



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

FIRST SECTION

CASE OF KESYAN v. RUSSIA

(Application no. 36496/02)

JUDGMENT

STRASBOURG

19 October 2006

FINAL

19/01/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kesyan v. Russia,

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

MR C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 28 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 36496/02) 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 Robert Ambartsumovich Kesyan (“the applicant”), on 16 September 2002.

2. The applicant was represented by Mr A. Kiryanov, a lawyer practising in Taganrog. The Russian Government (“the Government”) were represented by Mr P. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 30 August 2005 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

4. The applicant was born in 1952 and lives in the town of Sochi, in the Krasnodar Region.

I. THE CIRCUMSTANCES OF THE CASE

A. Tort proceedings

5. On 31 July 1998 the applicant sued the Rostov Regional Department of the Federal Treasury and Mrs O. in tort. A stamp on his statement of claims shows that the Kuybyshevskiy District Court of the Rostov Region received the statement of claim on the same day. According to the Government, the District Court received the statement of claim on 5 August 1998 and listed the first hearing for 22 September 1998.

6. On 22 September 1998 the hearing was adjourned due to the judge's leave. The following hearing on 28 December 1998 did not take place because of the defendants' absence.

7. On 11 February 1999 the District Court ordered an expert study and stayed the proceedings. The experts' report was received by the District Court in September 1999.

8. In October 1999 the applicant's representative amended the claims and asked the District Court to resume the proceedings and to question witnesses. The applicant then again amended the claims in November 1999.

9. On 25 November 1999 the District Court resumed the proceedings and summoned witnesses.

10. Between 25 November 1999 and 3 October 2000 the District Court listed eight hearings, of which three were adjourned because the defendants defaulted and five were postponed because none of the parties attended.

11. On 3 October 2000 the District Court adjourned the proceedings because the applicant appeared to have lost interest in the case. The applicant's representative objected to that decision, indicating that neither he nor the applicant had been duly apprised of the hearing dates.

12. On 12 July 2001 the District Court quashed the decision of 3 October 2000 and resumed the proceedings, having found no evidence that the applicant and/or his representative had been duly notified of the hearings.

13. Upon the applicant's request, on 10 October 2001 the District Court adjourned the proceedings because a similar claim was pending before another court. The proceedings were resumed on 30 September 2002.

14. Between 30 September and 20 December 2002 three hearings were adjourned because the parties did not attend.

15. On 20 December 2002 the District Court suspended the proceedings by reason of the applicant's repeated failure to appear. The proceedings were then resumed on 23 January 2004 once it had been discovered that the applicant and his representative had not been duly summoned to the hearings.

16. Of the ten hearings listed between 20 February and 16 November 2004, four hearings were adjourned due to Mrs O.'s absence, two hearings due to the parties' absence, one upon the applicant's representative's request and two because the presiding judge was on leave.

17. On 16 November 2004 the Kuybyshevskiy District Court dismissed the applicant's claim. On 16 February 2005 the Rostov Regional Court quashed the judgment of 16 November 2004 and remitted the matter for a new consideration by the District Court.

18. The Kuybyshevskiy District Court listed the first hearing for 18 May 2005. Of the three hearings fixed between 18 May and 28 June 2005, two were adjourned because the defendants defaulted and one was postponed upon the defendants' request.

19. On 28 June 2005, upon the applicant's request, the District Court ordered an expert study and stayed the proceedings.

20. The proceedings were later resumed and on 15 December 2005 the Kyubyshevskiy District Court partly allowed the applicant's action. The judgment of 15 December 2005 was upheld on appeal by the Rostov Regional Court on 28 February 2006.

B. Enforcement proceedings

21. On 8 August 1996 the applicant transported goods in his car from Ukraine to Russia and crossed the border without declaring the goods at the Russian customs. On the same day policemen of the Rostov Regional police department stopped the applicant and seized his car due to a violation of customs regulations. On 16 October 1996 the Taganrog town customs issued a confiscation order in respect of the car and organised its sale in November 1996 through a private company.

