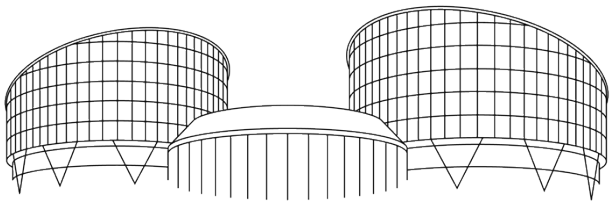

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF PELIPENKO v. RUSSIA

(Application no. 69037/10)

JUDGMENT
(merits)

STRASBOURG

2 October 2012

FINAL

02/01/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Pelipenko v. Russia,

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges,*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 11 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 69037/10) 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 two Russian nationals, Ms Svetlana Grigoryevna Pelipenko and Mr Aleksandr Vitalyevich Pelipenko ("the applicants"), on 2 November 2010.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged, in particular, that they had not been able to obtain enforcement of a final judgment in their favour and that they had been unlawfully evicted from their home.

4. On 17 March 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). Further to the applicants' request, the Court granted priority to the application (Rule 41 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1963 and 1985 respectively and live in the town of Anapa, Krasnodar Region. The applicants are mother and son.

A. General overview of the applicants' housing situation and the court judgment of 21 November 2001

6. In 1989 the first applicant started working in a State-owned seaside health resort in Anapa. A year later the resort's management allowed the applicants to occupy two rooms in a former administrative building. By a decision of the resort's trade union committee of 24 October 1991, the first applicant was officially assigned housing rights to those premises. A year later a State body supervising the resort decided to assign the status of a dormitory to the administrative building in which the first applicant and her son lived. However, the proceedings by which the status of the administrative building was to be changed were not completed. At the same time, pursuant to a decision of the Head of the Anapa City Council the applicants and other inhabitants of the dormitory registered, on a permanent basis, their housing rights to the premises they occupied in the dormitory building.

7. In 2001 a new director of the resort, which by that time had been transformed into a private joint-stock company, "Golden Beach Resort" (hereinafter – "the Company"), lodged an action against the applicants seeking their eviction.

8. On 21 November 2001 the Anapa Town Court dismissed the action, having found that the applicants had been lawfully provided with the premises, which they had established as their place of permanent residence. The first applicant had duly paid the rent and, with the consent of the resort's management, had improved the state of the premises by installing a sewage system and carrying out renovation works. The Town Court noted that "it was impossible to evict the applicants without providing them with other housing premises" and held that the Company was, at its next general meeting of shareholders, to determine the issue of purchasing a flat for the applicants in accordance with the requirements of the Russian Housing Code in order to resettle them from the premises they had occupied in the resort.

9. That decision was upheld on appeal by the Krasnodar Regional Court on 5 February 2002.

10. On 2 April 2002 the Anapa Town Court issued a writ of execution which the first applicant submitted to a bailiff on the following day.

B. Proceedings for the enforcement of the judgment of 21 November 2001

11. In 2004 the first applicant, disappointed by the bailiff's failure to enforce the judgment of 21 November 2001, asked the Anapa Town Court to amend the method of enforcement of the judgment by ordering the Company to pay her a sum equal to the cost of a two-room flat.

12. On 5 November 2004 the Town Court accepted the action, having noted the Company's "persistent unwillingness" to enforce the judgment of 21 November 2001 despite the applicants' countless complaints to various law-enforcement bodies and courts. It ordered that the Company purchase for the applicants, before 1 January 2005, a two-room flat in the town of Anapa. In the event of its failure to comply with the judgment, the Company was to pay the applicants 1,168,800 Russian roubles, equivalent to the cost of a two-room flat. That decision became final on 14 December 2004, having been upheld on appeal by the Krasnodar Regional Court.

13. Enforcement proceedings, initiated in January 2005 and pending without any apparent success, were stayed on 13 May 2005 after the acting President of the Krasnodar Regional Court had initiated supervisory review of the decisions of 5 November and 14 December 2004.

