



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

FIRST SECTION

CASE OF BORZHONOV v. RUSSIA

(Application no. 18274/04)

JUDGMENT

STRASBOURG

22 January 2009

FINAL

22/04/2009

This judgment may be subject to editorial revision.

In the case of Borzhonov v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 16 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 18274/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Yevgeniy Dmitriyevich Borzhonov (“the applicant”), on 20 April 2004.

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

3. On 9 May 2006 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1954 and lives in the town of Ulan-Ude in the Buryatiya Republic.

A. Criminal proceedings against the applicant

5. The Russian authorities initiated criminal proceedings against the applicant:

- on 13 June 1999 under Article 198 § 2 of the Criminal Code (tax evasion by a private person); the applicant was charged on 10 August 1999;
- on 24 June 1999 under Article 201 § 1 of the Code (abuse of power);
- on 29 August 1999 under Article 199 of the Code (tax evasion by a legal entity);
- on 13 October 1999 under Article 160 § 3 (b) (misappropriation of private property);
- on 21 January 2000 under Article 165 (causing pecuniary damage).

6. The above cases were joined on a number of occasions, most recently on 4 June 2001. According to the Government, the charges under Articles 165 and 199 of the Code were abandoned on 5 January 2000 and 4 June 2001 respectively (see, however, paragraph 9 below).

7. According to the Government, the proceedings were suspended on 6 January, 4 February and 17 August 2000, 13 June and 21 September 2001, and 20 January 2003, owing to the applicant's illness. According to the Government, the applicant and his counsel were advised that the proceedings had been suspended on a number of occasions and subsequently resumed.

8. On 18 August 2004 the applicant sought access to the case file and, in particular, to the above-mentioned decisions to suspend the proceedings. On 27 August 2004 the Prosecutor's Office of the Buryatiya Republic sent him a letter stating that the case file might be available at the archives of the Tax Authority in Ulan-Ude. On 5 October 2004 the Investigations Department of the Regional Ministry of the Interior informed the applicant that the criminal case against him had been suspended owing to his illness. Upon his renewed request, on 22 December 2004 the applicant received another reply from the Regional Office of the Drugs Control Service stating that the Investigations Department might be able to provide the requested documents. On 8 September 2005 the Drugs Control Service informed the applicant that on 10 July 2003 the criminal case against him had been forwarded to the Prosecutor's Office of the Buryatiya Republic.

9. On 20 January 2006 the Investigations Department discontinued the proceedings as regards charges under Articles 160, 165, 198, 199 and 201 of the Criminal Code.

B. Seizure and retention of the applicant's bus

10. In August 1997 the applicant bought a PAZ-320500 bus. On 5 November 1999 the investigator in the criminal case against the applicant (see above) authorised seizure of the bus as security for eventual civil

claims against him or eventual confiscation as a penalty under Article 160 § 3 (b) of the Criminal Code (see paragraph 16 below). On 9 November 1999 the applicant's bus was seized. It appears that no civil claims were lodged in the criminal case against the applicant.

11. On an unspecified date the bus was transferred for safekeeping to a Mr Y.

12. In September 2003 the applicant brought proceedings in which he challenged the investigator's seizure order as unlawful and requested the court to release the bus.

13. On 15 September 2003 the Sovetskiy District Court of Ulan-Ude examined the applicant's claims with reference to Article 125 of the 2002 Code of Criminal Procedure (see paragraph 19 below) and rejected them as unfounded. The court held as follows:

"...under Article 175 § 1 of the RSFSR Code of Criminal Procedure in order to secure civil claims or eventual confiscation of property the investigator shall issue an order of attachment in respect of the accused's property which had been unlawfully obtained. Article 160 § 3 of the Criminal Code of the Russian Federation provides for confiscation as a penalty. Besides, the case discloses pecuniary loss [sustained by the victim], and the victim has the right to file a civil claim for damages against the applicant...

The court finds no reasons for leaving the bus with [the applicant] for safekeeping...

The [first instance] court rejected the applicant's arguments to the effect that his property rights over the bus had been breached by the continuing attachment of property and the criminal case is still pending. The case is being suspended owing to the applicant's illness..."

