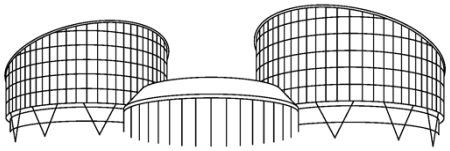

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF UNIYA OOO AND BELCOURT TRADING COMPANY v. RUSSIA

(Applications nos. 4437/03 and 13290/03)

JUDGMENT

STRASBOURG

19 June 2014

FINAL

17/11/2014

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

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In the case of Uniya OOO and Belcourt Trading Company v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 27 May 2014,

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

PROCEDURE

1. The case originated in two applications (nos. 4437/03 and 13290/03) 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 companies ("the applicant companies").

2. The first applicant company was Uniya OOO, a limited liability company registered in Alsheyvskiy District, Bashkortostan, under Russian law. The materials of the case indicate that this company went into liquidation during the proceedings before the Court, and no longer exists as a legal person.

3. The second applicant company is Belcourt Trading Company, which was originally registered in the Republic of Ireland and then in the state of Delaware, USA, and subsequently in Belize City, Belize.

4. The applications on behalf of the two applicant companies were introduced on 28 December 2002 and 17 March 2003 respectively. The first applicant company was represented before the Court by Ms Alekseyenkova, a lawyer practising in Kaliningrad. The second was represented by Mr Golovkin, its director, and by Mr Rubinstein, who both live in the Kaliningrad Region, Russia.

5. The Russian Government ("the Government") were represented by Mr P. Laptev and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights, and subsequently by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

6. The applicants alleged that their property was seized and destroyed, and that there had been no effective judicial review of the seizure and the destruction.

7. The Chamber decided to join the proceedings in the applications (Rule 42 § 1). By a decision of 7 October 2010, the Court declared the applications admissible.

8. The applicant companies and the Government each submitted further written observations (Rule 59 § 1) on the merits. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The criminal case against Mr Golovkin

9. Between 1997 and 1998 the first applicant company (Uniya) imported several consignments of alcohol into the Kaliningrad Region under a contract with the second applicant company (Belcourt). The alcohol had been produced in Germany and Belgium. Uniya acted as a commissioner (agent) or, in some instances, as a buyer of the alcohol. The initial price of the alcohol, as sold by the producer, varied between 1.09 and 1.12 German marks per bottle. Under the contracts between the second and the first applicant company the price of the alcohol varied between about 7.25 and 7.41 United States dollars (USD) per bottle. The alcohol was declared at the border at that price. The alcohol was bottled by the producer; after customs clearance the alcohol was sold in the Kaliningrad Region under various brand names (such as Petrov-Lemon, Extra-Uniya, and Drink-Uniya) bottled in plastic and glass bottles. According to the Government, between November 1997 and April 1998 Uniya imported and sold alcohol worth USD 20,000,000.

10. On 29 April 1998 the police instituted criminal proceedings on suspicion of unlawful trafficking in alcohol by the senior management of Uniya (no. 52012). In particular, the police suspected that Uniya had been importing the alcohol without an appropriate licence ("the criminal proceedings" or "criminal case no. 52012"), an offence under Article 171 of the Criminal Code ("illegal trading"). It appears that whereas the licence in issue was required for wholesale trading in vodka, the alcohol was declared at the border as "alcohol tincture" which did not require the licence.

11. Within that criminal case Mr Golovkin, the director of the Kaliningrad branch of Uniya, was charged under Article 171 of the Criminal Code. The offence imputed to Mr Golovkin was categorised by the investigator as "a crime on a particularly large scale". The amount of

damage caused to the State was calculated by the Government with reference to the price of two licences that Mr Golovkin and other managers of Uniya should have purchased: a general operating licence worth 1,544,565 Russian roubles (RUB), and a storage licence worth RUB 292,215. In addition, the Government indicated that the managers of Uniya "had received 'uncontrolled profit' in the amount of RUB 7,634,358 from illegal activity in the sphere of alcohol trading".

