



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

1959 · 50 · 2009

THIRD SECTION

CASE OF BATSANINA v. RUSSIA

(Application no. 3932/02)

JUDGMENT

STRASBOURG

26 May 2009

FINAL

14/09/2009

This judgment may be subject to editorial revision.

In the case of Batsanina v. Russia,

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Boštjan M. Zupančič,

Anatoly Kovler,

Alvina Gyulumyan,

Egbert Myjer,

Luis López Guerra, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 5 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 3932/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Ms Svetlana Ksenofontovna Batsanina (“the applicant”), on 10 January 2002.

2. The applicant, who had been granted legal aid, was represented by Mr G. Nikolayev, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Mr P. Laptev, the then Representative of the Russian Federation at the European Court of Human Rights.

3. On 22 May 2006 the President of the Third 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 1957 and lives in the town of Gelendzhik, in the Krasnodar Region.

A. Civil proceedings

5. The applicant's husband was a staff member of the Oceanology Institute of the Russian Academy of Sciences, a State-owned institution. In 1977 he was placed on a waiting list to receive housing. In August 1998 he was on the top of the list. In order to obtain a larger flat from the Institute, it was agreed that the applicant would transfer title to her own flat to the Institute. On 4 December 1998 the applicant and the Institute signed an exchange agreement. The Institute subsequently discovered that the applicant had sold her old flat in March 1998.

6. On an unspecified date, having become aware of the above transactions, the Gelendzhik town prosecutor, acting on behalf of the Institute and the person who had been allocated the applicant's flat (a Mr M), brought proceedings against the applicant and her husband to have the exchange agreement invalidated and to evict the applicant's family from the flat granted to her husband. The applicant's husband brought a counter-claim seeking the acknowledgement of his right to the new flat received from the Institute.

7. On 9 March 2000 the Gelendzhik Town Court of the Krasnodar Region granted the public prosecutor's claim. On 25 April 2000 the Krasnodar Regional Court quashed the judgment and ordered a re-examination of the case by the first-instance court.

8. The first instance heard the prosecutor, the applicant, her husband and their counsel. The Oceanology Institute's and Mr M's representatives were also present and made submissions to the court. On 1 June 2001 the Town Court granted the public prosecutor's claim. On 18 June 2001 the Town Court dismissed the counter-claim in a separate judgment. The applicant appealed. On 16 August 2001 the Regional Court upheld the judgments of 1 and 18 June 2001. The prosecutor was present at the appeal hearing. There is no written proof that the applicant received any summons for the appeal hearing scheduled for 16 August 2001.

9. On 30 January 2003 the Supreme Court refused to initiate supervisory proceedings in respect of the above judgments. It rejected, *inter alia*, the applicant's complaint about non-notification of the appeal hearing, noting that the parties had been apprised of it.

B. Criminal proceedings against the applicant

10. In the meantime, on 4 February 2000 criminal proceedings were instituted against the applicant on suspicion of embezzlement in relation to the same facts. On 19 December 2000 the case was discontinued for lack of a *corpus delicti*. On 15 August 2006 the above decision was quashed and the preliminary investigation was resumed. Its outcome remains unclear.

II. RELEVANT DOMESTIC LAW

A. Legislation on the role of prosecutors in court proceedings

11. The RSFSR Code of Civil Procedure (CCP) in force at the material time read as follows:

Article 41. Participation of a prosecutor in the proceedings

“A prosecutor may bring to a court a claim for the protection of rights and lawfully protected interests of other persons or enter the proceedings at any stage, if it is required for the protection of State or public interests or rights and lawfully protected interests of citizens...”

The prosecutor who participates in the proceedings may study the case materials, bring challenges, produce evidence, take part in the examination of evidence, lodge applications, state his opinion on issues arising in the course of the proceedings and on the merits of the case as a whole, as well as perform other procedural actions provided for by law...”

12. The Prosecutor’s Offices Act (Federal Law no. 2202-1 of 17 January 1992), as in force at the material time provided:

Section 1. Prosecutor’s Office of the Russian Federation

“... 3. In accordance with the procedural legislation of the Russian Federation, prosecutors shall participate in the hearing of cases by courts of law and commercial courts (hereinafter referred to as the “courts”) and shall challenge any court decisions, sentences and rulings which are contrary to the law...”