14. On 11 November 2003 the Supreme Court of the Buryatiya Republic upheld the judgment on appeal. The court stated:

"Under Article 115 § 9 the Code of Criminal Procedure, which is now applicable to issues pertaining to attachment of property, the authority dealing with the criminal case has the power to release the property under the order of attachment, if attachment is no longer needed. As shown by the case file, at present the criminal case against the applicant is being dealt with by the investigating authority, the investigation being suspended. Taking into account the earlier submissions and the requirement of the procedure under Article 125 of the Code of Criminal Procedure, the court is not empowered to decide on the issue of lifting the order of attachment..."

15. On 18 July 2006 the deputy prosecutor of the Buryatiya Republic lifted the order of attachment in respect of the applicant's bus. The applicant was served with a copy of that decision on 21 March 2007. It appears that the authorities were unable to determine where the bus was kept and thus could not return it to the applicant.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Criminal Code

16. Under Article 160 § 3 (b) of the Code, in force at the material time, misappropriation of another's property committed on a large scale or in view of the person's hierarchical status was punishable by a sentence of imprisonment of up to ten years with or without confiscation of property. Under the Federal Law of 8 December 2003 (no. 162-Φ3), confiscation as a penalty was removed from the Criminal Code, including its Article 160 § 3 (b). On 27 July 2006 a new Chapter 15.1 reintroducing the notion of confiscation was inserted into the Code in relation to a number of offences. The offences under Articles 160, 165, 198, 199 and 201 were not concerned.

B. Criminal proceedings

1. *The 1960 RSFSR Code of Criminal Procedure (RSFSR CCrP)*

17. A preliminary investigation in a criminal case had to be completed within two months starting from the date when the proceedings were initiated until the date when a bill of indictment was sent to the prosecutor or when the proceedings were terminated or suspended (Article 133). The preliminary investigation could be suspended if the accused had absconded or if his whereabouts had not been determined or if he was suffering from a mental or other serious disease. The investigator had to issue a reasoned decision (Article 195). Pursuant to Article 218 of the Code, a prosecutor was competent to examine complaints against decisions taken by an inquirer or an investigator. By a ruling of 23 March 1999, the Constitutional Court invalidated this provision in so far as it excluded a possibility of judicial supervision over such decisions, including those relating to suspension of proceedings and imposition of charging orders.

2. *The 2002 Code of Criminal Procedure (CCrP)*

18. Under Article 208 § 1 of the Code, the preliminary investigation can be suspended, *inter alia*, if the suspect or accused is temporarily suffering from a serious disease which prevents him from participating in the investigation. A victim, civil claimant or respondent and their representatives should be notified accordingly and apprised of their right to appeal against the decision suspending the proceedings (Article 209 § 1). A suspect or accused and counsel should also be informed, if the suspension was caused by his or her illness.

19. Articles 123 and 125 of the Code concern judicial supervision over any (in)action on the part of an inquirer, investigator or prosecutor in so far as such (in)action affects a complainant's rights or impedes his or her access to a court. The judge either (i) invalidates the impugned (in)action as unlawful or lacking justification and requires the respondent authority to remedy the violation, or (ii) rejects the complaint.

20. A decision terminating the criminal proceedings should be handed over or dispatched to the person concerned (Article 214 § 4).

21. Article 133 § 1 of the Code safeguards a so-called "right to rehabilitation", including a right to full compensation in respect of pecuniary and non-pecuniary damage caused by criminal prosecution of a person who has been acquitted or in respect of whom the criminal proceedings have been terminated, *inter alia*, owing to a lack of *corpus delicti* or because the person had not been involved in the criminal act. The investigator issues a decision in which he or she recognises the person's right to rehabilitation and also sends notification explaining the procedure for obtaining compensation (Article 134 § 1).

C. Attachment of property in criminal proceedings

1. The 1960 RSFSR CCrP

22. A person who has sustained pecuniary damage or loss from a criminal offence has a right to lodge a civil claim against the accused. He or she can exercise this right from the commencement of the criminal proceedings until the opening of the trial (Article 29).

23. If sufficient reasons obtain as to the existence of pecuniary damage caused by a criminal offence, the investigating authority or a court should take measures for securing the existing or eventual civil claim and/or for impeding the accused from hiding his property, if the charges against him carry confiscation as a possible penalty (Article 30).