12. In 1999 Mr Golovkin and several other managers of Uniya were also charged under Article 199 § 2 of the Criminal Code with corporate tax evasion. According to the Government, Mr Golovkin was suspected of "artificial under-pricing of the imported alcohol in the contracts between Uniya and Belcourt in order to reduce the amount of taxes subject to payment on the territory of the Russian Federation". Mr Golovkin and others were also charged with money laundering (Article 174 § 3 of the Criminal Code).

13. On 31 May 2005 the Baltiyskiy District Court. Kaliningrad ("the Baltiyskiy District Court") found Mr Golovkin guilty of illegal trading. The District Court found, *inter alia*, that between October 1997 and May 1998 he had, in his capacity as director of the Kaliningrad branch of Uniya, imported 2,459,756 litres of various brands of alcohol worth USD 17,871,860. The District Court found that a special licence was required for such operations, which Mr Golovkin did not have. In relation to other charges, Mr Golovkin and others were acquitted of some of the charges, and some were dropped by the prosecution. For more details concerning criminal proceedings against Mr Golovkin see the Court's judgment in the case of *Golovkin v. Russia*, no. 16595/02, 3 April 2008.

14. On 22 September 2005 the Kaliningrad Regional Court quashed the judgment of 31 May 2005 on appeal and decided to discontinue the proceedings in Mr Golovkin's case, on account of the expiry of the statutory time-limit for finding him criminally responsible.

B. The first consignment of alcohol (337,104 bottles belonging to Belcourt and 120,317 bottles belonging to Uniya)

1. Seizure and destruction of the first consignment

(a) Seizure

15. Between May and October 1998 the police investigator in charge of criminal case no. 52012, Mr Zh., ordered the seizure of the alcohol imported by Uniya. Pursuant to his order, between June and September 1998 the police seized over 450,000 one-litre bottles of liquor, stored in various warehouses (hereinafter "the first consignment"). The first consignment had undergone customs clearance and all customs duties had been paid.

16. According to the most recent court judgments concerning those events, 120,317 bottles seized by the investigator belonged to the first applicant company (Uniya), whereas 337,104 bottles were the property of the second applicant company (Belcourt).

17. According to the Government, the first consignment of alcohol was seized under Article 167 of the Code of Criminal Procedure. In support of that submission they produced copies of several seizure orders by the investigator Zh., dated from 19 May to 26 October 1998. It appears from these documents that the alcohol was seized on two different grounds: either for the purpose of possible confiscation of the property of the accused (Mr Golovkin and others) or as physical evidence of a crime in the criminal proceedings against Mr Golovkin. The seizure orders were thus formulated either as "order for attachment of property" (*постановление о наложении ареста на имущество)* or "orders for removal of physical evidence" (*постановление о производстве выемки*).

18. The "removal of physical evidence" orders referred to Article 197 of the CCrP ("Measures of identification of the person to be charged") which apparently bore no relation to the investigator's power to seize items or definition of "physical evidence".

19. All the seizure orders contained a summary of the charges against Mr Golovkin under Article 171 of the Criminal Code ("illegal trading") and indicated where the alcohol in question could be found. The decisions which referred to Article 175 of the Code of Criminal Proceedings (for example, the decisions of 16 and 18 June 1998) mentioned that the attachment order had been imposed in order to secure the possible payment of civil damages and/or confiscation of property of the suspect (namely Mr Golovkin and other managers of Uniya). Some of the seizure orders (see, for example, the "removal of physical evidence" order of 26 October 1998 and the "attachment of property" order of 19 May 1998) mentioned that the offence imputed to Mr Golovkin and others ("illegal trading") caused damage to the State amounting to RUB one million. In other respects the seizure orders were substantially the same.

20. According to the applicant companies, on the basis of the "removal of physical evidence" orders the investigative authorities carried out several searches and seizures at different addresses. Thus, *in toto* the authorities seized 162,246 bottles under the head of "removal of physical evidence" and 295,235 bottles under the head of "attachment of property orders". The alcohol was seized from both the applicant companies under two heads. The price of the alcohol seized varied between USD 7.31 and 7.41 per bottle.