Section 35. Prosecutor’s participation in court hearings

“1. The prosecutor shall take part in court hearings in the cases provided for by the procedural legislation of the Russian Federation and other federal laws...”

3. The prosecutor, in accordance with the procedural legislation of the Russian Federation, shall be entitled to make an application to the court or to enter the case at any stage of the proceedings, if the protection of civil rights and lawful interests of society or the state so requires...”

B. Summonses and storage periods

13. Article 106 of the RSFSR CCP provided that a summons was to be served on the parties and their representatives in such a way that they would have enough time to appear at the hearing and prepare their case. Where necessary, the parties could be summoned by a phone call or a telegram.

Pursuant to Articles 108 and 109, court summonses were to be sent by mail or by courier and served on the person who was a party to the case.

14. According to Instruction no. 8 issued by the Judiciary Department of the Supreme Court of Russia on 29 January 1999, in force at the material time, there was no requirement for registering acknowledgment-of-receipt cards for summons; the cards were to be filed into the relevant case files (point 12). Under Instruction no. 171 issued on 29 December 1999, the storage period for case files in civil cases examined by a first-instance court on the merits varied from five to fifteen years depending on the nature of the case; certain case files had to be stored for an indefinite period of time; the storage period for case files in civil cases examined by a court of appeal amounted to three years; registers of incoming correspondence were to be kept for three years; copies of summons issued by regional courts were to be kept for five years.

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

15. The relevant part of the Parliamentary Assembly's Resolution 1604 (2003) On the Role of the Public Prosecutor's Office in a Democratic Society Governed by the Rule of Law reads as follows:

“it is essential:

a. that any role for prosecutors in the general protection of human rights does not give rise to any conflict of interest or act as a deterrent to individuals seeking state protection of their rights;

b. that an effective separation of state power between branches of government is respected in the allocation of additional functions to prosecutors, with complete independence of the public prosecution from intervention on the level of individual cases by any branch of government; and

c. that the powers and responsibilities of prosecutors are limited to the prosecution of criminal offences and a general role in defending public interest through the criminal justice system, with separate, appropriately located and effective bodies established to discharge any other functions...”

16. The European Commission for Democracy through Law (the Venice Commission) at its 63rd plenary session (10-11 June 2005) adopted an Opinion on the Prosecutor's Offices Act (see above). Its relevant provisions provide as follows:

“...57...It is, of course, clear that the Russian Office of the Prosecutor General is among those Offices which does not conform to the model which the Parliamentary Assembly considered to be essential. Moreover, in respect of the Prosecutor's predominant role in the Russian administration, which can hardly be described as limited or exceptional, the Prosecutor's Office does not seem to conform to the tests...which are as follows:

1. In addition to the essential role played by prosecutors in the criminal justice system, some member states of the Council of Europe provide for the participation of the prosecutor in the civil and administrative sectors for historical, efficiency and economic reasons but their role should always be exceptional (principle of exceptionality).

2. The role of the prosecutor in civil and administrative procedures should not be predominant; the intervention of the prosecutor can only be accepted when the objective of this procedure cannot, or hardly be ensured otherwise (principle of subsidiarity).

3. The participation of the prosecutor in the civil and administrative sectors should be limited and must always have a well-founded, recognisable aim (principle of speciality).

4. States can entitle prosecutors to defend the interest of the state (principle of protection of state interest).

5. Prosecutors can be entitled to initiate procedures or to intervene in ongoing procedures or to use various legal remedies to ensure legality (principle of legality).

6. In case it is required for reasons of public interest and/or the legality of decisions (e.g in cases of protection of the environment, insolvency etc.) the participation of the prosecutor can be justified (principle of public interest).

7. Protecting the rights and interests of disadvantaged groups of society unable to exercise their rights can be an exceptional reason for the intervention of the prosecutor (principle of protection of human rights)...

13. Prosecutors should have no decision-making powers outside the criminal field or be given more rights than other parties before courts (principle of equality of arms).

14. Prosecutors should not discriminate among persons when protecting their rights and should only intervene for well-grounded reasons (principle of non-discrimination)...