24. According to Article 175 of the Code, in order to secure civil claims or eventual confiscation of property, the investigator should issue a charging order in respect of an accused's property; that of persons who are liable by law for the accused or suspect's actions; that of other persons who are in possession of the property acquired through unlawful actions. Property attached may be impounded or transferred at the attaching official's discretion for safekeeping to a competent authority or left with the owner or other person who shall be warned about responsibility for keeping the property safe, and the fact shall be mentioned in the relevant record. The investigator lifts the charging order if it is no longer needed.

2. *The 2002 CCrP*

25. Under Article 115 § 1 of the Code, in order to ensure execution of a judgment in a part pertaining to a civil claim, to satisfy other pecuniary penalties or an eventual confiscation of property, an inquirer or investigator, subject to the prosecutor's consent, or a prosecutor should apply to a court for a charging order in respect of the suspect's or accused's property. The court should examine such request under the procedure set out in Article 165 of the Code. A charge or attachment of property prohibits the proprietor or owner from disposing of, and, if appropriate, using the property; it may require impounding of that property and its transfer for safekeeping to its proprietor or owner or a third person (§§ 2 and 6). A charging order is lifted by the authority dealing with the criminal case when the charge is no longer needed (§ 9).

On 4 July 2003 Article 115 § 1 of the Code was amended to exclude an eventual confiscation of property as a reason for requesting a charging order. A charging order could only concern property acquired by the suspect, accused or another person as a result of criminal activity or by criminal means.

On 8 December 2003 Article 115 § 1 of the Code was amended to reintroduce an eventual confiscation of property as a reason for requesting a charging order; in such circumstances it became incumbent on the court to indicate the relevant circumstances in its decision.

3. *Other relevant legislation/jurisprudence*

26. By decision no. 97-O of 10 March 2005 the Constitutional Court held, in the context of proceedings concerning Article 82 of the CCrP on real evidence, that provisional measures such as imposition of a charge on one's property may be required in criminal proceedings and should not be considered as a violation of constitutional rights and freedoms, including property rights. Judicial scrutiny of such measures as to their lawfulness should also encompass an assessment of whether other measures would be inappropriate, with due regard to the gravity of the charges in relation to which provisional measures have been taken, as well as to the nature of the property under the charge, its importance for its owner or holder and other eventual negative effects that the charge might have. Thus, it is incumbent on the investigator and, subsequently, on the reviewing court to be satisfied that the property under the charge should or should not be returned to its owner for safekeeping until the closure of the criminal proceedings.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 6 AND 13 OF THE CONVENTION

27. The applicant complained that the length of the criminal proceedings against him had been in breach of the “reasonable time” requirement under Article 6 § 1 of the Convention. It reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

He also complained about the lack of effective remedies in respect of his above complaint. Article 13 reads 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.”

28. In relation to both complaints, the Government argued that the applicant had not complained before the national authorities about any delays in the criminal proceedings or appealed against decisions by which they had been suspended. Neither had he ascertained his right to rehabilitation following the discontinuation of the criminal case against him. They also submitted that the preliminary investigation in the applicant’s case had taken only eleven months, certain unspecified periods of delay being attributable to the authorities. With reference to an information note from the Prosecutor General’s Office, the Government alleged that the criminal case file contained copies of notifications sent to the applicant about suspension of the proceedings and their resumption; the applicant and his counsel had not requested copies of the relevant procedural orders. In any event, Articles 208 and 209 of the Code of Criminal Procedure (CCrP) did not require their provision to the defence (see paragraph 18 above). The proceedings had been suspended owing to the applicant’s repeated periods of illness.

29. The applicant submitted that the preliminary investigation in his case had spanned from June 1999 to January 2006. He had not been served with copies of the decisions suspending the proceedings which, in any event, could not have been justified by the state of his mental health. He had learnt about the discontinuation of the proceedings from the Government’s observations dated 6 September 2006. Having not been provided with copies of the relevant decisions, the applicant could not challenge them in the courts and had not been informed of his right to rehabilitation.

A. Admissibility

30. The Court considers that the Government's argument relating to exhaustion of domestic remedies is closely linked to the merits of the applicant's complaint under Article 13 of the Convention. Thus, the Court finds it necessary to join it to the merits of the applicant's complaint under Article 13 of the Convention.