21. As well as seizing alcohol, the investigator carried out searches in Uniya's offices and seized its official stamps and seals.

(b) First and second expert examinations of the quality of the alcohol

22. On 29 June 1998 five bottles of the seized alcohol were examined in Moscow by the Central Laboratory of the State Customs Office, at the request of the investigator. The experts concluded that the content of one bottle could be characterised as "vodka" according to the State manufacturing standard for liquor (GOST 12712-80). The content of the other four bottles could be characterised as "bitter liquor" (State manufacturing standard GOST 7190-93). The experts concluded that the alcohol had been made from food-grade spirit, according to traditional processes, and was drinkable (if consumed in reasonable quantities).

23. On 13 July 1998 the investigator commissioned another expert examination of the alcohol (hereinafter "the second expert examination"). He sent the experts ten bottles of the alcohol seized by the investigator earlier. The new examination was entrusted to the Centre of Forensic Examination of the Ministry of the Interior in Moscow.

24. On 14 August 1998 the second expert report was prepared. The experts found that some of the ingredients mentioned on the labels were absent from the sample bottles (such as citric acid and some flavourings as regards the bottles labelled Petrov-Lemon). The experts further found that all the alcohol's physical and chemical characteristics corresponded to the State manufacturing standard for liquor (GOST 7190-93). However, the alcohol could not be characterised as "bitter liquor": its examination had shown that the alcohol had been made from non-food-grade raw spirit, whereas under Russian law it was required to be produced from food-grade vegetable-derived raw spirit. The experts based their conclusion on the very low proportion of methanol in the alcohol examined. The experts noted that such alcohol was potentially harmful to consumers.

(c) Destruction of the alcohol

25. On 26 January 1999 the investigator concluded that the liquor seized was "derelict property". According to the investigator, the first consignment had been purchased by Uniya from Belcourt. Between January and March 1998 the alcohol had "ostensibly" been returned to Belcourt. The fact of the return was confirmed by several invoices issued by Uniya, as well as by a "reciprocal debt settlement agreement" signed between Uniya and Belcourt on 18 March 1998 and discovered by the investigating authorities. The agreement had been signed on behalf of Belcourt by their agent, Mr I. The latter had been questioned by the investigator. He had testified that he had never heard of Belcourt or any alcohol. On that ground the investigator concluded that the alcohol had no lawful owner. On the basis of the expert report of 14 August 1998 the investigator concluded that it was "non-drinkable" alcohol and was derelict property. He ordered the alcohol to be sent to a competent regional authority (hereinafter "the Alcohol Commission") for "further disposal or processing".

26. On 30 April 1999 the local police department signed an agreement with a private firm, Fakel, which undertook to destroy the alcohol for RUB 29,956.

27. On 1 June 1999 the Alcohol Commission held a meeting. According to the minutes of the meeting, the State obtained title to the alcohol received by the Commission from the investigator on 26 January 1998. The Government produced a report by the State Environment Protection Committee of the Kaliningrad Region authorising the destruction of the alcohol seized (Extra-Uniya, Drink-Uniya and Petrov-Lemon).

28. Between 13 September and 21 October 1999 the first consignment of alcohol was allegedly destroyed. According to the official reports, it took seven days to dispose of over 460,000 one-litre bottles of alcohol by burning the alcohol or pouring it into the sewerage system.

2. The "special ruling" of the Baltiyskiy District Court

29. On an unspecified date during the trial of criminal case no. 52012 Mr Golovkin requested the Baltiyskiy District Court to conduct an additional expert examination of the alcohol seized earlier by the investigator. On 16 March 2000 the court granted the request and entrusted the examination to a different group of experts.

30. On 25 May 2000 the experts concluded that the six samples of alcohol could be characterised as "bitter liquor" and complied with the State manufacturing standards GOST 7190-93 and GOST 12712-80, and with sanitary and hygiene standard SanPiN 2.3.2.560-96. The experts contested the findings of the previous expert team that the alcohol had been made from non-food-grade spirit. The Government maintained that the new expert examination "negated the findings of the previous examinations".