22. The applicant brought an application to a court seeking invalidation of the confiscation order of 16 October 1996. On 29 June 1999 the Taganrog Town Court quashed the confiscation order of 16 October 1996 and held that the Taganrog town customs should return the car to the applicant. The judgment did not become final as the town customs appealed against it.

23. On 2 July 1999 the Taganrog Town Court issued a charging order over the car with a view to preventing it from being sold, holding that the car should be seized and returned to the applicant. The charging order was binding, enforceable and addressed to any current holder of the applicant's car.

24. On 5 July 1999 the applicant's representative handed over the charging order of 2 July 1999 to the bailiffs. The covering letter of 5 July 1999 listed a writ of execution of 2 July 1999 as an enclosure and bore a stamp of the Taganrog Town bailiffs' service.

25. In July 1999 the bailiffs established that the private company had sold the car to Mr S. in 1996. However, they did not impound the car.

26. On 21 June 2000 the Rostov Regional Court quashed the judgment of 29 June 1999 and remitted the matter concerning the confiscation order of 16 October 1999 for a fresh examination. The charging order of 2 July 1999 remained unaffected.

27. On 26 September 2000 the applicant successfully amended his claims. He dropped his claims against the Taganrog town customs and sought repossession of his car from Mr S.

28. In October 2000 a bailiff asked Mr S. about the location of the car. A written statement by Mr S. read as follows:

“I use [the car] for transportation of goods from Moscow to Rostov. It is kept at my house in the town of Azov, the address: Yuzhnaya street, 4, in the territory of MTP “Ikar”. The car is now in Moscow but it will come back around Monday...”

29. In October, November and December 2000 the bailiffs ordered that Mr S. produce the car to the Taganrog town bailiffs' office. Mr S. did not respond.

30. On 20 November 2000 the Taganrog Town Court adjourned the enforcement proceedings, upon Mr S.'s request. That decision was quashed by the Rostov Regional Court on 14 February 2001. The matter was remitted for a fresh examination to the Town Court and the enforcement was resumed.

31. In October 2001 Mr S. asked the local road police department to cancel the car registration on the ground that it would be sold to a purchaser in Ukraine.

32. In November 2001 Mr S. informed the bailiffs that the car had been sold. The bailiffs, in their turn, told the applicant that the car had been sold and that Mr S. had refused to inform them who had bought the car. They asked whether the applicant would be willing to pay for the search of the car. The applicant agreed to bear the costs.

33. On 10 January 2002 the Taganrog Town Court issued a judgment by which Mr S. should return the car to the applicant. On 28 February 2002 a writ of execution was issued. The applicant submitted it to the bailiffs and asked them to calculate an approximate cost of the search. On 15 March 2002 enforcement proceedings were instituted, but the applicant's request for the calculation remained unanswered.

34. In July 2002 Mr S. bought a new car and asked the road police department to have it registered. A copy of the request indicated Mr S.'s home address.

35. On 27 December 2002 the enforcement proceedings related to the judgment of 10 January 2002 were discontinued because the bailiffs could not, allegedly, find Mr S.'s residence or the vehicle.

36. On 1 April 2003 the Taganrog Town Court ordered the bailiffs to impound three cars belonging to Mr S. with a view to enforcing the

judgment of 10 January 2002. According to the Government, the bailiffs began searching for the cars on 24 October 2003, but never completed it because the applicant had refused to advance payment.

37. On 29 May 2003 the Taganrog Town Court, upon the applicant's request, ordered that Mr S. pay the applicant 462,384 Russian roubles (RUR) in lieu of the car. The judgment became final on 10 June 2003 and on 2 July 2003 enforcement proceedings were instituted.

38. In June 2003 Mr S. applied for renewal of his passport. His passport application listed his unchanged place of residence. On 16 August 2003 Mr S. received the passport.

