



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

FIFTH SECTION

CASE OF MICKOVSKI v. NORTH MACEDONIA

(Applications nos. 39107/18 and 39726/18)

JUDGMENT

Art 1 P1 • Control of the use of property • Applicant's failure to demonstrate that the temporary suspension of his bailiff's practice in connection with a criminal investigation against him resulted in an individual and excessive burden on him

STRASBOURG

24 March 2022

FINAL

05/09/2022

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

In the case of Mickovski v. North Macedonia,

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

Síofra O’Leary, *President*,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
Lətif Hüseynov,
Jovan Ilievski,
Ivana Jelić,
Arnfinn Bårdsen, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the applications (nos. 39726/18 and 39107/18) against the Republic of North Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Mr Vlado Mickovski, a Macedonian/citizen of the Republic of North Macedonia, as a physical person and his registered bailiff practice as a legal person (for ease of reference, they will be designated hereinafter as “the applicant”), on 14 and 4 August 2018 respectively;

the decision to give notice to the Government of North Macedonia (“the Government”) of the complaint concerning Article 1 of Protocol No. 1 to the Convention and to declare the remainder of the applications inadmissible;

the parties’ observations;

Having deliberated in private on 14 December 2021 and 8 February 2022,
Delivers the following judgment, which was adopted on the latter date:

INTRODUCTION

1. The case concerns the alleged interference with the applicant’s rights under Article 1 of Protocol No. 1 to the Convention as a result of the temporary suspension of his bailiff practice’s activities (in connection with a criminal investigation launched in respect of him) and the judicial decisions rejecting the applicant’s ensuing claim for compensation.

THE FACTS

2. The applicant was born in 1964 and lives in Vraneshtica. Following his registration with the Chamber of Bailiffs (“the Chamber”) in 2006, he established his bailiff practice in Kichevo. The applicant was represented before the Court by Ms M. Danilovska, a lawyer practising in Kichevo.

3. The Government were represented by their Agent, Ms D. Djonova.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. On 3 February 2011 the Gostivar Court of First Instance decided to open a criminal investigation in respect of the applicant for negligence in the performance of his duties as bailiff on account of alleged double enforcement of a pecuniary claim (Official Gazette no. 59 of 20 April 2011).

6. On 11 April 2011 the Chamber ordered the suspension of his practice as a compulsory measure under section 60(2) of the Enforcement Act (see paragraph 17 below). The Minister of Justice appointed a certain M.D. from Struga as deputy bailiff to carry out necessary activities during the suspension. The income from the services provided by the deputy bailiff on behalf of the applicant was credited to the applicant's bailiff practice except for certain fees charged by the deputy bailiff.

7. On 22 June 2011 the Constitutional Court rejected on grounds of *res judicata* a request by the applicant for an abstract constitutionality review of section 60(2) of the Enforcement Act.

8. On 21 November 2011, after the investigation against the applicant had been terminated for lack of evidence, the Chamber lifted the suspension measure.

9. Subsequently, the applicant brought a claim against the respondent State and the Chamber under the Obligations Act, seeking compensation for pecuniary damage (actual damage and loss of income) and non-pecuniary damage caused by the suspension, which had lasted from 11 April to 21 November 2011 ("the relevant period"). The applicant submitted that during the relevant period it had paid part of the employees' salaries and had incurred other costs necessary to maintain the office, the total of which had amounted to approximately 10,418 euros (EUR). The applicant claimed approximately EUR 23,845 for loss of income and EUR 15,450 for harm to his reputation.

10. On 2 March 2016 the Kichevo Court of First Instance granted the applicant's claim against the State in the amount of EUR 10,418 in respect of the actual loss and found no need to examine its claim in respect of the Chamber. The judgment was based on an expert report and other supporting evidence provided by the applicants, such as decisions on the suspension of an employment contract (*решенија за мирување на договор за вработување*), bank statements, utility bills and a services agreement. It dismissed the claim for non-pecuniary loss, holding that he had been neither convicted nor fined.