14. On 9 June 2005 the Presidium of the Regional Court, by way of supervisory review, quashed both decisions and remitted the case for fresh examination by the Town Court.

15. On 28 July 2005 the Town Court discontinued the proceedings following the first applicant's failure to attend two hearings. No appeal being lodged, the decision became final on 8 August 2005.

16. In 2006 the Anapa Town Bailiffs Service reinitiated the enforcement proceedings in respect of the judgment of 21 November 2001. In December 2006 the applicants again resubmitted the writ of execution to the bailiffs, having reminded them of their right to have the judgment of 21 November 2001 enforced.

17. According to the Government, on 9 October 2009 the head of the Anapa Town Bailiffs Service applied to the Town Court, asking it to issue a duplicate of the writ as the Service had lost it. That request was dismissed by the Town Court on 27 October 2009. A similar request by the Service was, however, accepted on 17 May 2010. Three days later the bailiffs closed the enforcement proceedings because, by a decision of the Commercial Court of the Krasnodar Region, the Company had been declared bankrupt on 11 March 2009 and liquidation proceedings had been initiated. The bailiffs sent the duplicate of the writ to the Company's liquidator for execution. At the same time, they applied to the Town Court asking it to uphold their decision to close the enforcement proceedings. On 25 June 2010 the Town Court dismissed the motion, having found that the bailiffs had failed to transfer the entire enforcement case file to the Company's liquidator and had not fulfilled a number of other legal obligations.

18. The first applicant lodged an action against the Anapa Town Bailiffs Service, complaining that the bailiffs had failed to enforce the final judgment of 21 November 2001. In particular, the first applicant argued that the Company had been an active legal entity, that its shareholders had regularly convened meetings since 2001, that the issue of compliance with the judgment of 21 November 2001 had never been raised at those meetings

and that the bailiffs had not taken any steps to enforce the judgment. Furthermore, the first applicant claimed that due to the fact that the bailiffs had lost the writ of execution, had failed to promptly ask the Town Court for a duplicate and had therefore failed to submit the writ to the Company's liquidator in due time, she and her son had not been included on the list of the Company's creditors and their claims against the Company had never been considered in the course of the bankruptcy proceedings.

19. On 26 August 2010 the Town Court, having found that the first applicant's arguments were well-founded, accepted her complaint and declared the bailiffs' inactivity to be unlawful. Having been upheld on appeal by the Krasnodar Regional Court, that decision became final on 7 October 2010.

20. In response to a number of complaints by the applicants about the bailiffs' failure to enforce the judgment of 21 November 2001, the Anapa Town Prosecutor's office conducted an inquiry. In September 2010 the applicants received several letters from the prosecutor's office, by which they were notified about the results of the inquiry. The prosecutors found that the bailiffs had acted unlawfully, having lost the applicants' case file in 2008 and having failed to enforce the judgment despite the fact that the first applicant had herself helped to restore the enforcement file.

21. On 4 May 2011 the Commercial Court of the Krasnodar Region found that the applicants had missed the time-limit for having their claims against the Company included on the list of creditors. At the same time, the court held that they maintained the right to have the judgment of 21 November 2001 enforced from the Company's funds should any be left after the Company had satisfied all claims of its creditors.

C. Transfers of title to the resort property and new proceedings for the applicants' eviction

22. According to the applicants, in the meantime, in June 2005 title to the resort's immovable property, including the former administrative building in which they lived, was transferred by a court order sought by a Mr K. to the Krasnodar Regional Association of Trade Unions (hereinafter – "the Association"). Two months later the Association sold the resort to Mr K. The sale and purchase agreement contained a clause no. 1.1, by virtue of which Mr K. was to "independently and at his own expense guarantee the housing rights of individuals who lived or were registered as living in the resort". Mr K.'s title to the resort was endorsed by a decision of the Town Court issued on 27 October 2005. On the following day, complying with the court's decision, the State authorities registered Mr K.'s title. On 17 April 2006 the resort property was sold by Mr K. to Mr S., the chauffeur of the resort's director. Three months later Mr S. sold the resort to Ms A., the wife of a deputy director of the resort.