31. On 24 November 2000, following the acquittal of Mr Golovkin, the Baltiyskiy District Court issued a special ruling (*частное определение*) addressed to the police and the regional prosecutor's office. In that ruling the court held that the "removal of physical evidence" had been tainted by procedural irregularities: the investigator had failed to attach the physical evidence to the materials in the criminal case, and had not decided where to store the physical evidence, as required by the Code of Criminal Procedure. Further, the investigator had unlawfully transmitted the alcohol to the regional authorities for destruction. Since the alcohol had been seized as an item of physical evidence, that is as "physical evidence of a crime", only the trial court had the power to decide what to do with it. Moreover, when transmitting the consignment the investigator had had at his disposal an alternative expert report, which stated that the alcohol was drinkable; however, he had not even mentioned that report in his decision. The District Court finally found that the destruction of the alcohol had resulted in significant pecuniary loss for the first applicant company. The court

requested the regional prosecutor to take appropriate measures in that respect. That ruling was not challenged and remained in force.

3. Criminal investigation of the destruction of the alcohol

32. On 31 July 2000 police investigator Ms S. opened an investigation of the destruction of the first consignment of alcohol (case no. 022155). Having examined the records of the disposal of the alcohol, she concluded that it could not have been done within seven days. According to the investigator, it would have taken 462 working days to destroy the alcohol using the method described in the official reports. Furthermore, it was unclear where all the empty bottles had gone. The investigator concluded that only 2% of the alcohol had really been destroyed; the whereabouts of the rest of the alcohol remained unknown.

33. On 13 January 2002 the investigation was closed. Mr Ya., another police investigator, concluded that investigator Mr Zh. had acted within his powers and reasonably. Ownership of the alcohol remained unclear, since Mr Golovkin had denied that the alcohol belonged to him or to Uniya, in order to avoid criminal responsibility. Furthermore, the examination of the alcohol of 14 August 1998 (see paragraph 24 above) showed that it had been made from non-food-grade spirit. As a result, the investigator had considered the alcohol to be "derelict property" and undrinkable, and had ordered it to be destroyed. It had been sent for disposal. It was impossible to establish how many bottles of alcohol had been destroyed, and what had happened to the empty bottles. The investigator also concluded that since the criminal proceedings against Mr Golovkin were still pending at the time, it had been impossible to establish who owned the alcohol at issue. As a result, the case had been closed.

34. On 3 September 2002 the Leningradskiy District Court, Kaliningrad upheld the investigator's decision of 13 January 2002. The District Court confirmed that the investigator had acted within his powers and in accordance with the applicable legislation. The Alcohol Commission had also been competent to take the decision to destroy the alcohol.

4. Complaints by Uniya, Belcourt and Mr Golovkin under Article 125 of the CCrP

(a) Judicial review of the seizure

(i) Complaints by Uniya and Mr Golovkin

(α) First round (Article 125 proceedings)

35. On 17 March 2003 Mr Golovkin, referring to Article 125 of the Code of Criminal Proceedings (CCrP), lodged a complaint with the Baltiyskiy District Court, which was examining his criminal case. In that

complaint Mr Golovkin sought to have the seizure of the first consignment of alcohol declared illegal. He submitted that 120,317 litres of alcohol belonged to Uniya, whereas the rest (337,104 litres) belonged to Belcourt. It is unclear whether Mr Golovkin introduced that complaint in his own name or on behalf of the first applicant company as the director of its Kaliningrad branch.

36. On 17 June 2003 the Baltiyskiy District Court examined the complaint and dismissed it. The court observed that the property seized did not belong to the defendant personally, and that Article 175 of the CCrP does not provide for confiscation of property as a penalty. However, "the investigation of the criminal case was still pending, and it was unclear whether any new charges or civil claims would be brought against Mr Golovkin or against any prospective civil defendants". The court also noted that the prosecution had lodged a civil action against Mr Golovkin, claiming damages in the amount of RUB 6,200,566.