11. On 10 November 2016 the Gostivar Court of Appeal accepted the facts as established by the trial court but overturned the judgment and dismissed the applicant's claims, holding that, *inter alia*, the State could not be held responsible in the absence of wrongful conviction or imprisonment, as provided for in sections 549 and 553 of the Criminal Proceedings Act. On 17 May 2018 the Supreme Court upheld that judgment.

12. Between 23 April and 28 December 2011 and on 17 January 2018 the applicant made several applications to the State Judicial Council and the State

Public Prosecutor to have disciplinary proceedings for professional misconduct initiated against the public prosecutor and the judge involved in the criminal investigation. No such proceedings were initiated.

RELEVANT LEGAL FRAMEWORK

13. Section 141 of the Obligations Act sets out the general principles regarding compensation claims. Section 178 provides for the right of a victim to monetary compensation on account, *inter alia*, of loss of profit.

Section 189 provides for the right of compensation in case of unjustified interference with personal rights.

14. The Government submitted an excerpt of a decision delivered in 2009 in which the Supreme Court had held that, pursuant to section 189 of the Obligations Act and the provisions of the Criminal Proceedings Act, the mere initiation of criminal proceedings did not entitle the plaintiffs to claim an award in respect of non-pecuniary damage.

15. Sections 549 and 553 of the Criminal Proceedings Act provide for the right of compensation in case of unjustified deprivation of liberty or conviction.

16. Under sections 7 and 16 of the Enforcement Act (Official Gazette no. 83 of 3 July 2009), as valid at the time, persons with an enforceable title in respect to which enforcement proceedings were pending before the domestic courts had six months (as from 1 July 2010) to designate a bailiff (appointed for a given jurisdictional area) to continue the enforcement of the title in question.

The Act amending the Enforcement Act (Official Gazette no. 88 of 2 July 2010) set 1 July 2011 as the starting date for the calculation of the six-month time-limit for transferring the enforcement cases to bailiffs.

17. Section 31 of the Enforcement Act (Official Gazette no. 59 of 20 April 2011), as valid at the time, conferred public prerogatives on bailiffs.

Section 60 (2) provided for suspension of bailiff's practice after a criminal investigation was opened in relation to the performance of his or her official duty.

Under sections 59-v and 60 the Chamber was responsible to decide issues pertaining to bailiffs' disciplinary responsibility and suspension.

Section 65 provided that the Chamber shall have a legal personality.

18. In accordance with amendments to the Enforcement Act (Official Gazette no. 72 of 12 April 2016) posterior to the facts in the present case, the operation of a bailiff practice could be suspended only if an indictment had been confirmed in criminal proceedings.

THE LAW

JOINDER OF THE APPLICATIONS

19. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

20. The applicant complained under Article 1 of Protocol No.1 to the Convention that the seven-month suspension of the operation of the bailiff practice on account of the criminal investigation had been an unjustified interference with his business interests and that he was not compensated for the resulting loss. Article 1 of Protocol No.1 reads as follows:

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

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

A. Admissibility

1. The parties’ submissions

(a) The Government

21. The Government argued that the State could not be held responsible for any negative consequences arising from a dispute between two private parties – the applicant and the Chamber. Furthermore, the suspension had only concerned the bailiff practice as a legal person and not Mr Mickovski as a physical person who had no legal standing in the proceedings before the Court. In any event the applications had been lodged more than six months after the Constitutional Court’s decision of 22 June 2011 (see paragraph 7 above). The subsequent civil proceedings had not been an effective remedy. The applicant should have instead instituted disciplinary or criminal proceedings against the public prosecutor or the criminal court judge.

22. Lastly, they argued that in the present case there had been no “possessions” within the meaning of Article 1 of Protocol No. 1. The applicant’s claim for loss of income fell outside the scope of that provision. The applicant’s clientele had been recoverable, as it had been dependent on geographical location (in respect of the bailiff’s territorial jurisdiction, as provided for by law, rather than on goodwill).

(b) The applicants

23. The applicant contested all the Government's arguments. In particular, he submitted that he had been unable to make any business arrangements during the suspension, of which his clients had been informed, resulting in a loss of future income.