31. The Court further notes that the applicant's complaints under Articles 6 and 13 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Article 13 of the Convention

32. 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 effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. The Court considers that the applicant's complaint under Article 6 § 1 of the Convention is an arguable one.

33. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; however, the remedy required by Article 13 must be "effective" in practice as well as in law (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI). Moreover, there is a close affinity between the requirements of Article 13 of the Convention and the rule on exhaustion of domestic remedies in Article 35 § 1 of the Convention. The latter's purpose is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). The rule in Article 35 § 1 is based on the assumption, reflected in Article 13, that there is an effective domestic remedy available in respect of the alleged breach of an individual's Convention rights (see *Kudła*, cited above, § 152). Nevertheless, the only remedies which Article 35 of the Convention requires to be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing

which they will lack the requisite accessibility and effectiveness (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 142, ECHR 2006-...).

34. As to a remedy concerning a complaint about the length of proceedings, the decisive element in assessing its effectiveness is whether the applicant can raise this complaint before the domestic courts by claiming a specific redress; in other words, whether a remedy exists that could answer his complaints by providing direct and speedy redress, and not merely indirect protection of the rights guaranteed in Article 6 of the Convention (see *Hajibeyli v. Azerbaijan*, no. 16528/05, § 39, 10 July 2008). In particular, a remedy of this sort shall be “effective” if it can be used either to expedite a decision by the courts dealing with the case or to provide the litigant with adequate redress for delays which have already occurred (see *Krasuski v. Poland*, no. 61444/00, § 66, ECHR 2005-V (extracts)).

35. Regarding the possibility of challenging procedural orders suspending the proceedings (see paragraphs 17 - 19 above), the Court observes that, as the Government have agreed, the applicant and his counsel were not served with copies of those orders. Despite their assertion to the contrary, the Government failed to adduce any evidence showing that the applicant had at least been put on notice that the proceedings had been suspended or resumed. In such circumstances, the Court does not see how the applicant could appeal against those procedural measures taken in the course of the preliminary investigation. In the Court’s view, in the absence of a copy of the procedural orders, the applicant would not have a realistic opportunity effectively to challenge them (see *Chitayev and Chitayev v. Russia*, no. 59334/00, §§ 139 and 140, 18 January 2007, and *Khamila Isayeva v. Russia*, no. 6846/02, §§ 101 and 133, 15 November 2007).

36. The Government also argued, in general terms, that the applicant could have exercised his so-called “right to rehabilitation” (see paragraph 21 above). The Court need not decide whether the procedure referred to by the Government constituted on the facts a remedy within the meaning of Article 13 of the Convention or for purposes of exhaustion within the meaning of its Article 35 § 1, since it does not transpire from the case file that the applicant was given a copy of the decision of 20 January 2006. Neither is there any evidence showing that he was apprised of his right to apply for compensation in respect of damage caused by criminal prosecution (compare *Sidorenko v. Russia*, no. 4459/03, § 39, 8 March 2007). Furthermore, the Government did not indicate how that would have remedied the complaint currently before the Court in respect of the alleged excessive length of the criminal proceedings (see *Karamitrov and Others v. Bulgaria*, no. 53321/99, §§ 59-60, 10 January 2008). The Government produced no copies of domestic court judgments where awards had been made in the proceedings under Articles 133 and 134 of the CCrP providing redress for excessive length of criminal proceedings. Having regard to this,

the Court considers that the Government's argument as to non-exhaustion of domestic remedies in respect of the applicant's complaint under Article 6 § 1 of the Convention must be dismissed.

37. Furthermore, the foregoing considerations are sufficient for the Court to conclude that the applicant was not afforded an effective and accessible remedy in respect of his complaint under Article 6 § 1 of the Convention regarding the allegedly excessive length of the criminal proceedings against him. Accordingly, there has been a violation of Article 13 of the Convention.

