



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

SECOND SECTION

CASE OF MUMLADZE v. GEORGIA

(Application no. 30097/03)

JUDGMENT

STRASBOURG

8 January 2008

FINAL

08/04/2008

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 Mumladze v. Georgia,

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

Françoise Tulkens, *President*,

András Baka,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Antonella Mularoni,

Danutė Jočienė, *judges*,

Irakli Adeishvili, *ad hoc judge*,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 4 December 2007,

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

PROCEDURE

1. The case originated in an application (no. 30097/03) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Mrs Neli Mumladze on 16 August 2003. The applicant was represented by Mr Avtandil Kakhniashvili and Ms Lia Mukhashavria, lawyers practising in Georgia.

2. The Georgian Government (“the Government”) were represented by their Agent, Ms Irine Bartaia of the Ministry of Justice.

3. On 29 March 2006 the Court decided to communicate to the Government the complaints concerning the absence of an oral hearing in cassation and the lack of a domestic remedy in this respect. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. The Government and the applicant each filed observations on the admissibility and merits of the application (Rule 54A of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1938 and lives in Zestafoni, Georgia.

1. Supervisory proceedings

6. In a judgment of 2 July 1998 the Zestafoni District Court ordered the applicant to discharge the debt of USD 1,000 (EUR 730¹) in favour of another private individual. On 20 August 1998 the Supreme Court of Georgia upheld this judgment in cassation and it became binding.

7. On an unspecified date, the applicant filed with the Supreme Court a request for the supervisory review of the final judgment of 2 July 1998, seeking the re-opening of the case. On 13 May 1999 the Vice-President of the Supreme Court dismissed that request as unsubstantiated.

8. On 15 May 1999 the new Code of Civil Procedure of 14 November 1997 (“the CCP”), annulling the system of supervisory review, entered into force. Pursuant to its Article 436, supervisory proceedings which had not been finalised before the entry into force of that Code were to be maintained by the Supreme Court.

9. On an unspecified date, the applicant requested the Supreme Court to resume examination of her supervisory review request on the basis of Article 436 of the CCP. On 25 October 2000 the Supreme Court replied that her request was manifestly ill-founded, insofar as the relevant supervisory proceedings had been terminated on 13 May 1999, i.e. prior to the CCP's entry into force.

10. The applicant brought another court action, requesting that the Supreme Court be ordered, as “an administrative organ”, to resume the supervisory proceedings under Article 436 of the CCP. This action was dismissed as unsubstantiated several times and, lastly, on 18 February 2003 by the Administrative Affairs Chamber of the Supreme Court.

2. Eviction proceedings

11. As the applicant refused to discharge the judgment debt of 2 July 1998, enforcement proceedings were initiated against her. Subsequently, an enforcement officer attached the applicant's house, located at 58 Pirosmiani Street in Zestafoni (“the house”), which was put up for public auction.

12. On 22 June 2001 the auction was held but no buyer appeared. In the course of the rescheduled auction on 16 July 2001, the house was initially offered for the price of GEL 10,042 (EUR 4,430), this amount corresponding to its market value according to an auditor's report of 30 March 2001. However, as no bids were made, the enforcement officer started decreasing the price and, ultimately, the creditor, being the sole bidder, purchased the house for GEL 2,076 (EUR 916). On 18 July 2001 the certificate confirming the creditor's property title to the house was issued and the Land Register amended accordingly.

¹ Here and elsewhere, approximate conversions are given in accordance with the exchange rate on 10 September 2007.

13. As the applicant continued living in the house, the creditor brought a court action for her eviction. On 12 March 2002 the Zestafoni District Court allowed the action on the basis of both parties' written and oral submissions. The court found it established that the creditor had acquired ownership of the house through the public auction of 16 July 2001. It reasoned that, insofar as the applicant had never challenged the lawfulness of that auction in separate proceedings, the house was to be vacated.

14. On 25 April 2002 the applicant lodged an appeal. She claimed to have been discharging the judgment debt in instalments and complained that the forced sale of her house had therefore been unjustified. She also contended that the house had been her husband's registered property and that the enforcement officer had no competence to conduct the auction.

15. In a decision of 13 June 2002, the Kutaisi Regional Court, after having heard both parties' oral pleadings, dismissed the appeal and upheld the judgment of 12 March 2002. It reiterated the lower court's findings that the applicant had never disputed the results of the public auction and that the creditor had acquired ownership of the house in good faith.