2. The Court

(a) Incompatibility *ratione personae*

(i) Responsibility of the respondent State

24. The Court observes that, while the Chamber is not a State body, but rather a professional body, it is established under the Enforcement Act (see paragraph 17 above). Furthermore, it pursues an aim of general interest and powers regarding, in particular, disciplinary proceedings and decisions on suspension, are conferred on it by law (see paragraph 17 above) (see, *mutatis mutandis*, *Beg S.p.a. v. Italy*, no. 5312/11, § 64, 20 May 2021). Section 60(2) of the Enforcement Act required the Chamber to order the compulsory suspension of the operation of a bailiff's practice in the event that a criminal investigation was initiated. Accordingly, the State's responsibility is engaged as a result of the administrative, as well as the regulatory powers of the Chamber (see *National Notary Chamber v. Albania* (dec.), no. 17029/05, 6 May 2008).

25. In addition, the Court reiterates the criteria for State responsibility for judicial decisions concerning disputes between private bodies and individuals set out in its case-law (see, for instance, *Zhidov and Others v. Russia*, nos. 54490/10 and 3 others, § 71, 16 October 2018) and observes that the present case also concerns the refusal of the higher courts to award the applicant compensation following the compulsory suspension ordered by the Chamber. It considers that, in the present case, the State responsibility is also engaged as a result of the decisions taken by the higher courts to dismiss the applicant's claim for damages (see paragraph 8 above), resulting from the compulsory suspension of the operation of his bailiff's practice ordered by the Chamber pursuant to section 60(2) of the Enforcement Act.

(ii) Locus standi

26. The relevant general principles are set out in *Sérvulo & Associados - Sociedade de Advogados, RL and Others v. Portugal* (no. 27013/10, § 79, 3 September 2015).

27. The Court observes at the outset that the Government considered that there are two applicants and that the physical person has no legal standing (see paragraph 21 above). However, in the present case, Mr Mickovski is the sole proprietor of the bailiff practice. Consequently, he has been directly

affected by the restrictions imposed on his established business. Furthermore, both Mr Mickovski as a physical person and his registered practice as a legal person were parties to the domestic proceedings (see paragraph 9 above). In such circumstances, and having regard to the particular nature of a bailiff's office under the relevant domestic law, according to which the legal person is closely linked to a sole individual qualified to practise the profession (see paragraph 17 above), the Court considers that both are so closely identified with each other that it would be artificial to distinguish between them in this context (see, *mutatis mutandis*, *Eugenia Michaelidou Developments Ltd and Michael Tymvios v. Turkey*, no. 16163/90, § 21, 31 July 2003; *Kin-Stib and Majkić v. Serbia*, no. 12312/05, § 74, 20 April 2010; *Vujović and Lipa D.O.O. v. Montenegro*, no. 18912/15, § 30, 20 February 2018; and *Albert and Others v. Hungary* [GC], no. 5294/14, §§ 157-58, 7 July 2020).

(b) Objections of non-exhaustion and non-compliance with the six-month rule

28. The general principles relevant to the Government's objections under this head are set out in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014) and *Alekseyev and Others v. Russia* (nos. 14988/09 and 50 others, § 12, 27 November 2018). Moreover, an applicant who has pursued 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).

29. Given the facts of the case (see paragraph 9 above) and in the absence of any supporting documents submitted by the Government, the Court does not consider that disciplinary or criminal proceedings against the public prosecutor or the judge responsible for opening the criminal investigation were appropriate remedies for the applicant's grievances. Furthermore, the Court notes that the compensation proceedings in question concerned the applicant's claim for monetary compensation for the pecuniary and non-pecuniary loss sustained during the seven-month suspension of his practice (see paragraph 9 above). He raised arguments regarding the same issues, falling to be examined under Article 1 of Protocol No. 1 to the Convention, which he now brings before the Court. Those proceedings were capable of establishing the relevant facts and were not fully devoid of any prospect of success, as it can be seen from the first instance court judgment granting the applicant's claim. Domestic courts at three levels of jurisdiction examined the applicant's claim on the merits (see paragraphs 8-10 above). In such circumstances, the Court cannot accept the Government's argument that the Constitutional Court's decision rejecting the applicant's request for an abstract constitutional review on grounds of *res judicata* was to be taken into consideration, instead of the compensation proceedings, for the calculation of the six-month time-limit (see paragraph 7 above).

