaction on the part of a court or a judge), the courts should directly apply the relevant provisions of the Constitution (see decision no. 685-O-O of 26 May 2011).

27. Article 392 of the CCP contains a list of situations which may justify the reopening of a finalised case on account of newly discovered circumstances. By a ruling of 26 February 2010 the Constitutional Court of Russia indicated that this Article should be interpreted as, in principle, allowing the launching of a procedure to have a final judgment re-examined on account of newly discovered circumstances, such as the finding of a violation of the European Convention in a given case by the European Court of Human Rights (see also the Constitutional Court's decision no. 853-O-O of 7 June 2011). Article 392 of the Code was amended accordingly with effect from 1 January 2012.

B. State liability

28. Article 1069 of the Civil Code ("the Code") provides that loss sustained as a result of unlawful actions or inaction on the part of public authorities or their officials should be compensated. Loss sustained as a

result of the administration of justice is recoverable if the judge's fault has been established in criminal proceedings (Article 1070 § 2 of the Code).

29. By a ruling of 25 January 2001, the Constitutional Court provided an interpretation of Article 1070 § 2 of the Code. It held that a judge's criminal conviction was a necessary element for a claim for damages on account of an unlawful judicial decision issued by that judge in the context of civil proceedings. However, a criminal conviction was not required if the claim concerned loss or damage sustained through other violations in judicial proceedings, such as, for instance, a failure to examine the case within a reasonable time. The Constitutional Court held that the federal legislature should adopt a legislative framework governing that second category of tort claims and, in particular, clarifying the grounds for recovering damages and related jurisdictional matters.

30. The Constitutional Court indicated that the absence of the above-mentioned legislative framework should not serve as a reason for refusing to deal with a case. The absence of such a framework did not imply the inapplicability of the general rules concerning the grounds and procedure for establishing State liability or concerning jurisdictional matters (see decision no. 210-O of 27 May 2004 and decision no. 278-O-II of 5 March 2009). Subsequently, the Constitutional Court developed its position (see decision no. 524-O-II of 8 April 2010) as follows:

“Administration of justice is a special type of State authority. When applying a general legal rule in the circumstances of a given case, a judge provides an interpretation of the rule, takes a decision within the scope of his (at times wide) margin of appreciation provided by the law and, often, assesses the circumstances without the benefit of sufficient information... A party to court proceedings benefiting from an annulment or amendment of a judgment by a higher court is entitled to consider that that judgment had not been in compliance with the law through the judge's fault... Article 1070 § 2 excludes a presumption of culpability on the tortfeasor's part, and requires the establishment of the judge's guilt in a criminal judgment as an additional condition of State liability... Thus, Article 1070 § 2 links State liability to a criminal act of a judge, which was premeditated or owing to the improper exercise of his powers ... when examining a case and taking a judicial decision... The above does not preclude compensation in respect of damage caused in other circumstances or contexts, when the judge's guilt may be established by a court decision outside the sphere of criminal law...”

C. Customs Code of 1993

31. Article 380 of the Customs Code provided that the execution of a confiscation order could only occur after the expiry of the time-limit for appeal. Confiscation could proceed irrespective of whether or not the goods to be confiscated were owned by the person who had been found to be in breach of the customs regulations, for instance under Article 279 of the Code concerning the non-declaration of imported goods. By a ruling of

14 May 1999 the Constitutional Court held that Article 380 was in compliance with the Constitution. The court noted that frequently the person charged with a customs offence, for instance the person omitting to make a customs declaration, was not necessarily the owner of the goods to be cleared; the person could be just a carrier or an intermediary, such as a customs broker.

32. Article 380 of the Code ceased to have effect on 1 July 2002.

D. Civil Code

33. Civil rights and obligations are conferred by virtue of legal grounds prescribed by law, such as contracts, acts of public authorities if required by law, or a court judgment. An entitlement concerning property, which should be subject to State registration, arises, as a rule, from the moment of such registration (Article 8 of the Civil Code). The Russian Government's Decree no. 938 of 12 August 1994 required State registration of vehicles, including those imported from abroad.