16. On 2 August 2002 the applicant lodged a cassation claim, reiterating her previous appeal arguments.

17. On 16 September 2002 the Supreme Court declared the applicant's cassation claim admissible and dispensed with an oral hearing on the merits under Article 408 § 3 of the CCP. By the same decision, the applicant was exempted, as an indigent person, from the court fees for cassation proceedings.

18. On 23 September 2002 the Supreme Court sent its decision of 16 September 2002 to the parties; the creditor was also served with a copy of the applicant's cassation claim. The Zestafoni postal services notified the Supreme Court on 26 September 2002 that this decision had been delivered to the applicant on 24 September 2002.

19. On 30 September 2002 the creditor submitted comments in reply. Those submissions, addressing mostly the factual circumstances of the case, were not transmitted to the applicant. In a decision of 9 December 2002, the Supreme Court dismissed the applicant's cassation claim. It found, in the light of the case materials, that the applicant had been the owner of the disputed house before the public auction. It reasoned that, since the results of the auction had never been the subject of an examination by the lower courts, either in separate proceedings or by way of a counter-claim within the same proceedings, the applicant was absolved from raising certain arguments for the first time before the cassation court. However, as no "additional and well-founded cassation argument" (*sakasacio pretenzia*) had been made, the findings of the lower courts concerning the circumstances of the case were declared binding on the cassation court.

20. In its decision of 9 December 2002, the Supreme Court did not take into account the arguments contained in the respondent's submissions of

30 September 2002; it solely addressed the issues raised in the applicant's cassation claim.

21. On 9 January 2003 the Supreme Court sent this last decision to the parties. According to the applicant, she never received that dispatch (see paragraphs 46 and 48 below).

22. On 20 January 2003 the applicant requested the Supreme Court to stay the cassation proceedings, in view of the fact that the supervisory proceedings were pending (see paragraph 10 above). In a letter of 18 February 2003, the Supreme Court replied that its decision of 9 December 2002, dismissing her cassation claim, was final and that no appeal lay against it. This letter was delivered to the applicant on 24 February 2003.

23. According to the applicant, the letter of 18 February 2003 enclosed the Supreme Court's decision of 9 December 2002, and that was how she learned first about the termination of the eviction proceedings.

3. Constitutional proceedings

24. On 30 April 2003 the applicant, along with other persons, lodged a constitutional claim with the Constitutional Court, requesting the annulment of Article 408 § 3 of the CCP for being unconstitutional.

25. On 3 July 2003 the Constitutional Court examined this claim. As the vote of the sitting judges was tied, the claim, pursuant to section 21 § 6 of the Constitutional Court Act, was dismissed (for more details, see paragraph 28 below).

II. RELEVANT DOMESTIC LAW AND PRACTICE

26. The Code of Civil Procedure of 14 November 1997, as in force at the material time of the eviction proceedings

Articles 70-78 prescribed the procedure for serving court summons on a party to the proceedings. This procedure required an acknowledgement of delivery to be returned to the dispatching court (Article 73).

Pursuant to Article 83 § 1, the parties had equal procedural rights. They could consult the case file and make extracts from or take copies of all the materials therein.

Pursuant to Article 393 §§ 1 and 2, only the lawfulness of an appellate decision could be challenged in a cassation claim. The disputed decision could be found to be unlawful if the appellate court had wrongly applied or interpreted legislative provisions.

Pursuant to Article 397, which regulated the time-limit for lodging a cassation claim, appellate decisions were considered to be delivered when

handed to a party in court or communicated under the procedure envisaged by Articles 70-78.

Article 396 § 1 (f) required the appellant to mention in his or her cassation claim those facts which supported the alleged breaches of procedural law if the cassation claim was challenging not only substantive but also procedural legal provisions.

According to Article 399, unless Chapter XLIX, which contained special rules for cassation proceedings, stated otherwise, the provisions regulating appellate proceedings should equally apply in cassation.

Chapter XLIX did not contain any provisions overruling or contradicting Articles 70-78 and 397.

Article 400 stated that a copy of the cassation claim with all the supporting documents should be forwarded to the adversary. Neither this nor any other provision of the Code required the adversary's reply to be transmitted to the appellant or that any further exchange of comments was possible.

Article 404 § 1

“The cassation court shall review the [disputed] judgment only in so far as challenged in the cassation claim. The cassation court cannot go beyond the facts referred to under Article 396 § 1 (f) or inquire of its own motion into other procedural breaches.”