23. On 11 March 2009 the Company was declared bankrupt and liquidation proceedings were initiated.

24. In July 2009 Ms A. lodged an action with the Anapa Town Court, seeking annulment of the applicants' registration in the housing premises and their eviction. The applicants lodged a counterclaim, asking the court to declare the sale and purchase agreements in respect of the resort property null and void and to uphold their right to live in the housing premises. They enclosed written witness statements, including one by a supervising police officer confirming that the applicants, having no other place of residence, were living permanently in the disputed housing premises and had been registered there. The applicants also provided the Town Court with a copy of the judgments of 21 November 2001 and 5 February 2002, arguing that their right to the housing premises had been upheld by the courts and that their eviction would run counter to those judgments and applicable law.

25. On 25 January 2010 the Town Court accepted the action by Ms A. and dismissed the counterclaim lodged by the applicants. Having held that the applicants' registration as resident in the premises should be annulled and that they should move out, the Town Court reasoned that, despite the findings made in the judgment of 21 November 2001, as upheld on appeal on 5 February 2002, the applicants had no right to occupy the premises, which had never been declared to be suitable for habitation. The applicants' registration in those premises had been effected when the building had been transformed into a dormitory. The registration had become unlawful and should have been annulled after the building had ceased to be a dormitory. The Town Court noted that although the applicants had been living in the disputed premises for a long time and were using the premises as their own, irrespective of who the real owner of the building at the time was, that was no ground on which to uphold their right to those premises.

26. The Town Court had heard the case in the applicants' absence, as they had refused to accept court summonses to the hearings. Bailiffs' attempts to serve the applicants with the summonses at their residence had been to no avail, as the applicants had refused to open the door. After all attempts to reach the applicants had proved to be futile, the Town Court had appointed legal aid counsel to represent the applicants. The lawyer, who had attended the court hearings, had made submissions in support of the applicants' counterclaim.

27. On 20 May 2010 the Krasnodar Regional Court upheld the judgment of 25 January 2010, fully endorsing the Town Court's reasoning. Having addressed an argument raised by the applicants concerning their absence from the hearings before the Town Court, the Regional Court noted that there was extensive evidence in the case file showing that the Town Court had taken all possible steps to summon the applicants to the hearings. However, they had refused to receive summonses or had gone into hiding so that summonses would not be served on them. The Town Court had ensured

the applicants' interests in the proceedings through legal representation which had not been alleged to be ineffective. Both the first applicant and the applicants' legal representative attended the appeal hearing.

D. Applicants' eviction

28. In August 2010 the applicants complained to the Anapa Town Court about the bailiffs' actions pertaining to the enforcement of the judgment of 25 January 2010. In particular, they claimed that early in the morning on 11 August 2010, without notifying them of the date and time of the visit, bailiffs had entered the housing premises, had taken all their personal belongings out to the street and had installed a new metal door precluding the applicants from entering the building. On 13 August 2010 the bailiffs had annulled their registration in the premises and had closed the enforcement proceedings. The first applicant also submitted that the bailiffs had enforced the judgment of 25 January 2010, having disregarded the fact that the enforcement proceedings had been stayed by a decision of 2 August 2010 of the Krasnodar Regional Court.

29. On 2 September 2010 the Town Court accepted the complaint, having confirmed that the bailiffs had unlawfully carried out the enforcement of the judgment of 25 January 2010.

