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

FIRST SECTION

CASE OF WASSERMAN v. RUSSIA (No. 2)

(Application no. 21071/05)

JUDGMENT

STRASBOURG

10 April 2008

FINAL

29/09/2008

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 Wasserman v. Russia (no. 2),

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Dean Spielmann,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 20 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 21071/05) 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 and Israeli national, Mr Kim Yefimovich Wasserman (“the applicant”), on 8 June 2005.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained of the continued non-enforcement of a judgment in his favour and the absence of an effective domestic remedy for this complaint.

4. On 13 March 2006 the Court decided to give notice of the application to the Government. 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1926 and lives in Ashdod, Israel.

A. Domestic judgment in the applicant's favour

6. On 9 January 1998 the applicant arrived in Russia. On crossing the border, he omitted to report a certain sum of cash in his customs declaration and the customs office seized his money. The applicant appealed to a court.

7. On 30 July 1999 the Khostinskiy District Court of Sochi set aside the seizure order and ordered the Treasury to repay the applicant the equivalent in Russian roubles of the 1,600 United States dollars (USD) seized. On 9 September 1999 the Krasnodar Regional Court upheld that judgment on appeal.

8. At the applicant's request the District Court amended the operative part of the judgment on 15 February 2001 and ordered the Treasury to pay USD 1,600 into the applicant's bank account in Israel.

9. On 10 April 2001 the District Court issued a writ of execution and sent it to the bailiffs' service in Moscow. On 30 October 2001 the Moscow bailiffs sent the writ back to Sochi, for reasons which are unclear.

10. After the judgment in his favour had remained unenforced for more than a year, the applicant complained to the Court (application no. 15021/02).

B. Judgment in the case of *Wasserman v. Russia* (application no. 15021/02)

11. On 18 November 2004 the Court delivered judgment in the above case. It noted the Government's acknowledgment that the writ of execution had been lost in the process of being transferred from the Moscow bailiffs to the Sochi office. However, in the Court's view, the logistical difficulties experienced by the State enforcement services could not serve as an excuse for not honouring a judgment debt; the applicant's complaints concerning the non-enforcement of the judgment should have prompted the competent authorities to investigate the matter and to ensure that the enforcement proceedings were brought to a successful conclusion. The Court found a violation of the applicant's "right to a court" under Article 6 § 1 of the Convention and of his right to peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 (see *Wasserman v. Russia*, no. 15021/02, §§ 38-40 and 43-45, 18 November 2004).

12. The Court granted the applicant's claim for the interest on the judgment debt. It rejected, however, the claim for the outstanding amount on the ground that "the Government's obligation to enforce the judgment at issue ha[d] not been yet extinguished and the applicant [was] still entitled to recover this amount in the domestic enforcement proceedings" (see *Wasserman*, cited above, § 49). It also made awards in respect of non-pecuniary damage and costs and expenses (§§ 50-53).

C. Further developments relating to enforcement of the judgment

13. In the meantime, on 17 February 2004, a duplicate of the writ was issued and presented to the Ministry of Finance for enforcement.

14. In its observations on the applicant's claim (see below), the Ministry of Finance mentioned that on 21 June 2004 payment of the outstanding amount into the applicant's account in Israel had been authorised.

15. By letter of 17 May 2005 the Ministry of Finance informed the applicant that it would not enforce the judgment because the District Court's decision of 15 February 2001 had misspelled one letter in his patronymic name and because the writ of execution had incorrectly designated the debtor as the "Chief State Directorate of the Federal Treasury" (the correct name of the entity does not contain the word "State").

16. By decision of 5 October 2005 the District Court corrected the spelling mistake in the decision of 15 February 2001.

17. On 3 October 2006 the sum of USD 1,569 was credited to the applicant's bank account in Israel. An amount of USD 31 was withheld by the State-owned bank *Vneshtorgbank* as commission for the wire transfer.