34. Under Article 167 of the Civil Code, a voided transaction does not give rise to any legal consequences beyond those related to its annulment, and is void *ab initio*. In the case of a voided transaction, the parties should return to each other what they have received or, if this is not practicable, they should pay compensation. Under Article 302 of the Civil Code, the original owner can claim property back from a *bona fide* purchaser who has acquired it from an unauthorised seller without knowing or being in a position to know that the seller was unauthorised. However, such a claim can only arise if the property was lost, stolen, or otherwise taken out of the original owner's control.

35. In accordance with a ruling of 25 February 1998 by the Plenary Session of the Supreme Commercial Court of Russia ("the ruling"), if a property had been sold at a public auction held in compliance with the Enforcement Proceedings Act, the court should grant the owner's claim for restitution of his property under Article 302 of the Civil Code if the property sold had been lost by the owner or had been stolen from him, or had otherwise been taken out of his control; the above should be applied even against a *bona fide* purchaser of the property (paragraph 26 of the ruling).

36. By a ruling of 21 April 2003, the Constitutional Court interpreted Article 167 of the Civil Code as not allowing the original owner to reclaim his property from a *bona fide* purchaser, unless there was a special legislative provision to this effect. Instead, a claim vindicating prior rights (*виндикационный иск*) could be lodged under Article 302 of the Civil Code.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

37. The applicants complained that they had been denied access to court because the national courts had refused to examine their claims for compensation against a number of public authorities. The Court will examine this complaint under Article 6 § 1 of the Convention, which reads as follows:

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

A. Submissions by the parties

38. The Government contended that the application form had been lodged on 31 May 2004 and had been signed by Mr Pursiainen, whereas the respective authority forms had been submitted much later, namely on 31 March and 4 April 2006. The Government concluded that the application had therefore been validly lodged only on 31 March and 4 April 2006, that is, after the expiry of the six-month time-limit under Article 35 § 1 of the Convention. As to the substance of the present complaint, the respondent Government argued that the applicants had no title or pecuniary rights in respect of the cars. It had been incumbent on them to substantiate their title with due regard to the principle *affirmanti incumbit probatio*. Thus, their claims in the compensation proceedings before the national courts had not been in relation to any “civil rights”. Consequently, the courts’ refusal to examine their case on the merits had not frustrated their right to a court. In any event, the applicants had been rightly required to produce a criminal court judgment confirming the criminal conviction of a judge. The claims, which were directed against several public authorities, had depended directly on the existence of such a judgment and could not be processed without it. The applicants had referred to Article 1070 § 2 of the Civil Code citing, as the basis for their action, an unlawful action by a judge, rather than the delivery of an unlawful court decision.

39. The applicants argued that they had complied with the admissibility criteria under Article 35 § 1 of the Convention. In particular, they submitted that the respective authority forms had first been enclosed with the application form in 2004. As to the substance of the present complaint, the applicants argued that they had been the owners of the confiscated cars and that no court had ever made findings to the contrary. The national courts had arbitrarily refused to deal with their claims for compensation directed against the public authorities.

B. The Court's assessment

1. Admissibility

40. As to the six-month rule, the Court observes that the case file contains authority forms dated 21 and 22 May 2004, authorising Mr Pursiainen to be the applicants' representative before the Court. The complaint was lodged on 31 May 2004 within six months after the domestic court decisions issued on 28 January and 1 March 2004. The Government's argument should consequently be dismissed.

41. Furthermore, the Government argued that no "civil rights" had been at stake in the relevant court proceedings, as the applicants had had no title to the cars and could not have suffered any damage of account of their confiscation and subsequent sale. The Court reiterates, in that connection, that Article 6 § 1 extends to "*contestations*" (disputes) over "civil rights" which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether they are also protected under the Convention (see, as a recent authority, *Enea v. Italy* [GC], no. 74912/01, § 103, ECHR 2009-...)

42. The Court notes that the applicants claimed compensation in respect of allegedly unlawful actions on the part of several public authorities, including a judge. It has not been seriously disputed that such a substantive right to compensation was, at least on arguable grounds, recognised under Russian law, as interpreted by the Russian Constitutional Court (see paragraphs 28-30 above, and, by way of comparison, *Georgiadis v. Greece*, 29 May 1997, §§ 34-36, *Reports of Judgments and Decisions* 1997-III, and *Neves e Silva v. Portugal*, 27 April 1989, § 37, Series A no. 153-A). It is also observed that the right to compensation, which the applicants sought to assert before the domestic courts, had as a factual basis the pecuniary damage to what they considered to be their property. The applicants' ownership was not challenged in the court proceedings at the heart of the present complaint.