30. The applicants also complained to the prosecution authorities. The prosecutors responded that the enforcement of the judgment of 25 January 2010 had been carried out in violation of the requirements of Russian law and in disregard of a stay in the enforcement proceedings, of which the bailiffs had been fully aware. The prosecutor's office lodged a motion with the Town Court, seeking annulment of the bailiffs' decision of 13 August 2010. Another motion was sent to the bailiffs' office, by which it was advised to seek interpretation of the judgment of 25 January 2010 in the light of the judgment of 21 November 2001.

31. In September 2010 the applicants moved back into the premises. Several days later representatives of Ms A. attempted to evict the applicants from the house. However, their attempts failed.

32. On 25 November 2010 the bailiffs again evicted the applicants from the premises, having left their furniture and personal belongings in the yard near the building. The applicants provided the Court with colour photographs depicting the outcome of the eviction proceedings. As is shown on the photos, the applicants were forced to live in the street with their furniture and personal belongings scattered all over the street in front of the building from which they had been evicted. Signs declaring the applicants' ownership and warning off possible thieves were posted on the scattered belongings. The photos also showed the new owners of the building installing wooden shutters on the building windows.

33. By a final judgment of 31 March 2011, the Krasnodar Regional Court dismissed the applicants' complaint about the bailiffs' actions in the enforcement proceedings, having noted that the applicants had witnessed the enforcement and had helped the bailiffs to move their belongings from the premises. The court also observed that the bailiffs had not been officially notified of a stay in the enforcement proceedings.

E. Developments after the communication of the case to the Russian Government

34. On 7 June 2011 the Supreme Court of the Russian Federation, by way of supervisory review, quashed the judgments of 25 January and 20 May 2010 and dismissed Ms A.'s claims against the applicants in full. It concluded that the courts had committed a serious breach of substantive and procedural law, having ordered the applicants' eviction from the premises in disregard of the final and binding judgment of 21 November 2001. The Supreme Court reiterated that on 21 November 2001 the court had confirmed the applicants' right to live in the premises and had forbidden their eviction without them being provided with suitable replacement housing. It also observed that an encumbrance had been attached to the sale-purchase contract in respect of the resort property, according to which the new or any subsequent owner of the resort was to provide the applicants with a flat should he or she wish to evict them from the resort building.

35. A month later the Anapa Town Court declared a reversal of the enforcement of the judgment of 25 January 2010 and ordered that the applicants be moved into the premises from which they had been evicted and that their right to use those premises for living accommodation be registered.

36. The applicants immediately applied to the Anapa Town Bailiffs Service, seeking assistance in preserving the building, which they wished to move back into. They claimed that, having learned of the Supreme Court's judgment, Ms A. had begun to destroy the building. Having enclosed colour photographs showing an entirely dilapidated building without a roof, doors, windows and floors, the applicants submitted that Ms A. had also cut the electricity, destroyed the sewage system, and cut the telephone and TV cables. They provided the Court with the same set of photographs. With no actions being taken in response to their pleas for assistance, the applicants lodged a number of complaints with other authorities, including the prosecutor's office and the Regional Ombudsman.

37. On 10 August 2011 the bailiffs informed Ms A. that the applicants were to be moved into the previously occupied premises. The Government submitted that, having observed that the building had been substantially damaged, having no roof and window frames and with the supply lines having been "shut down", the bailiffs had considered that it was impossible

to enforce the Supreme Court's judgment and had applied to the Town Court for clarification. On 6 October 2011 the Town Court dismissed the application, as domestic law did not provide the court with the ability to tell the bailiffs what to do in such a situation.

38. Having decided to proceed with the enforcement, the bailiffs sent a telegram to the applicants' last known address. The applicants were told to come to the housing premises on 14 November 2011 in order to be moved into them. With the applicants failing to appear on 14 November 2011, the bailiffs terminated the proceedings, having noted that the applicants had "impeded the enforcement of the judgment" and returned the writ of execution to them.

39. That decision was annulled by the Anapa Town Prosecutor, as there was no evidence that the applicants had been duly notified of the enforcement proceedings.