2. Article 6 § 1 of the Convention

38. The parties made no submissions as to the exact period to be taken into consideration. The Court considers that the relevant period started at the latest on 10 August 1999, when the applicant was first charged. As to the end of that period, the Court reiterates that proceedings which do not lead to a proper trial before a domestic court normally end with an official notification to the accused that he or she is no longer to be prosecuted on the charges which would allow a conclusion that the situation of that person could no longer be considered to be substantially affected (see *Kalpachka v. Bulgaria*, no. 49163/99, §§ 65 and 66, 2 November 2006, with further references). The Court notes that the criminal proceedings against the applicant were discontinued on 20 January 2006 but that he contended that he had first learnt about the discontinuation of the proceedings from the Government's observations submitted in September 2006. It is also observed that under Russian law (see paragraph 20 above) he was entitled to be served *ex officio* with a copy of the decision to discontinue the criminal proceedings against him (see also *Nakhmanovich v. Russia*, no. 55669/00, §§ 88-94, 2 March 2006). The Court has already noted that it does not transpire from the materials in the case file that the applicant was given a copy of that decision. Thus, the Court considers that the proceedings under review did not end until September 2006 and thus lasted for approximately seven years.

39. The Court reiterates that the reasonableness of the length of the proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities (see, among other authorities, *Rokhlina v. Russia*, no. 54071/00, § 86, 7 April 2005). One of the purposes of the right to trial within a reasonable period of time is to protect individuals from remaining too long in a state of uncertainty about their fate (see *Stögmüller v. Austria*, § 5, 10 November 1969, Series A no. 9).

40. The Court is not convinced by the Government's argument that the length of the proceedings was caused by the applicant's state of health. The Government did not submit copies of the suspension or resumption orders.

They neither adduced any medical evidence nor specified in what way the applicant's medical condition had impeded the proceedings. The applicant was not brought to trial and no plausible explanation was given as to why it took seven years to conduct the preliminary investigation. Furthermore, the facts of the case do not reveal that the applicant in any way delayed the investigation. The Court considers, rather, that the conduct of the domestic authorities led to substantial delays in the proceedings.

41. Having regard to the foregoing, the Court considers that the length of the proceedings did not satisfy the "reasonable-time" requirement. Accordingly, there has been a breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLE 1 OF PROTOCOL No. 1 IN CONJUNCTION WITH ARTICLE 13 OF THE CONVENTION

42. With reference to Article 6 §§ 1 and 2, Article 13 and Article 18 of the Convention and Article 1 of Protocol No. 1, the applicant contended that the imposition of the charging order in respect of his bus, its transfer to Mr Y. and its continued retention by the authorities amounted to disproportionate limitations on the "peaceful enjoyment of his possessions". The Court considers that this complaint should be examined under Article 1 of Protocol No. 1, which reads as follows:

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

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

The Court also decides to examine under Article 13 of the Convention (cited above) whether the applicant had an effective remedy in relation to his complaint under Article 1 of Protocol No. 1.

A. Submissions by the parties

43. The Government argued that the applicant could have applied to a court for the lifting of the charging order in respect of his bus and sought compensation in respect of the loss allegedly sustained because of the impounding of the vehicle. The Government submitted that the seizure of the applicant's bus had been lawful and that its aim had been to constitute security for the eventual penalty of confiscation of his property in relation to charges under Article 160 of the Criminal Code, if he were subsequently convicted by a court. The Government acknowledged that the investigator's

failure to order the release of the bus after the decision of 20 January 2006 had been unlawful. However, it had been remedied by the decision of 18 July 2006 taken by the deputy prosecutor of the Buryatiya Republic. In any event, the applicant had not made any effort between January and July 2006 in order to obtain release of his bus. As regards Article 13 of the Convention, the Government submitted that the applicant had had an effective remedy, namely the possibility of challenging the investigator's decision to seize the bus. The applicant had used that remedy, albeit without success.

44. The applicant maintained his complaint.

A. The Court's assessment

1. Scope of the complaints

45. The Court observes at the outset that the applicant's complaint is threefold. First, he contested as unlawful the charging order issued in respect of his bus. Second, he was unsatisfied with its transfer for safekeeping to a Mr Y. Third, he contended that the prolonged retention of the bus constituted a disproportionate limitation on the "peaceful enjoyment of his possessions".

46. The parties made no specific arguments relating to the lawfulness of the initial act of seizure or that of the safekeeping of the bus by Mr Y. The Court considers that both acts were lawful and otherwise compatible with Article 1 of Protocol No. 1. It will make no further findings in that respect. It is further noted that although the charging order was lifted in July 2006, the bus has not been returned to the applicant to date. The total period, during which the applicant was denied use of the vehicle has already exceeded nine years. In that connection, the Court observes that there are two uninterrupted periods under consideration:

- (i) from November 1999 to 18 July 2006, the date on which the charging order was lifted; and
- (ii) from 18 July 2006 onwards.