Article 407 §§ 1 and 2

“The cassation court shall take into account the party's submissions only in so far as disclosed by the case file or the appellate judgment; only the facts submitted under Article 396 § 1 (f) can be taken into account.

The establishment of the facts [by the appellate court] is binding on the [cassation] court, unless an additional and well-founded cassation argument has been raised.”

Article 408 § 3

“If the cassation court finds it appropriate..., it can decide the case without an oral hearing. The parties shall be notified of such a decision.”

27. The Enforcement Proceedings Act of 16 April 1999 (“the Enforcement Act”), as in force at the material time

Article 63 § 1 - “Enforcement measures [when related to immovable property]”

“Enforcement, when related to immovable property, is carried out by a public auction, mortgage or sequestration.”

Section 74 - “Final price offer”

“...the final price offered during [the first] public sale shall not be less than 70 % of the object's market value and shall include the costs of the auction ...”

Section 77 §§ 1 and 3 - “Repeat public auctions”

“If an appropriate price was not offered in the course of the first public sale, the enforcement officer shall schedule a repeat auction...”

During the repeated auction, the final price shall be of at least such an amount as to cover the creditor's claims and the costs of the sale ...”

28. The Constitutional Court Act of 31 January 1996, as in force at the material time

Section 21 § 6 (as amended on 12 February 2002)

“If the vote of a Chamber (Panel) [of the Constitutional Court] is tied, the constitutional claim is considered to have been dismissed.”

The provisions on the nature of Georgian constitutional proceedings were summarised in paragraph 23 of the Court's judgment in the case of *Apostol v. Georgia* (no. 40765/02, ECHR 2006-...).

29. The Constitutional Court's judgment of 3 July 2003 in the case of Rizhamadze and Mumladze v. the Parliament of Georgia

The Constitutional Court dismissed the applicant's complaint, challenging Article 408 § 3 of the CCP, which provided for the possibility to dispense with an oral hearing in cassation proceedings.

The Constitutional Court noted that, unlike an appellate court which established facts, the cassation court could only review the application of legal provisions. It could however examine, on the basis of Articles 396 § 1 (f) and 407 §§ 1 and 2 of the CCP, the facts which had been explicitly raised by the appellant in relation to the alleged violations of procedural law.

Consequently, whilst the scope of the review was mostly limited to the assessment of the application of procedural and substantive law, the Constitutional Court concluded that the right to an oral hearing in cassation proceedings was not absolute.

30. The Supreme Court's practice

In its judgment of 28 February 2006 in the case of “*Gokhi*” v. “*Telasi*” JSC, the Supreme Court defined the notion of an “additional and well-founded cassation argument” (Article 407 § 2 of the CCP), as follows:

“...!An additional and well-founded cassation argument' is ... a reference to those procedural breaches which, having been committed by the appellate court during the examination of the case, have resulted in an erroneous assessment of matters of fact and/or the incorrect interpretation and application of substantive legal provisions.”

THE LAW

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

31. The applicant complained under Article 6 § 1 of the Convention that the Supreme Court had refused to quash the judgment of 2 July 1998 and re-open her civil dispute.

32. She also complained that the rule dismissing constitutional proceedings on a tied vote undermined Article 6 § 1 of the Convention.

33. Finally, the applicant challenged the outcome of the eviction proceedings. She complained that the domestic courts had refused to endorse her arguments, especially that concerning the alleged unlawfulness of the public auction. She further complained that the Supreme Court had not held an oral hearing in cassation.

34. Article 6 § 1 of the Convention, in its relevant part, reads as follows:

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

A. Admissibility

1. As regards the supervisory proceedings

35. The Court recalls that neither Article 6 § 1 nor any other Convention provision guarantees the right to the re-opening of proceedings which have been closed by a final judgement (see *Zotov v. Bulgaria* (dec.), no. 43273/98, 6 March 2003; *Sablon v. Belgium*, no. 36445/97, § 81, 10 April 2001; *Callaghan and Others v. the United Kingdom*, n° 14739/89, Decision of 9 May 1989, DR no. 60, p. 296).

36. It follows that the applicant's complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

2. As regards the constitutional proceedings

37. The Court recalls that, in the aforementioned case of *Apostol v. Georgia* (§§ 42-47), Georgian constitutional proceedings were found to be an ineffective remedy for the purposes of Article 35 § 1 of the Convention. This finding was conditioned by the fact that the Georgian Constitutional Court was not empowered to set aside the individual decisions of public authorities or courts which directly affected the complainant's rights; a declaration that a statute or other normative act was unconstitutional could not result in the quashing of the judicial decisions which had already been taken on the basis of the impugned legislation.