40. A number of subsequent attempts by the bailiffs to move the applicants into the premises were unsuccessful, given the applicants' repeated failure to appear at the premises or their having lodged requests to stay the enforcement proceedings.

41. In the meantime, the applicants lodged an action against Ms A., the owner of the building, seeking compensation for damage, reconstruction of the housing premises and temporary provision of other housing premises for the period of the reconstruction works. On 5 June 2012 the Krasnodar Regional Court, in the final instance, dismissed the claim, having noted that the premises where the applicants had used to live had not been suitable for habitation from the very beginning and therefore that their reconstruction was impossible. The court noted, at the same time, that it was open to the applicants to claim a flat from Ms A.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

42. The applicants complained under Article 6 of the Convention that, given the bailiffs' failure to take any of the necessary steps, they had been unable to obtain enforcement of the final judgment of 21 November 2001. Article 6 of the Convention reads as follows:

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

A. Submissions by the parties

43. The Government, firstly, noted that enforcement of the judgment of 21 November 2001 was still possible, as the Company had not yet been liquidated. They asked the Court to dismiss the complaint as premature under Article 35 § 1 of the Convention. Having extensively relied on the Court's case-law, the Government further submitted that the judgment had been issued against a private company for whose debts the State could not be held liable. They stressed that the State's responsibility did not go any further than to assist the applicants in the enforcement of the judgment, through bailiffs or by way of bankruptcy proceedings. The Government reiterated that this was not an obligation of result but of means, with the means of enforcement available to the present applicants having been adequate and effective. The State should only bear responsibility for very serious omissions committed by its officials which had negated the point of enforcing the judgment. The Government further stated that the Court should distinguish the present case from the case of *Kunashko v. Russia* (no. 36337/03, 17 December 2009), in which it found a violation of Article 6 of the Convention on account of the State's failure to effectively assist the applicant in recovering a judgment debt against a private legal entity. Without providing any further details, the Government observed that, in contrast to the *Kunashko* case (cited above), in the case under examination the bailiffs had "under[taken] active measures aimed at the organisation of an appropriate procedure for the enforcement ... of the judgment of 21 November 2001". At the same time, the Government noted that the Russian courts had already declared the bailiffs' "inactivity and their failure to take every possible step" to enforce the judgment in the applicants' favour unlawful. The Government's final argument was that the enforcement of the judgment was at the material time in the hands of the Company's liquidator, who was not affiliated to the State in any way.

44. The applicants regretted that the judgment of 21 November 2001 had not been enforced and pointed out that in the ten years during which the enforcement proceedings had been pending the bailiffs had taken no steps to force the Company to comply with the judgment and the Government had not been able to point to any such measures having been taken. They further noted that, as a result of their claim against the Company not being included on the list of creditors, a chance to have the judgment enforced had been missed as a result of negligence. Given that the bankruptcy proceedings had been opened in respect of the Company precisely in view of its inability to pay its debts to those creditors who had been put on the list, it was absurd to expect that the Company would retain any funds by the end of the bankruptcy proceedings to cover debts falling outside the list of its creditors.

B. The Court's assessment

1. Admissibility

45. The Government argued that the complaint was inadmissible under Article 35 § 1 of the Convention because the applicants could still obtain enforcement of the judgment award.

46. The Court reiterates that it has examined a similar argument by the Russian Government in a number of cases. In particular, in the case of *Kesyan v. Russia* (no. 36496/02, §§ 61-63, 19 October 2006), the Court dismissed the Government's objection of non-exhaustion, having reiterated that according to its settled case-law, complaints concerning the length of enforcement proceedings could be raised with the Court before the final termination of the proceedings in question. In the case of *Kunashko* (cited above, § 47), the Court examined another angle of the Government's non-exhaustion objection. It noted that in a situation when an applicant had used various legal avenues provided for by Russian law to complain about bailiffs' conduct, including a complaint before a Russian court, the Court cannot reject for failure to exhaust domestic remedies an application concerning the quality of assistance afforded by the State for the purpose of obtaining enforcement of a final judgment against a private party.