D. Proceedings concerning compensation for excessive length of enforcement

18. On 12 May 2003 the applicant brought a civil claim against the Moscow bailiffs, the Ministry of Justice and the Ministry of Finance. He sought compensation for pecuniary and non-pecuniary damage allegedly incurred as a result of the unlawful actions of the bailiffs and the continued failure to enforce the judgment.

19. On 25 August 2004 the Zamoskvoretskiy District Court of Moscow found that the Moscow bailiffs had acted unlawfully in that they had never instituted enforcement proceedings and had had no legal grounds for sending the writ back to Sochi. However, it refused the claim for damages, finding that the applicant had not incurred any pecuniary damage as a result of the non-enforcement of the judgment of 30 July 1999. As to non-pecuniary damage, Russian law did not provide for compensation in situations such as the applicant's.

20. On 30 March 2005 the Moscow City Court dismissed an appeal by the applicant, reproducing verbatim the text of the District Court's judgment.

21. The applicant lodged an application for supervisory review. On 1 June 2006 the Presidium of the Moscow City Court granted his application, quashed the judgments of 25 August 2004 and 30 March 2005 in part and remitted the claim for damages for fresh examination by the District Court.

22. Between 25 September 2006 and 22 February 2007 the District Court listed nine hearings which were subsequently adjourned for various reasons.

23. On 22 February 2007 the Zamoskvoretskiy District Court issued a new judgment. It rejected the applicant's claim in respect of pecuniary damage on the ground that no admissible evidence had been produced in support of it. It accepted the claim for non-pecuniary damage in part, finding as follows:

> "...the court takes into account the fact that the Zamoskvoretskiy District Court judgment of 25 August 2004 found the [Moscow] bailiffs' actions to have been unlawful, and the fact that enforcement of the judgment was protracted and did not actually occur until 3 October 2006. This was not disputed by the parties.
>
> The court therefore finds that there has been a violation of the claimant's right to a fair hearing within a reasonable time on account of an unlawful delay in the enforcement of a judicial decision, which implies that just compensation must be paid to the individual who sustained damage as a result.
>
> Taking into account the specific circumstances of the case, the principle of reasonableness and the physical and mental suffering caused to the claimant on account of the belated enforcement of the judgment, and also the fact that the claimant is a pensioner and [has the title] 'Honoured Coach of Russia', the court considers it necessary to award him 8,000 Russian roubles as compensation for non-pecuniary damage, to be paid by the Ministry of Finance.
>
> The court finds no grounds to award a larger amount of compensation as the claimant did not produce evidence showing that the defendants had caused him physical or mental suffering of an irreversible nature..."

The District Court further rejected the applicant's claim for legal costs and expenses.

24. On 7 August 2007 the Moscow City Court upheld that judgment on appeal, reproducing verbatim the District Court's reasoning.

II. RELEVANT DOMESTIC LAW

25. A court may hold the tortfeasor liable for non-pecuniary damage caused to an individual by actions impairing his or her personal non-property rights or affecting other intangible assets belonging to him or her (Articles 151 and 1099 § 1 of the Civil Code).

26. Compensation for non-pecuniary damage sustained as a result of the infringement of an individual's property rights is recoverable only in the cases provided for by law (Article 1099 § 2 of the Civil Code).

27. Compensation for non-pecuniary damage is payable irrespective of the tortfeasor's fault if damage was caused to an individual's life or health as a result of unlawful criminal prosecution or dissemination of untrue

information, and in the other cases provided for by law (Article 1100 of the Civil Code).