39. In September 2003 the bailiffs, in the enforcement proceedings related to the judgment of 29 May 2003, issued a decision stating that Mr S. did not have any property and that the place of his residence was unknown.

40. In January 2004 the applicant received a calculation of the advance payments for the search of Mr S.'s property. He was to advance RUR 50,000 (approximately EUR 1,500).

41. In 2005 the applicant asked a prosecutor's office to institute criminal proceedings against Mr S. for his failure to abide by an enforceable judicial decision. In March, July and August 2005 an investigator questioned Mr S. Criminal proceedings were not instituted. The prosecutor's documents listed the same place of Mr S.'s residence as in 2002 and 2003.

42. On 3 October 2005 the bailiffs initiated the search of Mr S.'s property without any advance payment by the applicant. It appears that the enforcement proceedings are still pending.

C. Proceedings against the bailiffs

43. On several occasions the applicant complained to the courts about the bailiffs' failure to enforce the charging order of 2 July 1999 and the judgments of 10 January 2002 and 29 May 2003.

44. On 22 November 2001 the Taganrog Town Court dismissed one complaint, finding that the bailiffs had acted properly, that they had known that Mr S. had purchased the car but had no reason to doubt that Mr S. had not been willing to return it. The bailiffs could not be held liable for the sale of the car by Mr S.

45. On 12 February 2003 the Azov Town Court dismissed another complaint, holding that the decision of 27 December 2002 (by which the enforcement proceedings in respect of the judgment of 10 January 2002 had been discontinued) had been lawful because it had been impossible to locate Mr S. or his property. Although on 14 November 2001 the applicant had agreed to pay for the search of Mr S.'s property, the costs had not yet been calculated. The judgment of 12 February 2003 was upheld on appeal on 9 April 2003.

46. On 13 November 2003 the Azov Town Court dismissed the applicant's complaint about the bailiffs' failure to enforce the judgments and to provide him with the calculation of the costs for the search of Mr S.'s property. The court held:

“From the contents of the applicant's complaint about the acts (failures to act) of the bailiffs... it does not appear what rights or lawful interests have been violated and whether any damage has been caused, the complaint is unsubstantiated and may not be granted.”

II. RELEVANT DOMESTIC LAW

47. Article 87 of the Russian federal law “on enforcement proceedings” (Law no. 119-FZ of 21 July 1997) provides for certain measures which the bailiffs may take when private persons or public officials fail to comply with lawful orders, provide false information about a debtor's income and financial status, do not inform a bailiff about the debtor's dismissal from work, a change of the debtor's places of work or residence or when they do not respond to the bailiff's summonses. These measures include a fine of up to 100 minimum wages, escorting a defaulting party by force to a place where enforcement actions are performed and institution of criminal proceedings.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF EXCESSIVE LENGTH OF THE TORT PROCEEDINGS

48. The applicant complained that the length of the tort proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

49. The Court considers that the period to be taken into consideration began on 31 July 1998 when the Kuybyshevskiy District Court received the applicant's statement of claim and ended on 28 February 2006 with the final

judgment of the Rostov Regional Court. It thus lasted approximately seven years and seven months before courts at two levels of jurisdiction.

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

B. Merits

51. The Government argued that the applicant had caused a delay in the proceedings. He had asked for two expert reports in 1999 and 2005. He had amended his claims on three occasions, asked for adjournment of three hearings and defaulted at three hearings. The proceedings had been prolonged by the defendants' failure to attend at least eight hearings. Both parties failed to attend at least ten hearings.

52. The applicant averred that he could not be blamed for his absence as he had not been properly summoned. The proceedings had been stayed on many occasions due to the defendants' failure to attend. The District Court had not taken any steps to inquire of the reasons for their absence or to discipline the defaulting parties.

53. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

54. The parties did not argue that the case was particularly difficult to determine. In any event, the Court takes the view that an overall period of more than seven years and seven months could not, in itself, be explained by the complexity of the case.

55. As concerns the applicant's conduct, the Court is not convinced by the Government's argument that the applicant should be responsible for amending his claims and seeking to obtain additional evidence. It has been the Court's constant approach that an applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of his interests (see, *mutatis mutandis*, *Yağcı and Sargın v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 66).

56. As to the Government's argument that the applicant failed to attend certain hearings, the Court notes that neither the applicant nor his representative had been properly summoned for the hearings in 2000 and 2002 (see paragraphs 10-11 and 14-15 above). This fact has been confirmed by the District Court (see paragraphs 12 and 15 above). The delay incurred through the applicant's absence at four hearing to which he had been duly summoned, was negligible.

57. The Court, however, observes an aggregated delay of approximately two years resulting from the applicant's requests for two expert studies and a stay in the proceedings in 2001 (see paragraph 13 above). In this respect the Court notes, that although the twelve-month delay caused by the stay in the proceedings is entirely attributable to the applicant, the principal responsibility for a delay caused by the expert examinations rests ultimately with the State (see *Capuano v. Italy*, judgment of 25 June 1987, Series A no. 119, § 32, and *Antonov v. Russia*, (dec.), 38020/03, 3 November 2005). The domestic authorities took no steps to avoid delays and the District Court did not inquire into the progress of the experts' work. Accordingly, this period is imputable to the State.

58. The Court also observes an aggregated delay of approximately thirty months caused by the District Court's failure to summon properly the applicant and his representative (see paragraphs 10-12 and 14-15 above). The Court also considers that the domestic authorities were responsible for a substantial delay in the proceedings caused by the defendants' failure to attend hearings. In the Court's opinion, the domestic authorities failed to take adequate steps in order to ensure the defendants' presence. They did not react in any way to the defendants' behaviour and did not use the measures available to them to discipline the participants to the proceedings and ensure that the case be heard within a reasonable time (see *Sokolov v. Russia*, no. 3734/02, § 40, 22 September 2005).

59. Having regard to the materials submitted and the case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 ON ACCOUNT OF NON-ENFORCEMENT OF THE DECISION OF 2 JULY 1999 AND THE JUDGMENT OF 10 JANUARY 2002, AS AMENDED BY THE JUDGMENT OF 29 MAY 2003

60. The applicant complained that he had not been able to recover his car because of the bailiffs' inefficient conduct of the enforcement proceedings. The Court considers that this complaint falls to be examined under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. Article 6 is cited above and 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..."

A. Admissibility

61. The Government argued that the complaint was premature and inadmissible under Article 35 § 1 of the Convention because the enforcement proceedings were still pending.

62. According to the Court's constant case-law, complaints concerning length of procedure can be brought before it before the final termination of the proceedings in question (see *Plaksin v. Russia*, no. 14949/02, § 35, 30 April 2004). Since enforcement proceedings should be regarded as an integral part of judicial proceedings (see *Ivanova v. Russia* (dec.), no. 74705/01, 1 April 2004; and *Zappia v. Italy*, judgment of 26 September 1996, *Reports* 1996-IV, § 20), the Court dismisses the Government's objection.

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

B. Merits

1. Article 6 § 1 of the Convention

(a) General principles

64. The Court reiterates that, execution of a judgment given by any court must be regarded as an integral part of the “trial” for the purposes of Article 6 of the Convention. (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, pp. 510-511, § 40, and *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 63, ECHR 1999-V). However, the right of “access to court” does not impose an obligation on a State to execute every judgment of civil character without having regard to particular circumstances of a case (see *Sanglier v. France*, no. 50342/99, § 39, 27 May 2003). The State has a positive obligation to organise a system for enforcement of judgments that is effective both in law and in practice and ensures their enforcement without undue delay (see *Fuklev v. Ukraine*, no. 71186/01, § 84, 7 June 2005). When the authorities are obliged to act in order to enforce a judgment and they fail to do so, their inactivity can engage the State's responsibility on the ground of Article 6 § 1 of the Convention (see *Scollo v. Italy*, judgment of 28 September 1995, Series A no. 315-C, § 44).