43. Therefore, the Court considers that Article 6 of the Convention is applicable.

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

2. Merits

45. The Court reiterates that Article 6 § 1 secures to everyone the right to have a claim relating to his civil rights and obligations brought before a court or tribunal. In this way, that provision embodies the "right to a court", of which the right of access to a court, that is, the right to institute

proceedings before a court, constitutes one aspect; however, it is an aspect that makes it in fact possible to benefit from the further guarantees laid down in paragraph 1 of Article 6 (see *Sergey Smirnov v. Russia*, no. 14085/04, § 25, 22 December 2009, and *Teltronic-CATV v. Poland*, no. 48140/99, § 45, 10 January 2006).

46. The right to a court is not absolute and may be subject to limitations. The limitations applied should not bar or restrict the access afforded to the individual in such a way or to such an extent that the very essence of that right is impaired. Furthermore, the Court underlines that a limitation will not be compatible with Article 6 § 1 unless it pursues a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the legitimate aim sought to be achieved (see *Sergey Smirnov*, cited above, §§ 26 and 27; *Jedamski and Jedamska v. Poland*, no. 73547/01, § 58, 26 July 2005; and *Kreuz v. Poland*, no. 28249/95, §§ 54 and 55, ECHR 2001-VI).

47. The Court further reiterates that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see *Société Anonyme Sotiris and Nikos Koutras Attee v. Greece*, no. 39442/98, § 17, ECHR 2000-XII).

48. Turning to the present case, the Court observes that after having been submitted to a court, the applicants' case was not examined on the merits because the statement of claim was not accompanied by a document confirming the circumstances underlying the claims (a criminal court judgment against a judge), as required under the Russian Code of Civil Procedure (see paragraphs 24 and 25 above).

49. The main thrust of the applicants' argument concerns their disagreement with the national courts' conclusion that their case could be left unexamined for failure to confirm the circumstances underlying the claims by providing a criminal judgment convicting a judge of a criminal offence. In the instant case the applicants attempted to sue the State for the damage caused by a mistake allegedly committed by the court registrar and the judge who had examined their case. The national courts refused to deal with the applicants' claims on the ground that they had not submitted a criminal court judgment convicting the judge in question.

50. Under the Russian Civil Code, loss sustained as a result of the administration of justice is recoverable if the judge's fault has been established in criminal proceedings. In 2001 the Russian Constitutional Court held that a judge's criminal conviction was a necessary element for a claim for damages sustained as a result of an unlawful judicial decision issued by that judge in civil proceedings. However, a criminal conviction was not required if the claim concerned damage incurred through other

violations in judicial proceedings, such as, for instance, a failure to examine the case within a reasonable time. The Constitutional Court held that the legislature should adopt a legislative framework governing that second category of claims and, in particular, clarifying the grounds for recovering damages and related jurisdictional matters (see paragraphs 28 and 29 above).

51. In the Court's view, the absence of the above-mentioned legislative framework should not necessarily serve, in the Russian legal system, as a reason for refusing to deal with a case. Indeed, as the Russian Constitutional Court subsequently indicated in that connection, the absence of such a framework did not imply the inapplicability of the general rules concerning the grounds and procedure for establishing State liability or concerning jurisdictional matters (see paragraph 30 above).

52. The national courts in the present case failed to examine the applicants' claims in the light of the Constitutional Court's position as to the kind of procedural framework which should have been applied for processing such claims; and gave no reasons for their decision that the applicants' case fell within the first category of cases which required a judge's criminal conviction as a condition for their examination.

53. Furthermore, the Court is not satisfied that the relevant rules in the present case met the quality-of-law requirement under the Convention and were sufficiently foreseeable. The applicants were entitled to expect a coherent system based on a clear, practical and effective opportunity to assert their claims against the State (see *De Geouffre de la Pradelle v. France*, 16 December 1992, § 34, Series A no. 253-B). The Court has previously found a violation of Article 6 § 1 of the Convention on account of the State's prolonged and unexplained failure to provide a legislative framework, thus depriving the applicant of a procedural possibility of bringing a similar claim for compensation, and of obtaining its examination on the merits (see *Chernichkin v. Russia*, no. 39874/03, §§ 28-30, 16 September 2010).