47. The Court sees no reason to depart from those findings in the present case. The applicants complained of the excessive length of the enforcement proceedings allegedly resulting from the bailiffs' failure to act. They also made use of domestic remedies, having applied to the Russian courts with a complaint about the bailiffs' inactivity (see paragraphs 18 and 19 above). The Government's objection is, therefore, rejected.

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

2. Merits

49. The Court reiterates that execution of a judgment given by any court must be regarded as an integral part of the "trial" for the purposes of Article 6 of the Convention (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II, and *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 63, ECHR 1999-V). However, the right of "access to court" does not impose an obligation on a State to execute every judgment of a civil character without having regard to the particular circumstances of a case (see *Sanglier v. France*, no. 50342/99, § 39, 27 May 2003). The State has a positive obligation to put in place a system for enforcement of judgments that is effective both in law and in practice and ensures their enforcement without undue delay (see *Fuklev v. Ukraine*, no. 71186/01,

§ 84, 7 June 2005). In other words, when final judgments are issued against "private" defendants, the State's positive obligation consists of providing a legal arsenal allowing individuals to obtain, from their evading debtors, payment of sums awarded by those judgments (see *Dachar v. France* (dec.), no. 42338/98, 6 June 2000). When the authorities are obliged to act in order to enforce a judgment and they fail to do so, their inactivity can engage the State's responsibility on the basis of Article 6 § 1 of the Convention (see *Scollo v. Italy*, 28 September 1995, § 44, Series A no. 315-C). It is obvious that the State's positive obligation is not that of result, but one of means. Authorities have to take reasonably accessible steps to assist the recovery of any judgment debt. Consequently, when it is established that the measures taken by the authorities were adequate and sufficient, the State cannot be held responsible for a failure by a "private" defendant to pay the judgment debt (see *Kunashko*, cited above, § 38).

50. In the context of the Russian legal system, the principles cited above are applicable, in the first place, to the bailiffs service, which is required to perform its functions diligently and thoroughly with a view to ensuring effective execution of judgments issued against "private" defendants.

51. The Court, however, is not called upon to examine whether the internal legal order of the State is capable of guaranteeing the execution of judgments given by courts. Indeed, it is for each State to equip itself with legal instruments which are adequate and sufficient to ensure the fulfilment of positive obligations imposed upon the State (see *Ruianu v. Romania*, no. 34647/97, § 66, 17 June 2003). The Court's only task is to examine whether the measures applied by the Russian authorities in the present case were adequate and sufficient. In cases such as the present one which necessitate actions by a private debtor, the State – as the possessor of public authority – has to act diligently in order to assist a creditor in the execution of a judgment (see *Fociac v. Romania*, no. 2577/02, § 70, 3 February 2005).

52. As regards the facts of the present case, the Court observes that on 21 November 2001 the applicants obtained a judgment against a private company by which the latter was to determine the issue of providing the applicants with suitable housing premises in accordance with the law. The judgment was upheld on appeal and became final on 5 February 2002. While the ambiguity of the terms used in the judgment of 21 November 2001 does not escape the Court's attention, the subsequent developments in the case, as well as the interpretation of the judgment by the Russian courts (see paragraphs 12 and 21 above), do not leave room for any doubt that under the judgment of 21 November 2001 the Company was required to resettle the applicants from the housing premises they were occupying at the time to another flat. On 3 April 2002 the enforcement proceedings were instituted. In 2010 they were joined to the liquidation proceedings against the debtor company which are now pending.