28. In ruling no. 1-P of 25 January 2001, the Constitutional Court found that Article 1070 § 2 of the Civil Code was compatible with the Constitution in so far as it made State liability for damage caused by the administration of justice subject to special conditions. Nevertheless, it stated explicitly that the term “administration of justice” did not cover the judicial proceedings in their entirety but extended only to judicial acts touching upon the merits of a case. Other judicial acts – mainly of a procedural nature – fell outside the scope of the notion of “administration of justice”. State liability for the damage caused by such procedural acts or failures to act, such as a breach of the reasonable-time requirement in relation to court proceedings, could arise even in the absence of a final criminal conviction against a judge, if the fault of the judge had been established in civil proceedings. The Constitutional Court emphasised, however, that the constitutional right to compensation from the State for the damage caused should not be bound up with the individual fault of the judge concerned. An individual should be able to obtain compensation for any damage incurred as a result of the violation by a court of his or her right to a fair trial within the meaning of Article 6 of the Convention. The Constitutional Court held that Parliament should legislate on the grounds for and procedure governing State compensation for damage caused by unlawful acts or failures to act of a court or a judge, and should determine territorial and subject-matter jurisdiction in respect of such claims.

THE LAW

I. THE GOVERNMENT'S OBJECTION TO THE COURT'S COMPETENCE *RATIONE MATERIAE* TO EXAMINE THE PRESENT APPLICATION

29. The Government claimed that the Court was not competent to examine the present application under Article 46 § 2 of the Convention because the Committee of Ministers had not yet completed the procedure for execution of the Court's judgment in *Wasserman v. Russia* (no. 15021/02, 18 November 2004). They submitted that the application should be declared inadmissible under Article 35 §§ 2 and 4 of the Convention as falling outside the jurisdiction of the Court.

30. The applicant pointed out that the judgment had not yet been enforced, notwithstanding the Court's judgment in his first case.

31. Accordingly, the Court has to determine whether it is competent *ratione materiae* to examine the present application. It reiterates at the outset that under Article 46 of the Convention the Contracting Parties undertake to abide by the final judgments of the Court in any case to which they are parties, execution being supervised by the Committee of Ministers. It follows that a judgment in which the Court finds a breach of the Convention or the Protocols thereto imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and to make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Broniowski v. Poland* [GC], no. 31443/96, § 192, ECHR 2004-V; *Assanidze v. Georgia* [GC], no. 71503/01, § 198, ECHR 2004-II; *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; and *Sejdovic v. Italy* [GC], no. 56581/00, § 119, ECHR 2006-II). The Court does not have jurisdiction to verify whether a Contracting Party has complied with the obligations imposed on it by one of the Court's judgments (see *Oberschlick v. Austria*, nos. 19255/92 and 21655/93, Commission decision of 16 May 1995, Decisions and Reports 81-A, p. 5).

32. However, this does not mean that measures taken by a respondent State in the post-judgment phase to afford redress to an applicant for the violations found fall outside the jurisdiction of the Court (see *Lyons and Others v. the United Kingdom* (dec.), no. 15227/03, ECHR 2003-IX). In fact, there is nothing to prevent the Court from examining a subsequent application raising a new issue undecided by the original judgment (see *Mehemi v. France (no. 2)*, no. 53470/99, § 43, ECHR 2003-IV; *Pailot v. France*, 22 April 1998, § 57, *Reports of Judgments and Decisions* 1998-II; *Leterme v. France*, 29 April 1998, *Reports* 1998-III; and *Rando v. Italy*, no. 38498/97, 15 February 2000).

33. In the specific context of a continuing violation of a Convention right following adoption of a judgment in which the Court found a violation of that right during a certain period, it is not unusual for the Court to examine a second application concerning a violation of the same right during the subsequent period (see *Mehemi (no. 2)*, cited above, and *Rongoni v. Italy*, no. 44531/98, § 13, 25 October 2001).

34. The Court observes that application no. 15021/02 concerned the Russian authorities' failure to enforce the Sochi court's judgment of 30 July 1999, as amended on 15 February 2001. When the Court delivered its judgment on 18 November 2004, the Sochi court's judgment had not yet been executed and the Court found a violation of Article 6 and Article 1 of Protocol No. 1 and made an award in respect of the period preceding its judgment.