65. The Court is not called upon to examine whether the internal legal order of the State is capable of guaranteeing the execution of judgments given by courts. Indeed, it is for each State to equip itself with legal instruments which are adequate and sufficient to ensure the fulfilment of positive obligations imposed upon the State (see *Ruianu v. Romania*, no.

34647/97, § 66, 17 June 2003). The Court's only task is to examine whether measures applied by the Russian authorities in the present case were adequate and sufficient. In the cases, as the present one, which necessitate actions of a debtor who is a private person, the State – as the possessor of the public force – has to act diligently in order to assist a creditor in execution of a judgment (see *Fociac v. Romania*, no. 2577/02, § 70, 3 February 2005).

(b) Facts of the case

66. On the facts of the present case the Court observes that on 2 July 1999 the applicant obtained a decision by which the car was to be returned to him. The parties disagreed whether the writ of execution had in fact been issued. Although the Court is in possession of material evidence corroborating the applicant's claim that the writ had been issued on the same date (see paragraph 24 above), it does not need to examine the matter further because, in any event, the enforcement proceedings had been eventually instituted and the bailiffs had asked Mr S. to return the car. On 10 January 2002 the Taganrog Town Court confirmed that the car should be returned to the applicant. On 29 May 2003 the Taganrog Town Court varied the method of enforcement and awarded the applicant a sum of money against Mr S. On 2 July 2003 enforcement proceedings were instituted which are now pending.

67. The Court's task is to determine what measures the bailiffs had taken during the enforcement proceedings and whether they were adequate and sufficient. To that end the proceedings can be usefully divided into two periods:

(a) the period from July 1999 to 29 May 2003 during which the bailiffs were to return the applicant's car, and

(b) the period after 29 May 2003 during which the bailiffs were to recover a sum of money from Mr S.

(c) Period from July 1999 to 29 May 2003

68. The Government argued that the decision of 2 July 1999 could not be enforced because the applicant had not asked the Taganrog Town Court for a writ of execution. As to the judgment of 10 January 2002, the enforcement proceedings had been discontinued in December 2002 because the bailiffs' had not been able to find Mr S. or the car. The bailiffs had not begun the search for the car because the applicant had not advanced the associated costs.

69. The applicant pointed out that he had submitted a writ of execution of 2 July 1999 to the Taganrog Town bailiffs' service and that the enforcement proceedings had been instituted. He argued that he could not be blamed for the bailiffs' failure to start a search for Mr S. and his property.

70. It is undisputed that since July 1999 the bailiffs knew that the applicant's car was in possession of Mr S. However, they questioned Mr S. for the first time and asked him to return the car only in October 2000, that is thirteen months later. Having obtained information where the car was parked and it could be found there (see paragraph 28 above), the bailiffs remained passive, they did not visit Mr S. or impound the car. During the following three months their activity was confined to sending warnings, the most recent of which was dispatched in December 2000. It is remarkable that Mr S.'s disobedience to the bailiffs' request for the car to be returned, did not result in any legal action against him. No sanction provided for by domestic law in such situations – such as a fine or institution of criminal proceedings (see paragraph 47 above) – were applied to discipline Mr S. and force him to comply with the decision. After December 2000 the bailiffs had taken no action until November 2001 when Mr S. notified the sale of the car to them.

71. As regards the sale of the car, the Court notes that the road police did nothing to stall the definitive disposal by the judgment debtor of an asset, against which a charging order had been in place. It follows that the courts and the bailiffs had not made efforts to notify the existence of that charging order to the road police, that is the authority responsible for registration of motor vehicles, and to advise them that the enforcement proceedings were pending and that Mr S.'s right to sell the car was restricted.