54. It is true that despite the national courts' decision to leave the case unexamined, the applicants had the possibility of resubmitting the case provided that they complied with the formal requirements, including the one at the heart of the present complaint. However, the Court considers that this possibility does not attenuate the limitation on the right of access to court in the present case, since the underlying problem resided in the applicable legislation (see, by way of comparison, *Kolovangina v. Russia*, no. 76593/01, § 26, 11 December 2008). In view of the above considerations, the Court concludes that the very essence of the applicants' right of access to court was adversely affected.

55. Lastly, the Court observes that the requirement to produce a criminal court conviction in respect of a judge related to claims directed against the judiciary and/or a judge. Indeed, this was the applicants' central grievance.

However, by leaving the relevant claim unexamined for failure to submit a criminal court judgment, the national courts also left unexamined the claims against the other respondents, namely the customs office and the bailiff. It does not appear that the examination of those claims required a criminal court judgment in respect of a judge.

56. In view of the foregoing, there has been a violation of Article 6 § 1 of the Convention in that the applicants' right of access to a court was disproportionately impaired.

II. ALLEGED VIOLATIONS OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

57. The applicants complained that the seizure and subsequent sale of the cars, as well as the lack of compensation, had violated their rights under Articles 6 and 17 of the Convention, and under Article 1 of Protocol No. 1. The Court will examine the above complaints under Article 1 of Protocol No. 1, which read 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 or to secure the payment of taxes or other contributions or penalties.”

A. Submissions by the parties

1. *The Government*

58. The respondent Government argued that the applicants had not complied with the six-month rule (see paragraph 38 above) and that they had not brought any court proceedings challenging the lawfulness of the charging orders issued in respect of the cars and their actual impounding. The applicants should have brought civil proceedings to determine who was entitled to benefit from the restitution of the cars ordered by the judgments of 5 February 2003. The domestic court decisions indicated that the cars were to be returned to their “lawful holders”/“lawful possessors” («законные владельцы» in Russian) who were not necessarily the owners of the cars. In addition, they should have sued the customs officials or the bailiff. In any event, having received the orders of 5 February 2003, the applicants had not attempted to reclaim the cars from the State or under Article 302 of the Civil Code, which provided the owners with the

possibility of pursuing an action against any *bona fide* purchasers of the cars.

59. Furthermore, the Government argued that the applicants had never had any title to the cars. Nor had they produced any appropriate and sufficient evidence to this effect before the Court. No court had ever confirmed their title. The ownership issue had never been considered by the national courts, since such a matter was extraneous to the proceedings concerning customs offences and the eventual confiscation of the imported cars.

60. As to the substance of the complaint, the Government argued that the cars had been lawfully seized as physical evidence and attached to the case file in relation to the customs offence. The confiscation orders of 24 July 2002 had not impinged upon the rights of any lawful owners, since those orders had been quashed on appeal. The opening of enforcement proceedings by the bailiffs had been lawful. The applicants had not been parties to the enforcement proceedings and there was no requirement that they should have been informed about them.

61. It followed from the above that the applicants had no right to compensation against the State, since none of their substantive rights had been violated.

2. *The applicants*

62. The applicants affirmed, with reference to invoices, that they had been the owners of the cars at the time of the customs clearance and during the ensuing proceedings. No other documents concerning ownership title had been prepared during the purchase of the cars. Their ownership of the cars could not be extinguished by the fact that they had not complied with the applicable customs clearance rules or the registration requirements. Their ownership had never been challenged at the domestic level.

63. The applicants argued that they had exhausted domestic remedies by lodging a court action against the State. However, they had been denied access to a court in the context of that claim. As to a court action against any *bona fide* purchasers of the cars, it would have no prospect of success and, in any event, Russian law did not allow for the restitution of property which had not previously received customs clearance.

64. The applicants thus maintained that they had been arbitrarily deprived of their cars. In particular, they contended that the execution of the confiscation orders before they had become final had been unlawful. The courts' refusal to examine their claims for compensation had also been unlawful.