The Court will confine its analysis to the compatibility of the prolonged retention of the bus with the requirements of Article 1 of Protocol No. 1.

47. The Court also observes that the applicant's complaint under Article 13 of the Convention relates to the period when the charging order was in force, that is from November 1999 to 18 July 2006.

2. Admissibility

48. The Court considers that the Government's argument relating to exhaustion of domestic remedies is closely linked to the merits of the applicant's complaint under Article 13 of the Convention. Thus, the Court

finds it necessary to join it to the merits of the applicant's complaint under Article 13 of the Convention.

49. The Court further notes that the applicant's complaints under Article 13 of the Convention and Article 1 of Protocol No. 1 are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that they are not inadmissible on any other grounds. They must therefore be declared admissible.

3. Merits

(a) Compliance with Article 13 in conjunction with Article 1 of Protocol No. 1

50. The Court notes at the outset that although the complaints under Article 13 of the Convention and Article 1 of Protocol No. 1 arise out of the same facts, there is a difference in the nature of the interests protected by those provisions: the former affords a procedural safeguard, namely the "right to an effective remedy", whereas the procedural requirement inherent in the latter is ancillary to the wider purpose of ensuring respect for the right to the peaceful enjoyment of one's possessions. Thus, the Court judges it appropriate in the instant case to examine the same set of facts under both Articles (see *Iatridis v. Greece* [GC], no. 31107/96, § 65, ECHR 1999-II).

51. The Court has consistently interpreted Article 13 as requiring a remedy in domestic law in respect of grievances which can be regarded as "arguable" in terms of the Convention (see, for example, *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 54, Series A no. 131). The Court considers that the applicant's grievance under Article 1 of Protocol No. 1 is an "arguable" one. The Court has to determine whether the Russian legal system afforded the applicant an "effective" remedy, allowing the competent "national authority" both to deal with the complaint and to grant appropriate relief (see *Camenzind v. Switzerland*, 16 December 1997, § 53, Reports 1997-VIII).

52. The Court accepts that at the relevant time Russian law in principle allowed recourse to courts in order to challenge a decision by the investigating authority to seize chattels in pending criminal proceedings (see paragraphs 17 and 19 above). However, the Court is unable to reach the same conclusion in respect of the possibility of opposing the *continuing* retention of such chattels. Indeed, by a judgment of 15 September 2003 the Sovetskiy District Court of Ulan-Ude rejected the applicant's arguments to the effect that his property rights over the bus had been breached by the continuing application of the charging order. On appeal, the Supreme Court of the Buryatiya Republic, referring to the 2002 CCrP, held, however, that the authority dealing with the criminal case had the power to release the property under the charging order, if the charge was no longer needed. The appeal court concluded that "[t]aking into account...the requirement of the

procedure under Article 125 of the Code, the court [was] not empowered to decide on the issue of lifting the charging order”.

53. The Court observes that the redress in the procedure under Article 125 of the CCrP consists of invalidating the impugned action or inaction as unlawful or lacking justification and requiring the respondent authority to remedy the violation. The power to lift the charging order and to release the property remains with the “authority dealing with the case”, that is the investigator in the present case. In a recent case against Russia, the Court found a violation of Article 13 with reference to the fact that the domestic courts had examined a complaint concerning a search and seizure in the applicant’s flat, while declaring inadmissible a complaint about a failure to return his computer on the ground that the retention decision was not amenable to judicial review (see *Smirnov v. Russia*, no. 71362/01, § 64, 7 June 2007, ECHR 2007-...). In other words, the Russian courts declined jurisdiction to deal with the substance of the applicant’s complaint and to grant appropriate relief. In view of the above findings, the Court dismisses the Government’s argument that the applicant did not apply for the lifting of a charging order. It was not submitted, and the Court does not consider, that any subsequent applications would have had better prospects of success (see, *mutatis mutandis*, *Granger v. the United Kingdom*, 28 March 1990, §§ 37 and 40, Series A no. 174).