35. The present application, which the applicant lodged on 8 June 2005, concerns the respondent State's failure to execute the Sochi court's judgment in the period subsequent to the Court's judgment of 18 November 2004. The applicant also complained of the absence of an effective remedy at national level, an issue which had not been raised in application no. 15021/02.

36. The Court acknowledges that it has no jurisdiction to review the measures adopted in the domestic legal order to put an end to the violations found in its judgment in the first case brought by the applicant. It may, nevertheless, take stock of subsequent factual developments. The Court observes that, although the Sochi court's judgment of 30 July 1999, as amended on 15 February 2001, was eventually enforced in 2006, this happened almost two years after the Court had delivered its judgment in the case.

37. It follows that, in so far as the applicant's complaint concerns a further period during which the judgment in his favour remained unenforced, it has not been previously examined by the Court. The same holds true in relation to his new complaint about the absence of an effective domestic remedy in respect of delays in enforcement. These matters did not form part of the measures adopted in pursuance of the Court's initial judgment and thus fall outside the scope of the supervision exercised by the Committee of Ministers. The Court therefore has competence *ratione materiae* to entertain these complaints.

II. ORDER OF EXAMINATION OF THE COMPLAINTS

38. The Court observes that in the proceedings for compensation instituted by the applicant, the domestic authorities acknowledged that there had been a violation of his right to a hearing within a reasonable time and made an award in respect of non-pecuniary damage. In these circumstances a question arises whether the applicant may still claim to be a “victim” as regards his complaint concerning the further delay in enforcement of the judgment.

39. The Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a “victim” unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Amuur v. France*, 25 June 1996, § 36, *Reports* 1996-III, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI). As the Court has found, in length-of-proceedings cases the applicant's ability to claim to be a “victim” will depend on the redress which the domestic remedy has afforded him or her. Furthermore, in this type of case, the issue of victim status is linked to the more general question of effectiveness of the remedy (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 182, ECHR 2006-V).

40. Given that the applicant's other complaint concerned the absence of an effective domestic remedy in respect of delays in enforcement, the Court finds it appropriate to examine first the applicant's complaint under Article 13 of the Convention, before embarking on the analysis of his complaint concerning delays in enforcement of the judgment.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

41. The applicant complained under Article 13 of the Convention that he had not had an effective remedy in the Russian legal system in respect of the delays in enforcing the judgment. Article 13 provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

42. 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

1. Submissions by the parties

43. The Government submitted that the applicant did have an effective domestic remedy because he had instituted proceedings for compensation before the Moscow courts. The outcome of those proceedings was irrelevant for determining whether Article 13 had been complied with, because Article 13 did not guarantee a favourable outcome to the proceedings.

44. The applicant argued that the notion of an "effective domestic remedy" encompassed not only the possibility of instituting judicial proceedings but also prompt enforcement of a judgment. Excessive length of enforcement proceedings should be considered as a violation of the applicant's right to an effective domestic remedy.

2. Principles established in the Court's case-law

45. As the Court has held on many occasions, Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The scope of the Contracting States' obligations under Article 13 varies depending on

the nature of the applicant's complaint; the "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. However, the remedy required by Article 13 must be "effective" in practice as well as in law in the sense either of preventing the alleged violation or remedying the impugned state of affairs, or of providing adequate redress for any violation that has already occurred (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004, and *Kudła v. Poland* [GC], no. 30210/96, §§ 157-158, ECHR 2000-XI).

46. In a series of recent judgments the Court addressed the general question of effectiveness of the remedy in length-of-proceedings cases and gave certain indications as to the characteristics which such a domestic remedy should have in order to be considered "effective" (see *Scordino*, cited above, §§ 182 et seq., and *Cocchiarella v. Italy* [GC], no. 64886/01, § 73, ECHR 2006-V).