37. On an unspecified date in 2003 the Baltiyskiy District Court sent a letter to Mr Golovkin, informing him that his complaint about the seizure order in the form of "removal of physical evidence" could not be examined.

38. On 22 July 2003 the Kaliningrad Regional Court upheld the lower court's decision of 17 June 2003. It held in particular that although the decision of 17 June 2003 only referred to "removal of physical evidence" orders, in essence it also covered "attachment of property" orders. The Regional Court held that "since the investigation in the case [was] still pending, and since the prosecutor had lodged a tort claim on behalf of the State, the [lower court] had come to the right conclusion that Mr Golovkin's complaint should not have been allowed".

(β) Second round (Article 125 proceedings)

39. In 2004 Mr Golovkin, in the capacity of a representative of Uniya, renewed the complaint against the seizure orders concerning the first consignment.

40. On 31 January 2005 the Baltiyskiy District Court refused to examine the complaint in so far as it concerned the "attachment orders", as being essentially the same as the complaint examined on 17 June 2003. Mr Golovkin appealed, but on 12 April 2005 the Kaliningrad Regional Court confirmed the lower court's decision. At the same time, the court agreed to accept the complaint in so far as it concerned the "removal of physical evidence" orders concerning the first consignment.

41. On 20 April 2005 the Baltiyskiy District Court refused to examine the complaint by Mr Golovkin against the seizure orders of 1998 (both in the form of "attachment of property" orders and "removal of physical evidence" orders) as being essentially the same as the complaint already examined earlier and rejected on 17 June 2003 and 22 July 2003.

(γ) Chapter 25 proceedings

42. Following the partial acquittal of Mr Golovkin and discontinuation of the proceedings as to the remainder of the charges against him, the first applicant company lodged a complaint with the Baltiyskiy District Court. The first applicant company indicated that the courts had not ruled on the issue of the alcohol seized in the criminal proceedings, and asked the court to declare unlawful the decisions of the investigators concerning the seizure of the first consignment of alcohol. It appears that Uniya was relying on the general provisions of the Civil Procedure Code, which provided for the judicial review of an administrative action ("Chapter 25 proceedings").

43. On 29 December 2005 the Baltiyskiy District Court refused to examine the complaint by Uniya. It ruled that since the seizure had been ordered in criminal proceedings a civil court had no competence to examine that issue in civil proceedings. On 8 February 2006 that decision was upheld by the Kaliningrad Regional Court.

(ii) Complaints by Belcourt

(α) First round

44. On 19 May 2003 the second applicant company (Belcourt) lodged a complaint with the Baltiyskiy District Court, referring to Article 125 of the Code of Criminal Procedure. They sought to have the seizure of the alcohol ordered by the investigator declared illegal. In a letter of 16 June 2003 the Baltiyskiy District Court informed the second applicant company that its complaint could not be examined, because Belcourt was not a party to the criminal proceedings and therefore had no standing to lodge such a claim.

(β) Second round

45. In 2009 the second applicant company (Belcourt), with reference to Article 125 of the CCrP, reintroduced its complaint against the decision of the investigator of 1998 to seize alcohol belonging to it. The applicant company argued that the seizure had been unjustified and contrary to the law.

46. On 20 October 2009 the Baltiyskiy District Court dismissed the second applicant company's complaint on the following grounds. According to the District Court, the seizure had been ordered by a competent investigator as part of a criminal case. The seizure was ordered in accordance with the procedure established in Articles 169, 170, 171, 175 and 176 of the CCrP. The investigator had not been aware that some of the alcohol in the warehouses rented by Uniya was in fact the property of Belcourt. The search and seizure had been carried out in the presence of an employee of the warehouses. The investigator had had no obligation to contact a representative of Belcourt.

47. The District Court further explained the difference between "removal" of items within criminal proceedings and "attachment". The District Court considered that the "character of the imputed crimes" gave the investigator grounds to believe that both "attachment" and "removal" of the alcohol as an item of evidence could be necessary. On those grounds both "attachment of property" orders and "removal of physical evidence" orders were declared lawful by the District Court.