54. As to an eventual claim for compensation, the Court reiterates that an individual is not required to try more than one avenue of redress when there are several available. It is for the applicant to choose the legal remedy that is most appropriate in the circumstances of the case (see, among other authorities, *Airey v. Ireland*, 9 October 1979, § 23, Series A no. 32, and *Boicenco v. Moldova*, no. 41088/05, § 80, 11 July 2006). The Court considers that, having exhausted all the possibilities of appeal available to him in the framework of the 2003 proceedings (see paragraphs 13 and 14 above), the applicant should not be required to embark on another attempt to obtain redress by bringing a civil action for damages (see, *mutatis mutandis*, *Assenov and Others v. Bulgaria*, 28 October 1998, § 86, *Reports of Judgments and Decisions* 1998-VIII). In any event, the Court finds it unproven that at the relevant time Russian law provided the applicant with the possibility of seeking compensation for the damage caused as a result of the prolonged interference with his right to peaceful enjoyment of his possessions. In particular, the Government failed to provide sufficient details as to what type of legal action could be considered to have been an effective remedy that should have been exhausted.

55. As regards the second period, in the absence of any submissions from the Government regarding availability of a remedy relating to the applicant’s regaining possession of his bus after the charging order had been lifted and once the applicant had become aware of that fact, the Court is not prepared to dismiss the complaint for non-exhaustion of domestic remedies.

56. In view of the foregoing considerations, the Court concludes that there has been a violation of Article 13 of the Convention in that, at the relevant time, the applicant had no effective domestic remedy in respect of his complaint under Article 1 of Protocol No. 1.

(b) Article 1 of Protocol No. 1

57. It is common ground between the parties that the applicant was the lawful owner of the bus; in other words, it was his “possession”. Neither is it disputed that the charging order and its continued application amounted to an interference with the applicant’s right to peaceful enjoyment of his possessions and that Article 1 of Protocol No. 1 is therefore applicable. The Court reiterates that the seizure of property for legal proceedings normally relates to the control of the use of property, which falls within the ambit of the second paragraph of Article 1 of Protocol No. 1 to the Convention (see, among others, *Raimondo v. Italy*, 22 February 1994, § 27, Series A no. 281-A; *Andrews v. the United Kingdom* (dec.), no. 49584/99, 26 September 2002; *Adamczyk v. Poland* (dec.), no. 28551/04, 7 November 2006; and *Simonjan-Heikinheino v. Finland* (dec.), no. 6321/03, 2 September 2008). Indeed, the seizure of the vehicle did not deprive the applicant of his possession, but only provisionally prevented him from using it and from disposing of it. The Court cannot but note certain indications that the applicant’s bus is no longer available, which may be why it has not been returned to him to date. However, having regard to the established facts and verifiable information in its possession, it will examine the applicant’s complaint with reference to the second paragraph of Article 1 of Protocol No. 1.

58. As regards the period when the charging order was in force, nothing in the parties’ submissions discloses that the interference was not lawful. The Court also accepts that the interference was in the “general interest” of the community because the charge aimed at anticipating an eventual confiscation of property and securing civil claims of the injured party (see *Kokavec v. Hungary* (dec.), no. 27312/95, 20 April 1999, and *Földes and Földesné Hajlik v. Hungary*, no. 41463/02, § 26, ECHR 2006-...).

59. The Court observes, however, that there must also be a reasonable relation of proportionality between the means employed and the aim sought to be realised by any measures applied by the State, including measures designed to control the use of the individual’s property. That requirement is expressed by the notion of a “fair balance” that must be struck between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights (see *Edwards v. Malta*, no. 17647/04, § 69, 24 October 2006, with further references).

60. The Court considers that, in principle, imposition of a charge on an accused’s property is not in itself open to criticism, having regard in particular to the margin of appreciation permitted under the second

paragraph of Article 1 of the Protocol. However, it carries with it the risk of imposing on him or her an excessive burden in terms of ability to dispose of his or her property and must accordingly provide certain procedural safeguards so as to ensure that the operation of the system and its impact on an applicant's property rights are neither arbitrary nor unforeseeable (see, *mutatis mutandis*, *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 54, ECHR 1999-V, and the ruling from the Russian Constitutional Court cited in paragraph 26 above).