47. As in many spheres, in length-of-proceedings cases the best solution in absolute terms is indisputably prevention. The Court points out that it has stated on many occasions that Article 6 § 1 imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time (see, among many other authorities, *Süßmann v. Germany*, 16 September 1996, § 55, *Reports* 1996-IV). Where the judicial system is deficient in this respect, a remedy designed to expedite the proceedings in order to prevent them from becoming excessively lengthy is the most effective solution (see *Scordino*, cited above, § 183).

48. However, States can also choose to introduce only a compensatory remedy, without that remedy being regarded as ineffective (see *Scordino*, cited above, § 187). Where such a compensatory remedy is available in the domestic legal system, the Court must leave a wider margin of appreciation to the State to allow it to organise the remedy in a manner consistent with its own legal system and traditions and consonant with the standard of living in the country concerned. It will, in particular, be easier for the domestic courts to refer to the amounts awarded at domestic level for other types of damage – personal injury, damage relating to a relative's death or damage in defamation cases for example – and rely on their innermost conviction, even if that results in awards of amounts that are somewhat lower than those fixed by the Court in similar cases (see *Scordino*, cited above, § 189).

49. Furthermore, if a remedy is "effective" in the sense that it allows for the pending proceedings to be expedited or for the aggrieved party to be given adequate compensation for the delays that have already occurred, that conclusion applies only on condition that an application for compensation remains itself an effective, adequate and accessible remedy in respect of the excessive length of judicial proceedings (see *Scordino*, cited above, § 195, with further references). The Court has identified the following criteria

which may affect the effectiveness, adequacy or accessibility of such a remedy:
(i) an action for compensation must be heard within a reasonable time (see *Scordino*, cited above, § 195 *in fine*);
(ii) the compensation must be paid promptly and generally no later than six months from the date on which the decision awarding compensation becomes enforceable (§ 198);
(iii) the procedural rules governing an action for compensation must conform to the principle of fairness guaranteed by Article 6 of the Convention (§ 200);
(iv) the rules regarding legal costs must not place an excessive burden on litigants where their action is justified (§ 201);
(v) the level of compensation must not be unreasonable in comparison with the awards made by the Court in similar cases (§§ 202-206 and 213).

50. In relation to the last criterion the Court has indicated that, with regard to pecuniary damage, the domestic courts are clearly in a better position to determine its existence and quantum. The situation is, however, different with regard to non-pecuniary damage. There exists a strong but rebuttable presumption that excessively long proceedings will occasion non-pecuniary damage. The Court accepts that, in some cases, the length of proceedings may result in only minimal non-pecuniary damage or no non-pecuniary damage at all. In such cases the domestic courts will have to justify their decision by giving sufficient reasons (see *Scordino*, cited above, §§ 203-204).

3. *Application of these principles to the present case*

51. In the present case the applicant complained that he did not have an effective domestic remedy for the delays in enforcing the judgment in his favour. The Court reiterates that enforcement proceedings must be regarded as an integral part of the "trial" for the purposes of Article 6 of the Convention (see *Kanayev v. Russia*, no. 43726/02, § 19, 27 July 2006). It follows that the above principles developed in the context of length-of-proceedings cases are also applicable in a situation where the complaint concerns the availability of a remedy for extended delays in enforcement.

52. As the Court has already found, there is no preventive remedy in the Russian legal system by which to expedite the enforcement of a judgment against a State authority, as bailiffs do not have the power to compel the State to repay the judgment debt (see *Lositskiy v. Russia*, no. 24395/02, § 29, 14 December 2006).

53. It remains to be considered whether an action for compensation of the kind instituted by the applicant was an effective, adequate and accessible remedy capable of satisfying the requirements of Article 13 in the light of the criteria outlined above.