48. On 1 December 2009 the Kaliningrad Regional Court confirmed the decision of 20 October 2009 in a summary manner.

(b) Judicial review of the destruction

49. On an unspecified date in 2005 Mr Golovkin requested the Baltiyskiy District Court to exclude two items of evidence from the materials of the case file in his criminal case, namely the expert examination of 16 November 1998 and the investigator's decision of 26 January 1999.

50. On 14 April 2005 the Baltiyskiy District Court granted Mr Golovkin's request. It found that the expert examination of 16 November 1998 (see paragraph 124 below) had been tainted by serious procedural flaws, which made it unreliable. Further, the court noted that the investigator's decision of 26 January 1999 had been based on an expert examination which had also been discarded by the court as unreliable. However, it had not been the investigator who had ordered the first consignment of alcohol to be destroyed; he had simply sent it to the Alcohol Commission, which had taken the decision to destroy it. As a result, the District Court decided to exclude the expert examination from the body of evidence and rejected the remainder of the application.

51. Criminal proceedings against Mr Golovkin were terminated by the judgments of 31 May 2005 and 22 September 2005. Thereafter, on an unspecified date Mr Golovkin challenged the decision of the investigator of 26 January 1999, concerning the destruction of the first cargo of alcohol, in the Leningradskiy District Court. The prosecutor acknowledged in his reply that the decision at issue had been unlawful.

52. On 25 November 2005 the Leningradskiy District Court allowed the claim by Mr Golovkin and declared that the decision of the investigator of 26 January 1999 had been unlawful. The court found that the investigator's conclusion that the first consignment of alcohol was "derelict property" had not been sufficiently justified. Therefore, the investigator had had no right to dispose of the property before the final resolution of the criminal case. On 17 January 2006 the Kaliningrad Regional Court upheld the decision of 25 November 2005.

5. Tort claims by Belcourt and Uniya against the State and related proceedings

(a) Tort claims by Belcourt against the State concerning the seizure and destruction of 337,104 bottles of alcohol

(i) Proceedings before the commercial courts

(α) First round (tort claims related to the seizure and destruction)

53. In 2001 the second applicant company (Belcourt) lodged a civil claim with the Kaliningrad Region Commercial Court, seeking compensation for damage caused by the seizure and destruction by the authorities of 337,104 litres of alcohol allegedly belonging to Belcourt and constituting part of the first consignment. The first applicant company participated in those proceedings as a third party.

54. On 2 April 2002 the Kaliningrad Region Commercial Court allowed Belcourt's claims. The court held, in particular, that it would only have been licit for the State to appropriate alcohol belonging to the second applicant company pursuant to a court judgment, and not on the basis of a decision by an investigator. The investigator had failed to establish to whom the alcohol belonged. Further, the conclusions of the expert examination of 14 August 1998 had been unreliable. A fresh expert examination carried out at the request of the Baltiyskiy District Court in 2000 had completely discredited the second expert examination. Belcourt had been the lawful owner of part of the first consignment; its seizure had been unlawful and arbitrary. The declared customs value of the alcohol had been USD 7.31 per bottle. As a result, the Commercial Court ordered the defendant (the Ministry of the Interior) to pay the second applicant company RUB 76,810,056 in damages. The defendant appealed.

55. On 15 November 2002 the Kaliningrad Region Commercial Court, sitting as a court of appeal, quashed the lower court's judgment. The court confirmed that 337,104 bottles of alcohol seized by the investigator and later destroyed in fact belonged to Belcourt. However, the Kaliningrad Regional Commercial Court disagreed with the calculation of damages proposed by the plaintiff, because they were based on the sale price of the alcohol and not on the purchase price. The Commercial Court further noted that the alcohol at issue was returned to Belcourt unconditionally and that it had not been under an enforceable obligation to Uniya to pay for it. The court further held that under Article 1069 of the Civil Code of the Russian Federation only damage caused unlawfully could be compensated for. However, the seizure had taken place within the framework of the criminal proceedings against Mr Golovkin; therefore, the illegality or otherwise of that seizure could only be established in the course of those criminal proceedings, which were still pending. The "special ruling" of the Baltiyskiy District Court of 24 November 2000 was not a legitimate basis

for assessing the lawfulness of the investigating authorities' acts complained of. As a result, the appeal court dismissed the claims of the second applicant in full.