38. The Court further reiterates that Article 6 § 1 of the Convention would not normally apply to proceedings dealing in the abstract with the constitutionality of contested laws and which were unable to examine the lower bodies' decisions directly affecting an applicant's civil rights (cf., amongst others, *Kisić v. Croatia* (dec.), no. 50912/99, 18 October 2001; *Labus v. Croatia* (dec.), no. 50965/99, 18 October 2001).

39. In the present case, the only aim of the applicant's constitutional claim was to challenge Article 408 § 3 of the CCP allowing dispensation of an oral hearing in cassation. The outcome of the constitutional challenge was irrelevant for the already terminated eviction proceedings in the applicant's case. Even if the Constitutional Court had allowed the applicant's claim, it would have resulted in an abstract declaration that the disputed provision of the CCP was unconstitutional, without affecting the Supreme Court's binding decision of 9 December 2002 in any way.

40. In the light of the above, the Court concludes that, in the present case, the constitutional proceedings were completely detached from and indecisive for the applicant's interests, the latter having already been determined in the course of the eviction proceedings. Accordingly, Article 6 § 1 of the Convention does not apply thereto (see, the *Kisić* decision cited above; *Aćimović v. Croatia* (dec.), no. 48776/99, 18 October 2001).

41. It follows that the applicant's complaint about the constitutional proceedings is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

3. As regards the eviction proceedings

42. At the outset, the Court notes that it is not disputed by the parties that Article 6 § 1 of the Convention is applicable to the eviction proceedings in the present case.

(a) The complaint about the outcome of the proceedings and the domestic courts' decisions as such

43. The Court does not deem it necessary to examine here the Government's objection below (paragraph 45), as this part of the application is, in any case, inadmissible on other grounds.

44. Notably, by calling into question the outcome of the eviction proceedings and complaining that the domestic courts did not give due consideration to her arguments, the applicant requests the Court to act as an appeal court of “fourth instance”. However, the Court recalls that the domestic courts are best placed to assess the relevance of evidence to the issues in the case and to interpret and apply the rules of substantive and procedural law (see, amongst many authorities, *Vidal v. Belgium*, judgment of 22 April 1992, Series A no. 235-B, pp. 32-33, § 32; *Gurepka v. Ukraine*, no. 61406/00, § 45, 6 September 2005). In so far as the relevant domestic decisions do not disclose any manifestly arbitrary reasoning, the Court considers that this limb of the applicant's complaint under Article 6 § 1 is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

(b) The complaint about the absence of an oral hearing in cassation

i. The parties' arguments

45. The Government submitted that the Supreme Court's final decision of 9 December 2002 had been sent to the applicant on 9 January 2003. As proof, they submitted a copy of the record acknowledging the dispatch of that decision to the applicant's address on the above-mentioned date by registered post. As the application was lodged on 16 August 2003, that is more than seven months after the final decision was sent to the applicant, the complaint about the absence of an oral hearing did not satisfy the six months' requirement of Article 35 § 1 of the Convention. Furthermore, the Government claimed that the relevant domestic law did not require the domestic court to obtain delivery records of its dispatches. They argued that, had the decision not reached the addressee, the postal services would have returned it to the Supreme Court. The Government also submitted a letter, dated 18 April 2007, from the Head of the Zestafoni post office, stating that the impugned decision was delivered to the applicant's address on 13 January 2003. This statement was not supported by any evidence.

46. The applicant replied that, even assuming that the Supreme Court had sent its decision of 9 December 2002 on 9 January 2003, she never received it. She noted in this regard that, except for the proof of dispatch, the Government had not produced any evidence of the actual delivery of the decision to her. The applicant further submitted that, had she received the impugned decision on 9 January 2003, she would obviously not have requested the Supreme Court to stay the cassation proceedings on

20 January 2003 (see paragraph 22 above). She reiterated that the decision of 9 December 2002 had first been served on her on 24 February 2003, as an enclosure to the Supreme Court's letter of 18 February 2003 (see paragraphs 22-23 above).

ii. The Court's assessment

47. The Court considers that it has not been shown, just by the proof of dispatch, that the Supreme Court's decision of 9 December 2002 was actually handed to the applicant on a date material to the application of the six month rule laid down in Article 35 § 1 of the Convention. As noted by the applicant, the Government have not submitted clear proof of delivery, the statement of the Head of the Zestafoni being made four years after the material facts, without effective substantiation.