74. There have been undoubted reforms in the Russian system of Procuracy, notably the limitations on the prosecutor's powers of supervisory review of court decisions... and the fact that intervention in court cases on behalf of the citizens is limited to cases where they are unable to act for themselves or where this is justified because numerous citizens are affected by the wrongdoing concerned".

17. Opinion no. 3 (2008) adopted by the Consultative Council of European Prosecutors, an advisory body set up by the Council of Europe Committee of Ministers by its decision of 13 July 2005, contains the following comparative analysis [internal footnotes omitted]:

"22. Court actions – irrespective of the procedural rules governing them (rules of civil proceedings or special administrative law rules) – are bound to court proceedings: prosecutors act as parties therein. Prosecution services did not report any special powers or authority when prosecutors take part in civil court proceedings as petitioners, they have the same powers as other parties. Their position is not exclusive, the proceedings may be started by other interested persons as well. In such cases

prosecutors have definitely no decision-making powers regarding the merit of cases, their decisions concern only initiation of a case: submitting a petition to the civil law court.

23. Almost in all countries where prosecutors have competences in the non criminal field, prosecutors are empowered to launch new court-actions, to use ordinary and extraordinary remedies (appeals) as parties of proceedings. However some rules could be identified (prohibition of extraordinary appeal or proposal for reopening of proceedings; prohibition of settlement in the name of the party)...

25. The aims of non penal activities of prosecutors, irrespective of their substantive or procedural differences, are much more concordant: ensuring rule of law (integrity of democratic decisions, legality, observance of law, remedy against violation of law), protection of rights and liberties of persons (mostly of those incapable to protect their rights – minors, persons with unknown domicile, mentally incapables), protection of assets and interests of State, protection of public interest (or of public order), harmonisation of jurisdiction of courts (special remedies against final court decisions in the best interest of law, action as parties in such proceedings of the highest court levels)...

27. ...[T]he CCPE is aware of occasional improper practice of public prosecutors acting outside the field of criminal justice assessed by the Court or by certain Constitutional Courts or criticised by other bodies of the Council of Europe. The most disconcerting events were in connection with rejection without reason of requests to start civil law court actions; intervention in court proceedings without reasonable interest (of State, of public interest or based on protection of rights) violating the principle of equality of arms; quashing of final judgment of courts violating the principle of legal certainty (*res judicata*) ; participation of prosecutors in panels of supreme courts confusing the decision-making role of judges with prosecutors tasks; unlimited right to start litigation.

28. The contribution of prosecutors to the consolidation of the case-law of the courts is a fact in many member States. The role of prosecutors in this respect should not allow them to exercise undue influence on the final decision-taking process by judges.”

The Opinion referred to the following principles applicable in the relevant field:

“a. the principle of separation of powers should be respected in connection with the prosecutors’ tasks and activities outside the criminal law field and the role of courts to protect human rights;

b. the respect of impartiality and fairness should characterise the action of prosecutors acting outside the criminal law field as well;

c. these functions are carried out “on behalf of society and in the public interest”, to ensure the application of law while respecting fundamental rights and freedoms and within the competencies given to prosecutors by law, as well as the Convention and the case-law of the Court;

d. such competencies of prosecutors should be regulated by law as precisely as possible;

- e. there should be no undue intervention in the activities of prosecution services;
- f. when acting outside the criminal law field, prosecutors should enjoy the same rights and obligations as any other party and should not enjoy a privileged position in the court proceedings (equality of arms);
- g. the action of prosecution services on behalf of society to defend public interest in non criminal matters must not violate the principle of binding force of final court decisions (*res judicata*) with some exceptions established in accordance with international obligations including the case-law of the Court;
- h. the obligation of prosecutors to reason their actions and to make these reasons open for persons or institutions involved or interested in the case should be prescribed by law;
- i. the right of persons or institutions, involved or interested in the civil law cases to claim against measure or default of prosecutors should be assured;
- j. the developments in the case-law of the Court concerning prosecution services' activities outside the criminal law field should be closely followed in order to ensure that legal basis for such activities and the corresponding practice are in full compliance with the relevant judgments..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE PRINCIPLE OF EQUALITY OF ARMS

18. The applicant complained that the principle of equality of arms in the civil proceedings had been infringed as the prosecutor had brought the proceedings in the interest of a State institution and a private person. She relied on Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

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

B. Merits

20. The applicant contended that the prosecutor's right to institute civil proceedings should have been exercised only if the person concerned was unable to do so herself, for instance in view of her state of health, age, mental condition or another valid reason. Neither reason was present in the instant case. The first plaintiff was a wealthy State-owned institution. The prosecutor's rights were wider than those of an ordinary plaintiff and his or her objectivity was open to doubt. The prosecutor was the first to plead before the court and had an opportunity to address the court before the closure of the proceedings.