53. The Court's task is to determine what measures the bailiffs have undertaken during the enforcement proceedings and whether they were adequate and sufficient. The Government was not able to indicate any steps having been taken by the bailiffs in many years in which the enforcement proceedings were pending. The materials before the Court show that the bailiffs remained passive most of the time and that when they decided to act, those actions were directed at rectification of their own omissions (see, for instance, paragraph 17 above, describing attempts to restore the lost execution writ). It appears that the bailiffs were unaware of the Company's fate and its financial situation to the extent that they missed the opening of the bankruptcy proceedings against it and subsequently failed to transfer the entire enforcement file to the Company's liquidator. The bailiffs' inactivity and their constant mistakes were also criticised by the Russian courts (see paragraphs 17 and 19 above). It was the applicants who tried to push forward the enforcement proceedings, having attempted to amend the method of enforcement and having reminded the bailiffs of their obligations. One of those pleas made in 2006 led to an attempt by the bailiffs three years later to restore the misplaced enforcement file and to obtain a duplicate of the lost writ.

54. Having regard to the above considerations, the Court is of the opinion that the bailiffs did not employ adequate efforts to secure the execution of the judgment of 21 November 2001.

55. The Court does not lose sight of the Government's argument that the liquidation proceedings against the Company remain pending and that it is now for the Company's liquidator, an individual not affiliated to the State, to execute the judgment. It, however, finds it particularly important that the bailiffs did nothing to enforce the judgment award in the crucial period of almost seven years between April 2002 and March 2009, when the Company was not yet in a state of liquidation. Their failure to act during all those years led to the applicants now being compelled to await the outcome of the liquidation proceedings and to hope that the Company will, in the end, retain sufficient funds to comply with the judgment in their favour. In any event, the Court does not see how the unlikely possibility that the applicants, who, possibly through negligence on the part of the bailiffs, were not included on the list of the Company's creditors, will recover the judgment debt if and when the Company satisfies its liabilities to its creditors can remedy their grievances related to the lengthy and stale enforcement proceedings which lay at the heart of the present complaints (see, for similar reasoning, *Kunashko,* cited above, § 47).

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

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

57. The applicants complained that their eviction had been unlawful, having contradicted the final judgment of 21 November 2001. They relied on Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for ... his home ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Submissions by the parties

58. In their observations sent to the Court on 12 July 2011, the Government submitted that the eviction of the applicants had been carried out on the basis of the final judgment of 25 January 2010, in compliance with the requirements of domestic law, with the purpose of protecting the rights and interests of others, in particular, the new owner of the resort, and had therefore been necessary in a democratic society and proportionate. They stressed that the applicants had not been able to provide the Russian courts with any evidence showing that they had been lawfully residing in the housing premises in question and concluded that the new owner had been right in her claim to evict the applicants. The Government reiterated that the Court should not act as a court of fourth instance and should not interfere in the sphere which is occupied by the national judicial authorities, namely the interpretation of domestic law and the assessment of facts.

59. In their subsequent submissions received by the Court on 14 February 2012, the Government observed that the judgment of 25 January 2010 had been quashed by the Russian Supreme Court in view of the fact that the lower courts had erred in their interpretation and application of domestic law, having authorised the applicants' eviction in violation of domestic legal requirements and the final judgment of 21 November 2001. The Government insisted that the applicants' rights to reside in the housing premises had therefore been restored. Having noted that the building to which the applicants had been allowed to move back into was uninhabitable, they, nevertheless, stressed that the applicants had refused to comply with the bailiffs' orders, making it impossible for the bailiffs to enforce the Supreme Court's ruling.

60. The applicants insisted that their situation had not been remedied by the Supreme Court's decision, as the building had been almost completely destroyed by its current owners. They also argued that the authorities had not only failed to take any steps to prevent the unlawful conduct of the

owners, but had, in fact, contributed to a general lack of respect for the law by issuing unlawful judgments and enforcing them.