48. The Court cannot accept the Government's argument that procedural law did not oblige the domestic court to obtain a record of delivery from the postal services. Articles 73 and 397 of the CCP required appellate courts to do so and the Court sees no reason why the same rule should not have applied to the delivery of final cassation decisions, since Article 399 of the CCP expressly stated that all appellate rules were to be applied equally to cassation proceedings, unless otherwise specified in Chapter XLIX of the CCP. Moreover, in the very same cassation proceedings, the Supreme Court obtained proof of delivery from the postal services of its earlier decision declaring the case admissible, and of its intention to dispense with a hearing on the merits (see paragraphs 17 and 18 above). Finally, the Court is persuaded that, had the applicant received on 13 January 2003 the Supreme Court decision of 9 December 2002 terminating the dispute, she would probably not have requested a stay of the cassation proceedings on the 20 January 2003 (see paragraphs 22 and 46 above).

49. In the light of these considerations, the Court accepts the applicant's claim that she only received the cassation decision of 9 December 2002 as an enclosure to the Supreme Court's letter of 18 February 2003. As the present application was lodged with the Court on 16 August 2003, the Government's objection regarding non-observance of the six month rule is dismissed.

50. The Court further notes that the complaint about the absence of an oral hearing is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

51. The Government submitted that, under Georgian law, the primary role of the Supreme Court in cassation was to review the lawfulness of appellate decisions (Article 408 § 3 of the CCP; paragraph 26 above). Thus, where the cassation court could not inquire into the circumstances of the case and was only called upon to assess the already established facts from a legal point of view, the parties' participation at an oral hearing might not always be necessary. This rule could be justified by such legitimate considerations as the right to a hearing within a reasonable time and the demands of economy.

52. As to the present case, according to the Government, the Supreme Court had only to review the lawfulness of the appellate judgment. It could not re-examine the factual circumstances of the case, as requested by the applicant in her cassation claim. The cassation court was not even called upon to assess the facts relating to procedural breaches, as no such cassation argument (*sakasacio pretenzia*) had been raised by the applicant. In the Government's view, the inquiry into points of law in the light of the already established facts was fully possible on the basis of the applicant's written observations and the case materials. Furthermore, the applicant had been informed in advance of the decision to dispense with an oral hearing (see paragraphs 17 and 18 above).

53. The Government noted that domestic law did not require the transmission of the respondent's comments to the applicant prior to the Supreme Court's final decision of 9 December 2002 (Article 400 of the CCP). In any case, had the applicant wished to have knowledge of those submissions, she could have consulted the case file on the basis of Article 83 § 1 of the CCP (see paragraph 26 above).

54. In the light of the foregoing, the Government argued that the absence of an oral hearing before the Supreme Court could not be said to have breached any of the safeguards of Article 6 § 1 of the Convention.

55. The applicant replied that Article 408 § 3 of the CCP lacked clarity and foreseeability, as it did not specify the circumstances in which the cassation court could dispense with an oral hearing. She further complained that this provision did not oblige the cassation court to give reasons for such a decision or provide an appeal. These alleged deficiencies resulted in the Supreme Court's arbitrary practice in dispensing with oral hearings. The applicant also complained that none of the provisions of the CCP obliged the cassation court to give notice of its decision to dispense with an oral hearing prior to the delivery of a final decision (or judgment) in a case. She finally submitted that an oral hearing in the cassation proceedings would

have been indispensable to show that the factual circumstances of her case had not been properly assessed by the lower courts.

2. The Court's assessment

56. The Court notes that, by complaining that the Supreme Court was not obliged to give reasons for its decision to dispense with an oral hearing and that no appeal lay against it, the applicant detaches the impugned absence of a hearing in cassation from the context of her dispute, and instead denounces alleged deficiencies in the procedure under Article 408 § 3 of the CCP as such. However, it should be recalled that the Convention system does not envisage a mechanism to challenge legal provisions *in abstracto*, but only in relation to the specific application of such laws to the particular circumstances of an applicant's situation (see, among others, *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 145-B, p. 34, § 53). The Court must therefore examine whether the application of the procedure under Article 408 § 3 of the CCP to the applicant's case was in conformity with Article 6 § 1 of the Convention.

57. At the outset, the Court recalls that the Georgian Supreme Court's power derived from Article 408 § 3 of the CCP to dispense with an oral hearing in cassation does not *per se* constitute a violation of Article 6 § 1 of the Convention. This is justified by the role of cassation proceedings in the respondent State, which is essentially to address the points of law in a case, and the fact that hearings as a rule have already taken place before the lower instances (see *Rizhamadze v. Georgia*, no. 2745/03, §§ 35-39, 31 July 2007).