72. The Court notes that the Government did not furnish any explanation as to why the bailiffs had failed to act from July 1999 to November 2001, that is during the entire period when they knew where the car was and were able to impound it. It is particularly striking that that substantial period of inactivity followed by an unencumbered sale of the car ended in the bailiffs' proposal that the applicant pay for the search of the car. The applicant promptly agreed to cover these expenses, which fact has been confirmed by the domestic court (see paragraph 43 above). The bailiffs' service was to prepare a calculation and a contract, but the applicant never received those documents. His request to that effect made in February 2002 went unanswered. It appears from the Government's submission that these documents were not prepared until January 2004, that is after the enforcement proceedings in respect of the judgment of 10 January 2002 had already been discontinued.

73. Having regard to the above considerations, the Court is of the opinion that the bailiffs did not employ adequate efforts to secure execution of the decision of 2 July 1999 and the judgment of 10 January 2002. Their failure to take action for almost two years had permitted Mr S. to sell the impounded car and compelled the applicant to initiate a new round of litigation, seeking to vary the method of enforcement.

(d) Period after 29 May 2003

74. The Government argued that after 29 May 2003 the bailiffs had not been able to find either Mr S. or his property. The only possibility open to them was to order a search. The applicant, however, refused to advance payment in respect of costs. The applicant replied that on several occasions he had asked the bailiffs to calculate the advance payments but no response had followed.

75. The Court is not convinced by the Government's arguments. Firstly, it appears from the submitted documentary evidence that Mr S. had lived in the same place for years: he indicated the same home address in his application for the car registration in July 2002, in his passport application in June 2003 and the summonses from the prosecutor's office had also been sent to the same address in 2005 (see paragraphs 34, 38 and 41 above).

76. Furthermore, the Government did not indicate any measure which the bailiffs had undertaken with a view to finding Mr S.'s property. There is no indication that the bailiffs attempted to establish Mr S.'s sources of income or bank account or that they inquired the local registration and tax authorities about his immovable property.

77. In the light of the above consideration the Court takes the view that the bailiffs did not take adequate steps to secure enforcement of the judgment of 29 May 2003 (see, by contrast, *Fociac v. Romania*, no. 2577/02, §§ 70-77, 3 February 2005). Moreover, it also does not escape the Court's attention that since the initiation of the search in October 2005 there has been no change in the applicant's situation.

78. The Court thus finds that by refraining for years from taking adequate and effective measures required to secure compliance with the enforceable judicial decisions, the national authorities deprived the provisions of Article 6 § 1 of the Convention of all useful effect. There has therefore been a violation of Article 6 § 1 of the Convention.

2. Article 1 of Protocol No. 1

79. Having regard to its case-law, the Court notes that it has already established the principles relating to the alleged violation of the applicant's property rights owing to the State's failure to ensure the enforcement of a final judgment issued against a private party. In particular, in the case of *Fuklev v. Ukraine* the Court found as follows:

“89. The Court reiterates that by virtue of Article 1 of the Convention, each Contracting Party 'shall secure to everyone within [its] jurisdiction the rights and freedoms defined in ... [the] Convention'. The obligation to secure the effective exercise of the rights defined in that instrument may result in positive obligations for the State. In such circumstances, the State cannot simply remain passive and 'there is ... no room to distinguish between acts and omissions'....

91. As regards the right guaranteed by Article 1 of Protocol No. 1, those positive obligations may entail certain measures necessary to protect the right to property even in cases involving litigation between private individuals or companies. This means, in particular, that States are under an obligation to ensure that the procedures enshrined in the legislation for the enforcement of final judgments... are complied with.

92. The Court considers that the failure of the bailiffs to act and the domestic courts' failure to exercise appropriate control over the situation, created permanent uncertainty as to the enforcement of a judgment in the applicant's favour and as to the payment of the debt owed to him. Consequently, the applicant had to cope with that uncertainty during a lengthy period of time...