B. The Court's assessment

1. Admissibility

(a) The existence of “possessions” within the meaning of Article 1 of Protocol No. 1

65. The Court reiterates that Article 1 of Protocol No. 1 applies only to a person's existing possessions and does not guarantee the right to acquire possessions (see *Marckx v. Belgium*, 13 June 1979, § 50, Series A no. 31). Consequently, a person who complains of a violation of his or her right under Article 1 of the Protocol must first show that such a right existed; a “claim” can only fall within the scope of that Article if it is sufficiently established to be enforceable (see *Novikov v. Russia*, no. 35989/02, § 33, 18 June 2009, with further references).

66. The concept of “possessions” referred to in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to the ownership of physical goods and is independent from the formal classification in domestic law: certain other rights and interests constituting assets can also be regarded as “property rights”, and thus as “possessions” for the purposes of this provision. In each case the issue that needs to be examined is whether the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest protected by Article 1 of Protocol No. 1 (see *Depalle v. France* [GC], no. 34044/02, § 62, 29 March 2010).

67. The Court observes that in July 1999 the applicants submitted customs declarations to the Russian customs authorities for clearance in respect of two cars (see paragraphs 5 and 6 above). Subsequently, they were allowed to appeal against the confiscations orders in respect of these cars. The applicants' ownership was not challenged in the domestic court proceedings (see, for comparison, *Novikov*, cited above, § 36).

68. The Court considers that the circumstances of the present case, considered as a whole, conferred on the applicants titles to a substantive interest protected by Article 1 of Protocol No. 1. Thus, the Court accepts that the applicants may claim to have had “possessions” in relation to the above-mentioned cars. Thus, Article 1 of Protocol No. 1 is applicable.

(b) Exhaustion of domestic remedies and the six-month rule

69. The Court reiterates that the main thrust of the applicants' complaint concerns the allegedly unlawful confiscation orders and precipitated sale of the cars, leading to the alleged impossibility for them to regain possession of the cars, despite the judgments of 5 February 2003.

70. The Court reiterates that, according to Article 35 § 1 of the Convention, it may only deal with an issue after the domestic remedies have

been exhausted. While in the context of the machinery for the protection of human rights the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism, it does not require merely that applications should be made to the appropriate domestic courts and that use should be made of remedies designed to challenge impugned decisions which allegedly violate a Convention right. It normally requires also that the complaints intended to be made subsequently at the international level should have been aired before those same courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see, among other authorities, *Azinas v. Cyprus* [GC], no. 56679/00, § 38, ECHR 2004-III).

71. The object of the rule on exhaustion of domestic remedies is to allow the national authorities (primarily the judicial authorities) to address the allegation made of a violation of a Convention right and, where appropriate, to afford redress before that allegation is submitted to the Court (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI).

72. Article 35 § 1 of the Convention provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II). However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government had in fact been used or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see, among other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV).

73. The Court observes that the facts of the case are as follows. A court issued confiscation orders in respect of the cars. The applicants appealed. However, for some reason, the confiscation orders had been or were marked as final and enforceable. Having received the cars, the bailiffs sold them at a public auction. Having examined the applicants' appeal, the appeal court declined jurisdiction in favour of another court. The latter considered that the relevant time-limits had expired and thus discontinued the proceedings. The cars were to be returned to their "lawful holders". In any event, the cars could not be returned, having been sold to third persons. The applicants' actions against the State were not examined for the reasons stated above under Article 6 § 1 of the Convention.

74. The Government argued that the applicants should have brought court proceedings under Article 302 of the Civil Code against the *bona fide* purchasers of the cars. The applicants argued that they could not have

reasonably argued that the vehicles had been “taken out of [their] control”, as required for a vindication claim, and that they could not act under Russian law as “owners” asserting such a claim without prior customs clearance.

75. The Court reiterates that an applicant who has exhausted a remedy that is apparently effective and sufficient cannot be required also to have tried others that were available but probably no more likely to be successful (see *Aquilina v. Malta* [GC], no. 25642/94, § 39, ECHR 1999-III). When a remedy has been pursued, use of another remedy which has essentially the same objective is not required (see *Micallef v. Malta* [GC], no. 17056/06, § 58, 15 October 2009). In the circumstances of the present case, the Court considers that the applicants have complied with the exhaustion requirement and that it has not been shown, and the Court does not consider, that another court action would offer better prospect of success. Thus, the Government’s argument should be dismissed.

76. For the reasons stated in paragraph 40 above, the Court also considers that the applicants have complied with the six-month rule.