(c) Compatibility *ratione materiae*

30. The relevant general principles are set out in *Könyv-Tár Kft and Others v. Hungary* (no. 21623/13, § 31, 16 October 2018).

31. Turning to the present case, it is not disputed that the applicant had run his bailiff practice as a sole practitioner since 2006 (see paragraph 2 above). The bailiff practice was the vehicle through which he earned his income, which was directly linked to the number of his clients. By the time the suspension was ordered in 2011, he had built up his clientele over a five-year period. Whereas the Court agrees with the Government that the clientele may have been recoverable in part on the basis of geographical location (see paragraph 21 above) and that the person who replaced the applicant during the suspension, the deputy bailiff, generated certain income for him (see paragraph 6 above), it is clear that the applicant had a vested interest of an economic nature in continuing to run his bailiff practice and ensuring that the number of clients increase.

32. Furthermore, the Court considers that the applicant enjoyed “goodwill”, namely the advantage which had arisen over five years of practice from his own reputation and connections. The goodwill he had established was relevant to the decision of clients to choose his services (see, *mutatis mutandis*, *Malik v. the United Kingdom*, no. 23780/08, § 99, 13 March 2012, and *O’Sullivan McCarthy Mussel Development Ltd v. Ireland*, no. 44460/16, § 89, 7 June 2018, in which the Court has also found that Article 1 of Protocol No. 1 applied where there was a temporary prohibition on a permit connected to the usual conduct of a business).

33. For these reasons, the Court considers that the applicant can claim that the bailiff practice he was running was a “possession”, within the meaning of Article 1 of Protocol No. 1.

(d) Conclusion

34. In view of the foregoing, the Court dismisses the Government’s objections as to the admissibility of the applications. The Court notes that the applications are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits*1. The parties’ submissions*

35. The applicant submitted that the suspension of the operation of his practice had not been justified and that the deputy bailiff had been unable to offset the damage caused. He further claimed that he had sustained actual loss and loss of profit, resulting from the suspension and the subsequent dismissal of his compensation claim. In particular, he argued that between July and

December 2011 and owing to his suspension that had overlapped with the transfer of jurisdiction in enforcement matters from the courts to bailiffs (see paragraph 16 above) he and the appointed deputy had been unable to obtain new cases. In support he submitted in evidence a request of 2008 for enforcement of a claim worth EUR 999,326 that the creditor had withdrawn on 30 June 2011 due to, as the applicant said, the suspension of his bailiff's practice. He contested the relevance of the Supreme Court's decision referred to by the Government (see paragraph 14 above).

36. The Government argued that the impugned suspension had been temporary and lawful and had been aimed at ensuring legal certainty in respect of bailiffs' services in general. Furthermore, the suspension had not had significant economic consequences, since the deputy bailiff had continued to operate during the relevant period and had generated (supported with material evidence) in the period from May to October 2011 a higher income (EUR 207,521) for the applicant compared with the income the latter had earned in January-March and December 2011 (EUR 98,791). They emphasised that there was nothing to suggest that the compensation proceedings had been unfair or that the court's decisions relying on the provisions of the Criminal Proceedings Act had been arbitrary or unreasoned. They noted the Supreme Court's consistent interpretation of section 189 of the Obligations Act *vis-à-vis* the Criminal Proceedings Act (see paragraph 14 above). Lastly, the Government contended that the applicant's reputation had not been affected, as the suspension had been confidential.

2. The Court's assessment

37. The Court considers that the compulsory suspension related to the criminal investigation temporarily removed the applicant's clientele which was interested in his services and was therefore capable of affecting his "possession" – the bailiff practice he was running. It was a measure entailing control of the use of property, which falls to be considered under the second paragraph of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Tre Traktörer AB v. Sweden*, 7 July 1989, § 55, Series A no. 159; *Döring v. Germany* (dec.), no. 37595/97, ECHR 1999-VIII; and *Buzescu v. Romania*, no. 61302/00, § 88, 24 May 2005). It remains to be ascertained whether such an interference was lawful and struck a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see *Buzescu*, cited above, § 89). This fair balance will be upset if the person concerned has to bear an individual and excessive burden (see *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 300, 28 June 2018).