B. The Court's assessment

1. Admissibility

61. The Court observes that the present complaint concerns the applicants' eviction from their home on the basis of the judgment of 25 January 2010. It has not been disputed between the parties that the eviction amounted to an interference with the applicants' right to respect for their home (see *Stanková v. Slovakia*, no. 7205/02, § 57, 9 October 2007, and *Bjedov v. Croatia*, no. 42150/09, § 62, 29 May 2012). The judgment of 25 January 2010 was, however, quashed by way of supervisory review on 7 June 2011 and the applicants' right to live in the housing premises was upheld. The applicants were, nevertheless, unable to move back in as the building had become uninhabitable, having been almost entirely destroyed by its owner. The question therefore arises whether, for the purposes of Article 34 of the Convention, the applicants can still claim to be "victims" of the alleged violation of their rights secured by Article 8 of the Convention. In this connection, the Court reiterates that an applicant is deprived of his or her status as a victim if the national authorities have acknowledged, either expressly or in substance, and then afforded appropriate and sufficient redress for, a breach of the Convention (see, for example, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-93, ECHR 2006-V).

62. In the present case, the Supreme Court of the Russian Federation in its judgment of 7 June 2011 held that the applicants' eviction ran counter to the requirements of domestic law and the final judgment of 21 November 2001. The Court is prepared to interpret that finding, as well as the Government's submissions of 14 February 2012, as an implied acknowledgement of the violation alleged by the applicants. However, the Court is not convinced that the applicants were afforded any redress for the breach of their rights secured by Article 8 of the Convention. While having been given judicial authorisation to move back into their home, the applicants were not able, in practice, to effect that move, as their home had already been destroyed. The Court is unable to hold the applicants responsible for their refusal to comply with the bailiffs' persistent attempts to move them into the dilapidated building. It therefore finds that they retain their victim status, within the meaning of Article 34 of the Convention, in so far as their complaint under Article 8 of the Convention is concerned.

63. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and

that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

64. The Court reiterates that the Supreme Court's ruling of 7 July 2011 declaring the applicants' eviction from their home unlawful found that the eviction had resulted from the erroneous interpretation and application of domestic law by the Russian courts which also ran counter to the final findings in the judgment of 21 November 2001, which had forbidden the applicants' eviction from the disputed housing premises without the provision of another flat. In their submissions of 14 February 2012 the Government gave a similar reading to the domestic judgments ordering the applicants' eviction.

65. In this connection, the Court reiterates that it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, even in those fields where the Convention "incorporates" the rules of that law, since the national authorities are, by their very nature, particularly qualified to settle issues arising in this connection (see *Orlić v. Croatia*, no. 48833/07, § 61, 21 June 2011). The Court will not therefore substitute its own interpretation for that of the Russian Supreme Court and does not see a reason to depart from its findings.

66. In these circumstances, the Court cannot but conclude that the applicant's eviction was not in accordance with domestic law.

67. With the interference with the applicants' right to respect for their home having no legal basis, the Court, accordingly, finds that there has been a violation of Article 8 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

68. Lastly, the Court has examined the other complaints submitted by the applicants. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that 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 the remainder of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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."

70. The applicants submitted a long list of claims for compensation in respect of pecuniary damage, including the cost of a new flat, the cost of repair works for the old housing premises, the cost of their personal belongings damaged or lost during the eviction and expenses for renting a flat after their eviction. They also claimed compensation for non-pecuniary damage and reimbursement of their costs and expenses. However, they required further information from the Government and further time to make their proposals more accurate.

71. The Government contested the claims, having argued that they were inflated and unsubstantiated.

72. In the circumstances of the case, the Court considers that the question of the application of Article 41 of the Convention is not ready for decision. It must accordingly be reserved and the further procedure fixed with due regard being had to the possibility of an agreement between the respondent State and the applicants.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the non-enforcement of the judgment and the applicants' eviction admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 8 of the Convention;

4. *Holds* that the question of the application of Article 41 of the Convention is not ready for decision,
   and accordingly,
   (a) *reserves* the said question;
   (b) *invites* the parties to submit, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;

(c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 2 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President