(c) Conclusion

77. The Court considers that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

78. Having established that the applicants had “possessions” under Article 1 of Protocol No. 1, the Court has to determine whether the interference complained of was in compliance with the requirements of that provision.

79. However, the Court does not have to determine whether the circumstances of the case should be classified as a deprivation of possessions or control of use.

80. The Court reiterates that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only “subject to the conditions provided for by law” and the second paragraph recognises that the States have the right to control the use of property by enforcing “laws” (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II).

81. The Court observes that in July 1999 the applicants submitted customs declarations to the Russian customs authorities for clearance. Their applications were not processed, in particular because they had court proceedings concerning their claim for a waiver of customs duties. Also, charging orders were issued in the meantime in respect of the cars in the

framework of a criminal case. These charging orders were annulled as soon as it became clear that the applicants' situation was not related to the circumstances of the criminal case. Subsequently, the customs authority impounded the cars because the applicants had not provided, within a time-limit, additional documents in order to finalise the customs clearance. The applicants offered to pay the required customs duty for customs clearance of the cars. Subsequently, a court issued confiscation orders.

82. The Court observes that while owing to the expiry of the liability time-limits no fine could be imposed, the cars were confiscated as the direct objects of the customs offence. As stated by the Town Court, such confiscation could be imposed within three years of the date of the violation of the customs regulations. Later on, the appeal court annulled the confiscation orders on the ground that the Town Court had had no jurisdiction to hear the case. In the resumed proceedings before another court, it was established that since 1 July 2002 a decision concerning a customs offence could not be issued after the expiry of one year from the date on which the offence was committed. Since the offence had been committed more than one year before, the court discontinued the case and ordered that the vehicles should be returned.

83. In view of the above considerations, the Court concludes that the confiscation orders in the present case were in breach of Russian law and that the applicants were not provided with adequate redress.

84. The Court also observes that until July 2002 the Customs Code provided that the execution of a confiscation order could only occur after the expiry of the time-limit for appeal (see paragraph 31 above). The Court reiterates that its power to review compliance with domestic law is limited as it is in the first place for the national authorities to interpret and apply that law. Therefore, having regard to the Russian authorities' consistent failure to indicate a legal provision that could be construed as the basis for the precipitated enforcement of the confiscation orders in late 2002, the Court finds the impugned interference in terms of Article 1 of Protocol No. 1 cannot be considered lawful.

85. The above findings make it unnecessary to examine whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

86. There has therefore been a violation of Article 1 of Protocol No. 1.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

87. Lastly, the applicants complained under Article 6 of the Convention about the supervisory review proceedings in 1999, and maintained that they had not been given an opportunity to attend the hearing on 24 July 2002.

88. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court 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.

IV. 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 first and second applicants claimed 11,655 and 14,593 euros (EUR), respectively, as regards pecuniary damage (the purchase price of the vehicles), and EUR 5,000 each in respect of non-pecuniary damage.

91. The Government contested the claims because, in their view, there had been no violation of the applicants’ rights.

92. The Court has found that the circumstances of the present case disclosed an unlawful interference with the applicants’ “possessions” in breach of Article 1 of Protocol No. 1. In the circumstances of the present case, noting the absence of the Government’s specific comments concerning the calculations in respect of pecuniary damage and having examined the available material, the Court finds it appropriate to award EUR 8,000 and EUR 10,000 to the first and second applicants respectively, plus any tax that may be chargeable.

93. Furthermore, having regard to the violations found, the Court awards each applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

94. Each applicant also claimed EUR 3,563 for the legal costs and expenses incurred at the national level and before the Court.

95. The Government contested the claims, arguing that there was no evidence that they related to the matters raised before the Court.

96. 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 documents in its possession and the above criteria, and in so far as the claims relate to the violations it has found, the Court considers it reasonable to award each applicant the sum of EUR 1,000 under all heads, plus any tax that may be chargeable to the applicants.

C. Default interest

97. The Court considers it appropriate that the default interest rate 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 access to court and the confiscation orders admissible, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds*
 - (a) that the respondent State is to pay, within three months from 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 at the date of settlement:
 - (i) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage, to the first applicant (Mr Vasilyev);
 - (ii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage, to the second applicant (Mr Kovtun);
 - (iii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to each applicant;
 - (iv) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to each applicant;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 December 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President