54. The Court notes at the outset that Russian law does not have a special compensatory remedy for complaints stemming from the excessive length of enforcement proceedings. Although the Constitutional Court – as far back as 2001 – called on the legislature to determine the procedural rules governing actions for compensation for violations of the right to a fair trial within the meaning of Article 6 of the Convention (see paragraph 28 above), the domestic law has not evolved since. This situation, viewed in the context of the absence of sufficiently established and consistent case-law in cases similar to the applicant's, leads the Court to the conclusion that the possibility of obtaining redress in respect of non-pecuniary damage by making use of the remedy in question was not sufficiently certain in practice as required by the Convention case-law.

55. The Court further notes that the proceedings concerning the applicant's claim for compensation lasted from 12 May 2003 to 30 March 2005 and then, following their reopening on supervisory review, from 1 June 2006 to 22 February 2007. Their overall duration therefore exceeded two and a half years, notwithstanding the explicit requirement of the Code of Civil Procedure that civil cases be heard within two months from the receipt of a statement of claim (Article 154). In the Court's view, such a long period clearly falls foul of the requirement of speediness necessary for a remedy to be "effective" (see, by contrast, *Scordino*, cited above, § 208).

56. Moreover, the Court observes that the domestic courts awarded the applicant 8,000 roubles (RUB), that is, less than 250 euros (EUR) in compensation for the non-pecuniary damage incurred as a result of the belated enforcement of the judgment in his favour. It is not apparent from the domestic judgments what period of non-enforcement the courts took into account or what method of calculation they employed in determining that amount (see paragraph 23 above). What is certain, however, is that the award of less than EUR 50 per year of non-enforcement is manifestly unreasonable in the light of the Court's case-law in similar cases against Russia (see the case-law cited in paragraph 65 below, and also compare *Scordino*, cited above, § 214).

57. In conclusion, and having regard to the fact that various requirements for a remedy to be "effective" have not been satisfied, the Court finds that the applicant did not have an effective remedy for his complaint arising out of the belated enforcement of the judgment in his favour.

58. There has therefore been a violation of Article 13 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

59. The applicant complained that the judgment of 30 July 1999, as amended on 15 February 2001, had remained unenforced in the period

following the Court's judgment of 18 November 2004. He relied on Article 6 of the Convention and Article 1 of Protocol No. 1, which in their relevant parts read as follows:

Article 6 § 1

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

Article 1 of Protocol No. 1

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

A. Admissibility

60. As the Court has found above, the redress afforded to the applicant in the domestic compensation proceedings was manifestly insufficient (see paragraph 56 above). Accordingly, the Court finds that the applicant may still claim to be a "victim" of the alleged violation.

61. 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

62. The Government submitted that the delays in enforcing the judgment had been due to the complexity of the procedure for transferring money to bank accounts outside Russia.

63. The applicant pointed out that in June 2004 the Ministry of Finance had not found any defects in the enforcement papers. However, some fourteen months later it determined that the same documents had contained some trivial errors and refused to effect payment. The judgment debt had been paid in 2006, but only in part.

64. The Court recalls that in the first *Wasserman* case it found a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 on account of the Russian authorities' failure to enforce the judgment of 30 July 1999, as amended on 15 February 2001, in the period preceding the Court's judgment (see *Wasserman*, cited above, §§ 35 et seq.). As regards the period following the Court's judgment of 18 November 2004, which is at issue in the present application, the Court observes that a major part of the judgment debt was not paid until October 2006, that is, almost two years later. The

Government did not explain why the alleged defects in the enforcement papers had not been uncovered by the Ministry of Finance back in 2004 when it had authorised the payment. In any event, the responsibility for the delays lies with the authorities because the alleged defects were contained in official documents issued by a Russian court. Even after the typing errors had been corrected, it took the Ministry of Finance one year to effect the payment. Finally, the Court observes that the full amount of the judgment debt has not yet been paid to the applicant, despite the fact that the supplementary judgment of 15 February 2001 provided for payment of the entire amount to the applicant's account in Israel (see paragraph 8 above). This was due to the fact that the Ministry of Finance did not make provision for covering the commission of the State-owned bank through which it carried out the wire transfer. As a result, the applicant, through no fault of his own, received a lesser amount than the one awarded to him in the judgment of 30 July 1999, as amended on 15 February 2001.

65. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to those in the present case (see *Reynbakh v. Russia*, no. 23405/03, §§ 23 et seq., 29 September 2005; *Gizzatova v. Russia*, no. 5124/03, §§ 19 et seq., 13 January 2005; *Petrushko v. Russia*, no. 36494/02, §§ 23 et seq., 24 February 2005; *Gorokhov and Rusyayev v. Russia*, no. 38305/02, §§ 30 et seq., 17 March 2005; and *Burdov v. Russia*, no. 59498/00, §§ 34 et seq., ECHR 2002-III).

66. Having examined the material submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court finds that by failing – for almost two years in the period subsequent to the Court's judgment in the case concerning application no. 15021/02 – to comply with the enforceable judgment in the applicant's favour, the domestic authorities violated his right to a hearing within a reasonable time and prevented him – during the same two-year period – from receiving the money he could reasonably have expected to receive.

67. There has accordingly been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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

69. The applicant claimed USD 501 in respect of pecuniary damage, representing the amount outstanding under the judgment (USD 31) plus interest on the judgment debt for the period from December 2004 to November 2006 at the Russian Central Bank's marginal lending rate. He claimed USD 10,000 in respect of non-pecuniary damage.

70. The Government submitted that it would be premature to make an award in respect of pecuniary damage because that claim had not yet been examined by the domestic courts. They considered that the claim for non-pecuniary damage was excessive, unsubstantiated and unreasonable.

71. The Court notes that in the present case it found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on the grounds that the judgment debt had been paid to the applicant only after a substantial delay and then only in part. The Court reiterates that the adequacy of compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce its value, such as an extended delay in enforcement (see *Gizzatova*, cited above, § 28, and *Metaxas v. Greece*, no. 8415/02, § 36, 27 May 2004). Accordingly, the Court awards the applicant the outstanding part of the judgment debt, that is, EUR 23, and the interest accrued during the period in respect of which the violation was found, in the amount of EUR 350, plus any tax that may be chargeable on those amounts.

72. The Court further considers that the applicant must have suffered distress and frustration resulting from the State authorities' failure to enforce the judgment for a further period of approximately two years and the absence of an effective domestic remedy. The particular sum claimed is, however, excessive. The Court takes into account the relevant aspects, such as the length of the enforcement proceedings, the nature of the award (reimbursement of unlawfully confiscated money) and the fact that this is the second application concerning non-enforcement of the same judgment. Making its assessment on an equitable basis, it awards the applicant EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

73. The applicant also claimed USD 2,340 for the costs and expenses incurred before the domestic courts and the Court. He produced documents showing the amounts for copying, translation, printing and postal expenses, as well as copies of air tickets to Moscow and invoices relating to the fees for his representation before the Moscow courts.

74. The Government accepted the applicant's claim in so far as it concerned postal, copying and printing expenses in the amount of USD 130.

They claimed that the legal services agreement was void under Russian law. They further maintained that there had been no need for the applicant to travel to Moscow as he had a representative there. Finally, they rejected the remainder of the claim as irrelevant to the subject matter of the application.

75. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,200 covering costs under all heads, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

76. 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. *Rejects* the Government's objection as to the Court's competence *ratione materiae*;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1;

4. *Holds* that there has been a violation of Article 13 of the Convention;

5. *Holds*
   (a) that the respondent State is 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, the following amounts:
      (i) EUR 373 (three hundred and seventy-three euros) in respect of pecuniary damage, plus any tax that may be chargeable;
      (ii) EUR 4,000 (four thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
      (iii) EUR 1,200 (one thousand two hundred euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 10 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President