93. Having regard to the foregoing considerations and to its findings in respect of Article 6 § 1 of the Convention, the Court is of the view that the manner in which the enforcement proceedings were conducted, their total length and the uncertainty in which the applicant was left, upset the 'fair balance' that had to be struck between the demands of the public interest and the need to protect the applicant's right to the peaceful enjoyment of his possessions. Consequently, the State failed to comply with its obligation to secure to the applicant the effective enjoyment of his right of property, as guaranteed by Article 1 of Protocol No. 1." (no. 71186/01, 7 June 2005)

80. The Court sees no reasons to depart from these findings in the present case. Applying these principles and having regard to the findings set out in the paragraphs 73, 77 and 78 above, the Court considers that owing to the bailiffs' failure to take adequate and sufficient measures with the view to securing enforcement of the judicial decisions in the applicant's favour, he was left for many years in the situation of uncertainty and since 1999 was unable to enjoy his possessions. Accordingly, there has been a violation of Article 1 of Protocol No. 1.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

81. The applicant complained about discrimination against him by the bailiffs.

82. The Court finds that the applicant's allegations that he had been discriminated are not supported by the facts of the case. In particular, the fact that the bailiffs failed to ensure the enforcement of the judgments in his favour does not in itself constitute discrimination contrary to Article 14 of the Convention (see, *mutatis mutandis*, *Des Fours Walderode v. the Czech Republic* (dec.), no. 40057/98, ECHR 2004).

83. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 § 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. 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

85. The applicant claimed 8,750 euros (EUR) in respect of non-pecuniary damage sustained as a result of the excessive length of the tort proceedings and EUR 13,220.87 in respect of non-pecuniary damage caused by the bailiffs' failure to ensure the enforcement of the decision of 2 July 1999 and the judgments of 10 January 2002 and 29 May 2003 in his favour.

86. The Government argued that the claim was excessive and unreasonable.

87. The Court observes that the applicant did not submit any claim in respect of pecuniary damage. The Court, however, notes that the State's outstanding obligation to ensure the effective enforcement of the judgments in the applicant's favour is not in dispute. Accordingly, the applicant is still entitled to recover the principal amount of the judgment debt in the domestic proceedings. The Court recalls that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant as far as possible is put in the position he would have been had the requirements of Article 6 not been disregarded (see *Piersack v. Belgium* (Article 50), judgment of 26 October 1984, Series A no. 85, p. 16, § 12, and, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003). The Court finds that in the present case this principle applies as well, having regard to the violation found. It therefore considers that the Government shall secure, by appropriate means, the enforcement of the award made in the applicant's favour by the judgment of 10 January 2002, as amended by the judgment of 29 May 2003.

88. As regards the applicant's claim in respect of non-pecuniary damage, the Court accepts that the applicant suffered distress, anxiety and frustration exacerbated by the unreasonable length of the tort proceedings and the domestic authorities' failure to secure enforcement of the decision of 2 July 1999 and the judgment of 10 January 2002, as amended by the judgment of 29 May 2003. However, the amount claimed appears excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

89. The applicant did not make any claim for the cost and expenses incurred before the domestic courts and before the Court.

90. Accordingly, the Court does not award anything under this head.

C. Default interest

91. 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 excessive length of the tort proceedings and non-enforcement of the judicial decisions in the applicant's favour admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of an unreasonable length of the tort proceedings;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of non-enforcement of the decision of 2 July 1999 and the judgment of 10 January 2002, as amended by the judgment of 29 May 2003;
4. *Holds*
 - (a) that the respondent State shall secure, by appropriate means, the enforcement of the awards made by the domestic court in the applicant's favour, and to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the settlement, plus any tax that may be chargeable;
 - (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;

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

Done in English, and notified in writing on 19 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President