38. The Court notes that the suspension order was based on section 60(2) of the Enforcement Act whose terms were clear (see paragraphs 6 and 17 above). Accordingly, the interference was provided for by law.

39. The Court further accepts that the impugned suspension pursued the general aim asserted by the Government, namely to ensure legal certainty in respect of bailiffs' services (see paragraph 36 above). The automatic nature of the suspension following the criminal investigation in respect of the applicant cannot be considered, in itself, to have stripped the Chamber's decision of 11 April 2011 of its legitimate aim.

40. As to whether a balance has been struck between that aim and the applicant's rights under this head, the Court notes that the measure in question prevented the applicant from practising as a bailiff between 11 April and 21 November 2011 (see paragraphs 6 and 8 above). Such a temporary suspension (seven months and ten days) does not appear excessive (see, conversely, *Buzescu*, cited above, § 94, in which the applicant could not practice as a lawyer for a five-year period).

41. Secondly, the Court observes that during the relevant period the deputy bailiff continued the applicant's professional bailiff's activities which were ongoing at the time (see paragraph 6 above). Therefore, the deputy bailiff's activities can be regarded as a safeguard that served the public interest by providing uninterrupted services to the existing clientele. In addition, the evidence submitted by the Government demonstrate that the activities taken by the deputy bailiff were sufficient to offset most of the adverse consequences the temporary suspension might have caused for the applicant.

42. Thirdly, as regards the applicant's claim that his bailiff's practice has suffered on account of loss of possible new clientele during the impugned suspension, which coincided in time with the transfer to bailiffs of the enforcement cases pending before the courts (see paragraphs 16 and 35 above), the Court finds no evidence, such as lists of enforcement cases transferred to other bailiffs in the same jurisdictional area at the relevant time, that he would have received a significant number of new enforcement cases had there not been for the suspension order. Furthermore, the applicant has not shown that the withdrawal (on 30 June 2011) of the enforcement request referred to in paragraph 35 above, which had been pending before the applicant since 2008, was a direct consequence of the impugned suspension.

43. Fourthly, both the Court of Appeal and the Supreme Court considered the applicant's claim in the light of sections 549 and 553 of the Criminal Proceedings Act (see paragraph 15 above) and held that the respondent State could not be held liable in the absence of wrongful conviction or imprisonment (see paragraph 8 above). The choice made by the legislator not to provide under the Criminal Proceedings Act for a possibility to seek damages in situations of simple discontinuation of criminal proceedings is not at issue, as Article 1 of Protocol No. 1 to the Convention cannot be seen as guaranteeing such a right. The applicant neither argued nor provided any example of domestic practice demonstrating that that approach was inconsistent or otherwise unforeseeable. The Court reiterates that it has only

a limited power to deal with alleged errors of fact or law committed by the domestic courts, to which it falls in the first place to interpret and apply the domestic law (see, *mutatis mutandis*, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 149, 20 March 2018; and the case-law cited therein); there is no appearance of arbitrariness in the way the domestic courts determined the applicant's claim.

44. Lastly, the Court notes that at the relevant time the suspension was an automatic consequence of the fact that a criminal investigation into alleged negligence in the performance of duties had been opened in respect of him (see paragraph 5 above). Therefore, the suspension was ordered at the earliest stage of the investigation. The Court notes that section 60(2) of the Enforcement Act, as worded at the relevant time (see paragraph 17 above), neither required nor allowed an assessment of the specific circumstances of the case, including the seriousness of the alleged offence, the time that has elapsed since the offence was allegedly committed or whether the duration of the suspension was appropriate to the gravity of the alleged offence. Accordingly, the relevant provision, no longer in force, did not allow for any concrete assessment of proportionality. However, it is not the Court's task to assess the relevant law *in abstracto*. In the present case, the fact remains that the applicant did not substantiate his loss given that the deputy bailiff had carried out the necessary activities during the suspension. The Court further notes that after the adoption of the Act amending the Enforcement Act the relevant domestic law provides for an additional safeguard and requires a higher level of suspicion of criminal liability: a bailiff's practice can be suspended only if an indictment is confirmed in criminal proceedings (see paragraph 18 above).