21. The Government submitted that the prosecutor's decision to initiate civil proceedings had been based on Article 41 of the RSFSR Code of Civil Procedure (see paragraph 11 above) and his obligation to protect the interests of the State and its nationals, namely the interests of the persons awaiting housing. The prosecutor's interest in the proceedings was of a procedural nature; he acted in his own right but also in the defence of other persons' rights.

22. The Court reiterates that the principle of equality of arms is one element of the broader concept of fair trial, within the meaning of Article 6 § 1 of the Convention. It requires "a fair balance between the parties", each party must be given a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent (see *Yvon v. France*, no. 44962/98, § 31, ECHR 2003-V; *Nideröst-Huber v. Switzerland*, 18 February 1997, § 23, *Reports of Judgments and Decisions* 1997-I; and *Kress v. France* [GC], no. 39594/98, § 72, ECHR 2001-VI).

23. Referring to its previous case-law on the role of public prosecutors outside the criminal law field, the Court reiterates that in a number of cases it has clarified that the mere presence of the prosecutor or comparable officer at the courts' deliberations, be it "active" or "passive", is deemed to be a violation of Article 6 § 1 of the Convention (see *Martinie v. France* [GC], no. 58675/00, § 53, ECHR 2006-...). In other cases the Court has also examined whether the submissions of the advocate-general or similar officer have been communicated to the applicant/party and whether the parties have had the opportunity to reply to them (see *Lobo Machado v. Portugal*, 20 February 1996, § 31, *Reports of Judgments and Decisions* 1996-I;

K.D.B. v. the Netherlands, 27 March 1998, § 43, *Reports of Judgments and Decisions* 1998-II and *Göç v. Turkey* [GC], no. 36590/97, § 55, ECHR 2002-V).

24. The present case, however, raises different issues, since the prosecutor did not participate in the judicial deliberations; his lawsuit was communicated to the applicant and she used the opportunity given to her to reply to the prosecutor's arguments. Nevertheless, the Court reiterates that since a prosecutor or comparable officer, in undertaking the status of a procedural plaintiff, becomes in effect the ally or opponent of one of the parties, his participation was capable of creating a feeling of inequality in respect of one of the parties (see *Kress*, cited above, § 81, and *F.W. v. France*, no. 61517/00, § 27, 31 March 2005). In this context, the Court reiterates that while the independence and impartiality of the prosecutor or similar officer were not open to criticism, the public's increased sensitivity to the fair administration of justice justified the growing importance attached to appearances (see *Borgers v. Belgium*, 30 October 1991, § 24, Series A no. 214-B).

25. The Court considers that the fact that a similar point of view is defended before a court by several parties or even the fact that the proceedings were initiated by a prosecutor does not necessarily place the opposing party in a position of "substantial disadvantage" when presenting her case. It remains to be ascertained whether, in the instant case, in view of the prosecutor's participation in the proceedings, the "fair balance" that ought to prevail between the parties was respected.

26. The Court points out that its task is not to review the relevant domestic law and practice *in abstracto*, but to determine whether the manner in which they were applied to or affected the applicant gave rise to a violation of Article 6 § 1 in the present case (see, among other authorities, *Padovani v. Italy*, 26 February 1993, § 24, Series A no. 257-B, and *Hauschildt v. Denmark*, 24 May 1989, § 45, Series A no. 154). Article 6 § 1 imposes on the Contracting States the duty to organise their legal systems in such a way that their courts can meet each of the requirements of that provision (see, among other authorities, *Sürmeli v. Germany* [GC], no. 75529/01, § 129, ECHR 2006-...). In order to determine whether the acts of the prosecutor's office in the present case were compatible with Article 6 § 1 of the Convention, the Court has had regard to relevant Council of Europe documents (see paragraphs 15 and 16 above).