58. Consequently, as hearings were held before both lower courts in the present case, the Court agrees with the Government that the right to an oral hearing in cassation could be outweighed by the demands of diligence and economy (see, *Rizhamadze*, cited above, § 39).

59. However, a problem may arise if the applicant shows that, as a consequence of the absence of a hearing in cassation, his or her right to adversarial proceedings and the principle of equality of arms were undermined (see, *Rizhamadze*, cited above, § 41). The Court notes that, in the present case, no comparable complaint has been made. In any case, nothing in the case file suggests that the written procedure offered to the applicant by the Supreme Court in lieu of an oral hearing disclosed any reasonable grounds to doubt its fairness.

60. As to the applicant's arguments that her oral pleadings before the cassation court were indispensable in order to clarify certain factual issues, the Court reiterates that legal arguments, as well as those relating to technical factual matters, may be presented effectively in writing rather than orally (see, for example, *Pursiheim v. Finland* (dec.), no. 57795/00, 25 November 2003; *Döry v. Sweden*, no. 28394/95, § 37, 12 November 2002; *Sutter v. Switzerland*, judgment of 22 February 1984, Series A no. 74,

§ 30; *Coorplan-Jenni GmbH and Hascic v. Austria*, no. 10523/02, § 63, 27 July 2006; *Salomonsson v. Sweden*, no. 38978/97, § 39, 12 November 2002; *Göç v. Turkey* [GC], no. 36590/97, § 51, ECHR 2002-V). Moreover, the Supreme Court of Georgia, when sitting in cassation, was not, contrary to the applicant's cassation demands, competent to review matters of fact in the present case (see *Rizhamadze*, cited above, § 37).

61. The case file discloses that the respondent's reply to the applicant's cassation claim was not transmitted to her before the delivery of the final decision (see, *a contrario*, *Rizhamadze*, cited above, § 42). However, in the circumstances of the present case, it did not amount to a violation of the principle of adversarial proceedings. The Court notes that the relevant provisions of the CCP did not entitle the parties to submit any additional comments on each others' submissions. Consequently, even if the applicant had had prior knowledge of the respondent's reply, she would not have been able to submit to the Supreme Court any further arguments with a view to influencing the forthcoming examination of her case. More importantly, the Supreme Court did not take into account any of the respondent's arguments when addressing the applicant's cassation claim (see paragraph 20 above). Consequently, it cannot be said that, in the course of the examination of her cassation claim, the applicant was put in a weaker position than her adversary.

62. Finally, since the applicant was not caught unaware by the Supreme Court's decision to dispense with an oral hearing which had been duly announced prior to the examination of her case (see, *Rizhamadze*, § 42), the Court accepts the Government's argument that she or a lawyer acting on her behalf could have exercised the right under Article 83 § 1 of the CCP to consult the case file. In this way, the applicant could have obtained knowledge of all the materials of the case, including the respondent's submissions, if any, before the case was finally decided.

63. Having regard to the above considerations, the Court concludes that the absence of an oral hearing before the cassation court did not constitute a violation of Article 6 § 1 of the Convention in the present case.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

64. Invoking Article 13 of the Convention in conjunction with Article 6, the applicant reiterated her complaint about the inability to appeal against the decision dispensing with an oral hearing.

65. Taking into account its findings under Article 6 § 1 of the Convention, the Court considers that no separate examination of the same issue is required under Article 13.

66. The applicant further complained under Article 1 of Protocol No. 1 about the forced sale of her house at a price lower than its market value.

67. The Court notes that this complaint was not examined by the domestic courts. The civil proceedings in question, which were at the core of the current application, solely addressed the issue of the lawfulness of the applicant's eviction; the issue of the forced sale at a given price was not a matter for judicial consideration. Nor had the applicant, as repeatedly acknowledged by the domestic courts in the course of the eviction proceedings, ever tried to bring a separate action for this grievance (see paragraphs 13, 15 and 19 above).

68. It follows that the complaint under Article 1 of Protocol No. 1 must be rejected for non-exhaustion of domestic remedies in accordance with Article 35 §§ 1 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the absence of an oral hearing in cassation admissible and the remainder of the application inadmissible;
2. *Holds* unanimously that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 8 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Section Registrar

Françoise Tulkens
President