61. The Court has already found that the criminal proceedings in relation to which the charging order had been issued in the present case did not comply with the "reasonable-time" requirement of Article 6 § 1 of the Convention (see paragraph 41 above). It has also found that the applicant was not afforded an effective remedy for his complaint under Article 1 of Protocol No. 1 (see paragraph 56 above). Furthermore, the Court reiterates that while any seizure or confiscation entails damage, the actual damage sustained should not be more extensive than that which is inevitable, if it is to be compatible with Article 1 of Protocol No. 1 (see *Raimondo*, cited above, § 33, and *Jucys v. Lithuania*, no. 5457/03, § 36, 8 January 2008). It was not in dispute between the parties that the bus had a considerable commercial value for the applicant. However, following amendment of the Criminal Code in December 2003, removing confiscation as a penalty for criminal offences, and in the absence of any civil claims against the applicant, it was incumbent on the national authorities to re-assess the lawfulness and necessity of the continued application of the order. Indeed, it was the investigator's duty under the CCrP to lift the charging order if it was no longer necessary (see paragraph 25 above). Nevertheless, the case remained dormant and no investigative measures were taken between 2000 and early 2006. The domestic authorities did not consider whether it would be possible to leave the bus with the applicant, while restraining him from disposing of it. Although the availability of alternative solutions does not in itself render the interference with the applicant's right unjustified, it constitutes a relevant factor when determining whether the means chosen may be regarded as reasonable and suited to achieving the legitimate aim being pursued (see *James and Others v. the United Kingdom*, 21 February 1986, § 51, Series A no. 98; and *Wiesinger v. Austria*, 30 October 1991, § 77, Series A no. 213). The Court concludes that the Russian authorities failed to strike a "fair balance" between the demands of the general interest and the requirement of the protection of the applicant's right to peaceful enjoyment of his possessions by maintaining the charging order for more than six years.

62. As regards the retention of the bus after the decision of 20 January 2006 (see paragraph 9 above), the Government have acknowledged that maintaining the charging order after that date and until its discharge on 18 July 2006 was unlawful. The Court has no reason to disagree with this

assessment. In addition to that, the Court observes that the Government cited no legal basis for not returning the bus to the applicant after that annulment. Thus, the Court considers that the continued retention of the bus even after the annulment of the charging order is equally unlawful (cf. *Vendittelli v. Italy*, 18 July 1994, §§ 39 and 40, Series A no. 293-A; and *Raimondo*, cited above, § 36).

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicant claimed 170,000 euros (EUR) in respect of non-pecuniary damage caused in relation to the seizure and retention of his bus and restitution of his bus or payment of EUR 700,000, as well as lost earnings in the amount of 1,533,000 Russian roubles (RUB).

66. The Government made no comments within the prescribed time-limit.

67. The Court considers that the applicant has suffered non-pecuniary damage on account of the prolonged retention of his bus and, making its assessment on an equitable basis, awards him EUR 3,000 under this head, plus any tax that may be chargeable.

68. As to the pecuniary claims, the Court considers that the applicant did not substantiate his claims in respect of the lost earnings. Neither did he submit any details as to his alternative claim regarding the value of the bus. Thus, the Court dismisses those claims as unfounded.

69. However, the Court reiterates that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences (see *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, Series A no. 330-B, and *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, ECHR 2001-I). Therefore, in so far as the claim for restitution of the bus is concerned, the Court finds it appropriate in the circumstances of the case to grant the applicant's claim by requiring the respondent State to ensure, by appropriate means, that the bus in question is returned to the applicant.

B. Costs and expenses

70. The applicant claimed RUB 21,000 for unspecified legal costs.

71. The Court reiterates that costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred, and were also reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). The Court considers that the applicant's claim is unsubstantiated; it therefore rejects it.

C. Default interest

72. 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. *Decides* to join to the merits the Government's objections as to the exhaustion of domestic remedies in respect of the applicant's complaints about the excessive length of the criminal proceedings against him and the prolonged retention of the bus and *rejects* them;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 13 of the Convention in relation to the applicant's complaint under Article 6 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
5. *Holds* that there has been a violation of Article 13 of the Convention in relation to the applicant's complaint under Article 1 of Protocol No. 1;
6. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
7. *Holds*
 - (a) that the respondent State shall ensure, by appropriate means, that the bus in question be returned to the applicant;
 - (b) 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, EUR 3,000 (three thousand euros) in

respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(c) 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;

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

Done in English, and notified in writing on 22 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President