27. It is noted that the parties to civil proceedings, the plaintiff and the respondent, should have equal procedural rights. The Court does not exclude that support by the prosecutor's office of one of the parties may be justified in certain circumstances, for instance for the protection of vulnerable persons who are assumed to be unable to protect their interests themselves, or where numerous citizens are affected by the wrongdoing concerned, or where identifiable State assets or interests need to be

protected. The Court notes in that connection that the applicant's opponent in the proceedings in question was a State-owned organisation (compare *Yavorivskaya v. Russia*, no. 34687/02, § 25, 21 July 2005). There was also a private person who had a vested interest in the outcome of the proceedings. Although both the Oceanology Institute and Mr M were represented in the proceedings, the Court considers that the public prosecutor acted in the public interest when he brought proceedings against the applicant and her husband (compare *Menchinskaya v. Russia*, no. 42454/02, §§ 37-40, 15 January 2009). The applicant and her husband were also represented by counsel and made both written and oral submissions to the first-instance court. It was not shown that the prosecutor's decision to initiate civil proceedings had no legal basis under Russian law, or that this decision fell outside the scope of his discretion to bring proceedings on account of the particular circumstances of the case (see paragraphs 11 and 12 above). In the circumstances of the case there is no reason to believe that the institution of the civil proceedings by the public prosecutor was meant or had the effect of unduly influencing the civil court or preventing the applicant from bringing an effective defence (see, *mutatis mutandis*, *Steel and Morris v. the United Kingdom*, no. 68416/01, § 67, ECHR 2005-II). Thus, in the Court's opinion, the principle of the equality of arms, requiring a fair balance between the parties, was respected in the present case.

28. There has accordingly been no violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE HEARING ON 16 AUGUST 2001

29. The applicant complained under Article 6 § 1 of the Convention (see above) that she had not been informed of the appeal hearing on 16 August 2001.

A. Admissibility

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

B. Merits

31. The Government argued that the applicant had been informed of the appeal hearing. However, they were unable to produce any evidence since the relevant registers had been destroyed after the expiry of the three-year

retention period, pursuant to an Instruction on case processing in district courts.

32. The applicant submitted that the Government should have relied on Instruction no. 8 issued by the Judiciary Department of the Supreme Court of Russia in 1999 (see paragraph 14 above). According to that Instruction, there was no requirement for registering acknowledgment-of-receipt cards for summons; the cards were to be handed over to the court registrar for filing into the relevant case file. Under another instruction, the storage period for case files in civil cases amounted to fifteen years (*ibid.*)

33. The Court notes that the Government submitted no proof for their argument that the applicant had been notified of the appeal hearing. Neither did they specify the legal basis for the alleged destruction of the relevant registers or produce a certificate confirming the act of destruction after the expiry of the three-year period. Even accepting that the Instructions referred to by the applicant were applicable in his case, the Court cannot discern what storage period applied. It has not been shown that the Government exhausted all reasonable possibilities to adduce the relevant evidence. Lastly, it does not follow from the text of the appeal judgment that the appeal court verified whether the applicant had been effectively informed of the appeal hearing.

34. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Yakovlev v. Russia*, no. 72701/01, § 19 et seq., 15 March 2005; *Groshev v. Russia*, no. 69889/01, § 27 et seq., 20 October 2005; *Mokrushina v. Russia*, no. 23377/02, § 20 et seq., 5 October 2006; *Prokopenko v. Russia*, no. 8630/03, § 17 et seq., 3 May 2007; *Subbotkin v. Russia*, no. 837/03, § 18 et seq., 12 June 2008, and *Litvinova v. Russia*, no. 34489/05, § 16 et seq., 14 November 2008).

35. Having examined the materials submitted to it, the Court concludes that the applicant was not afforded an opportunity to attend the appeal hearing and plead her case in adversarial proceedings.

36. It follows that there has been a violation of the applicant's right to a fair hearing under Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

37. The applicant also complained under Articles 6, 13 and 14 of the Convention that the courts had incorrectly determined the merits of her counterclaim, that the lay judges had been appointed in violation of Russian law, and that the length of the proceedings had been excessive. Lastly, she alleged under Article 1 of Protocol No. 1 to the Convention that by bringing his claim against the applicant, the prosecutor had unlawfully interfered with her possessions. Lastly, she alleged under Article 34 of the Convention

that the resumption of the criminal proceedings against her was aimed at intimidating her.