45. In light of the above and taking account, in particular, of the applicant's failure to show that he had to bear an individual and excessive burden as a result of the temporary suspension of his bailiff's practice, the Court concludes that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

FOR THESE REASONS, THE COURT,

1. *Decides*, unanimously, to join the applications;
2. *Declares*, unanimously, the applications admissible;
3. *Holds*, by five votes to two that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

MICKOVSKI v. NORTH MACEDONIA JUDGMENT

Done in English, and notified in writing on 24 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Síofra O’Leary
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Mourou-Vikström and Ilievski is annexed to this judgment.

S.O.L.
V.S.

JOINT DISSENTING OPINION OF JUDGES
MOUROU-VIKSTRÖM AND ILIEVSKI

1. We respectfully dissent from the conclusion reached by the majority to the effect that there has been no violation of Article 1 of Protocol No. 1 to the Convention. Such conclusion bypasses the most important question in this case: whether the applicant had to bear an individual and excessive burden as a result of the manner in which the legislation had been applied in the particular circumstances. In doing so, the majority correctly assumed that it is not the Court's task to examine the domestic legislation in the abstract, but abstained from assessing the negative effects for the applicant imposed by such legislation.

2. In our view, the majority should have considered whether the application of section 60(2) of the Enforcements Act (see paragraph 17 of the judgment) in the circumstances of the present case had had adverse consequences for the applicant (see, *mutatis mutandis*, *Sahin v. Germany* [GC], no. 30943/96, § 87, ECHR 2003-VIII). This is particularly so because the provision at issue neither required nor allowed an assessment of the specific circumstances of the case, including the seriousness of the alleged offence, the time that has elapsed since the offence was allegedly committed, or whether the duration of the suspension was proportional to the gravity of the alleged offence. At no point did that provision, applied in the applicant's case as a consequence of what was a mere suspicion of a criminal offence, allow for any specific assessment of proportionality. While we join the majority in welcoming the adoption of the text currently in force, which requires a higher level of suspicion of criminal liability, the fact remains that in the applicant's case that safeguard was not applicable.

3. The position advocated by the Government and endorsed by the majority encounters further obstacles which originate in the manner in which the provision in question was applied. More specifically, it is undisputed that the suspension prevented the applicant from practising as a bailiff for more than seven months. Such measure largely overlapped with the six-month time-limit specified under the Act amending the Enforcement Act of 2010 for the transfer of enforcement cases pending before the domestic courts, the Kichevo Court of First Instance in the present case, to bailiffs operating in its jurisdictional area. Moreover, no one disputed that the appointed deputy, acting in his stead, had been unable to take on new cases. And, in any event, given the strict regulations on the number of bailiffs and their appointment to a specific jurisdictional area in the respondent State, it is to be assumed that the flow of enforcement cases would have continued intact, which means that the new cases would be handled by another bailiff and not the designated deputy of the applicant. Accordingly, the applicant's suspension in any event had adverse economic consequences for him. Given the situation, the

applicant sought to recover his pecuniary loss by explicitly requesting the domestic courts to consider his compensation claim under the Obligations Act (see paragraph 9 of the judgment).

4. In this light, the majority rightly acknowledged that the choice made by the legislator not to include in the Criminal Proceedings Act the possibility of seeking damages in situations of discontinuation of criminal proceedings cannot be guaranteed by Article 1 of Protocol No. 1.

However, the relevant point is that the interpretation of the domestic law by the higher courts in the circumstances of the present case did not provide a possibility, in proceedings subsequent to the suspension, to take the requirement of proportionality into consideration, which the suspension order itself failed to do.

5. In conclusion, since no compensation was available, the authorities' duty to ensure that an individual assessment of proportionality is undertaken before deciding to suspend the applicant as a bailiff was of central importance. For the reasons set out above, we would hold that the automatic nature of the suspension in the circumstances of the present case did not strike a fair balance between the interference and the aim which it pursued.