38. The Court has examined the remainder of the applicant's complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application should be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant claimed reimbursement of the market value of the flat in dispute in the domestic proceedings, namely 72,653 euros (EUR). She also claimed EUR 25,000 in respect of non-pecuniary damage.

41. The Government submitted that the applicant's pecuniary claim had no connection to the complaints made by her in the present case under Article 6 § 1 of the Convention. They considered that the claim in respect of non-pecuniary damage was excessive.

42. The Court has found a violation of Article 6 § 1 of the Convention in relation to the appeal proceedings in the civil case against the applicant. Having examined the materials in its possession, the Court considers that it has not been established that the pecuniary claim had a sufficient link to the violations found or was properly substantiated; the Court therefore rejects it. At the same time, having regard to the nature of the violation found and making its assessment on an equitable basis, the Court awards the applicant EUR 1,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

43. The applicant claimed EUR 30 in respect of costs and expenses incurred in the domestic proceedings.

44. The Government considered that the above claim was reasonable and substantiated.

45. Regard being had to the information in its possession, the Court grants the applicant's claim.

C. Default interest

46. 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

1. *Declares* unanimously the complaints concerning the observance of the principle of equality of arms in civil proceedings and the domestic authorities' failure to inform the applicant of the appeal hearing admissible and the remainder of the application inadmissible;
2. *Holds* by six votes to one that there has been no violation of Article 6 § 1 of the Convention on account of the alleged non-observance of the principle of the equality of arms;
3. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention on account of the domestic authorities' failure to inform the applicant of the appeal hearing;
4. *Holds* unanimously
 - (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, EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage, and EUR 30 (thirty euros) in respect of costs and expenses, both sums to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (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;

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

Done in English, and notified in writing on 26 May 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following partly dissenting opinion of Judge Gyulumyan is annexed to this judgment.

J.C.M.
S.Q.

PARTLY DISSENTING OPINION OF JUDGE GYULUMYAN

I find that I am unable to share the opinion of the majority that there has been no violation of Article 6 § 1 of the Convention on account of the alleged non-observance of the principle of equality of arms.

The principle of equality of arms is one element of the broader concept of fair trial, within the meaning of Article 6 § 1 of the Convention. It requires “a fair balance between the parties”, each party being given a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-a-vis* his opponent (see, among many other authorities, *Yvon v. France*, no. 44962/98, §31, ECHR 2003-V; and *Kress v. France* [GC], no. 39594/98, §72, ECHR 2001-VI).

In the present case the prosecutor brought eviction proceedings against the applicant and her husband on behalf of the Oceanology Institute, a State-owned organisation, and a private individual, Mr M. The prosecutor subsequently participated in the first-instance and appeal hearings to protect the Oceanology Institute’s and Mr M.’s interests.

I agree that the participation of a prosecutor in civil proceedings may be justified in certain circumstances. However, I consider that such participation should be limited to exceptional cases and should only be used for protection of the rights of vulnerable groups – children, disabled people and so on – who are unable to protect their interests themselves, or where numerous citizens are affected by the wrongdoing concerned, or where State interests are seriously affected and cannot be protected otherwise (see *Menchinskaya v. Russia*, no. 42454/02, § 35, 15 January 2009). None of those exceptional circumstances is present here. I cannot agree with the majority that the participation of the prosecutor was necessary to protect State property. The flat in question, although it belonged to the State, was under the management of the Oceanology Institute. It was the Institute’s responsibility to protect that property against trespass and to participate in any related litigation. Indeed, the Institute participated in the proceedings through its representative. Nothing in the case file shows that it encountered any difficulties in bringing or pursuing proceedings and therefore there was no risk that the state interests would be left unprotected. I am unable to distinguish any well-founded, recognisable aim or public interest for the prosecutor’s interference in this otherwise ordinary civil dispute. Therefore, the participation of the prosecutor cannot be said to be justified in the circumstances of the present case.

In my view, this judgment regrettably sends the wrong signal to those contracting parties who strive commendably to define the important but limited role which public prosecutors should play in civil proceedings.

I consider that in this case, as in the similar case of *Menchinskaya v. Russia*, the principle of equality of arms was violated.