56. On 4 March 2003 the North-West Circuit Commercial Court, sitting as a court of appeal, upheld that decision. On 17 June 2003 a panel of three judges from the Supreme Commercial Court refused to institute supervisory review proceedings, emphasising primarily that "the proceedings in the case within the framework of which the seizure of the alcohol was ordered are still pending; therefore, the courts of appeal were unable to assess the lawfulness of the acts of the investigating authorities, and were consequently unable to examine whether there was any damage requiring compensation".

(β) Second round (tort claims related to the destruction)

57. In 2008 the second applicant company reintroduced its tort claim before the commercial courts, now in connection with the investigator's decision to destroy the first consignment of alcohol.

58. The second applicant company was represented in these proceedings by Mr Golovkin, who had been referred to in the text of the judgment as "the Director, according to the certificate confirming his status of 28.04.2008".

59. On 20 May 2009 the Kaliningrad Region Commercial Court rejected the second applicant company's tort claim. On 18 August 2009 the Thirteenth Commercial Court of Appeal upheld that judgment. The court of appeal based its conclusion on two main arguments forwarded by the lower court. First, the court of appeal noted that the alcohol at issue had not been destroyed by the investigator but by the Alcohol Commission. However, the lawfulness of the actions of the Alcohol Commission had never been challenged by the applicant company or duly established by the courts. Second, the court of appeal noted that the applicant company did not have "primary documents" confirming the price of the alcohol, and therefore had failed to substantiate its calculations of damages. On 23 November 2009 the North-West District Federal Commercial Court, sitting as a court of appeal on points of law, upheld the judgments of the courts at the first and second levels of jurisdiction. On 11 February 2010 the Supreme Commercial Court refused to initiate a supervisory review of the judgments.

60. In 2010 the second applicant company made an unsuccessful attempt to have the proceedings before the commercial court reopened. The final decision refusing to reopen the proceedings was taken by the North-West District Federal Commercial Court on 12 November 2010.

(γ) Third round (judicial review of the decision of the Alcohol Commission)

61. In 2010 the second applicant company brought a claim before the commercial courts against the Kaliningrad Region administration. The

applicant company sought to have the actions of the Alcohol Commission (destruction of alcohol on 1 June 1999) declared unlawful.

62. On 2 August 2010 the Kaliningrad Region Commercial Court rejected the claims of the second applicant company. The Commercial Court found that the Alcohol Commission had been acting within its powers. The Commercial Court noted in particular that:

> "It is clear from the decision of the Alcohol Commission that that decision was not to seize or confiscate the alcohol, but to decide on what was to be done with the alcohol which had already been seized and which was unfit for technical processing. That decision was taken on the basis of the information provided by the police and the Environmental Protection Committee. The Alcohol Commission had no authority to rule on whether the decision to seize or confiscate the alcohol had been in compliance with the law".

63. The Commercial Court further noted that the Alcohol Commission had been created by order of the head of the Kaliningrad Region administration and had been in the meantime abolished, again by his order. The Government of the Kaliningrad Region was not its successor; therefore, they were not liable for the decisions taken by the Alcohol Commission.

64. The Commercial Court added that the decision of the Alcohol Commission had been in compliance with the law, and did not breach the applicant company's rights or legitimate interests.

65. Finally, the Commercial Court ruled that the applicant company had missed the time-limits for challenging the impugned decision.

66. On 1 December 2010 the Thirteenth Commercial Court of Appeal confirmed the judgment of 2 August 2010.

(ii) Proceedings before the courts of general jurisdiction

(α) First round

67. On 19 June 2008 the second applicant company lodged a tort claim against the State under Article 139 of the CCrP in connection with the actions of the investigator. They sought RUB 84,276,000 in damages. In its statement of claim the applicant company did not identify the defendant. The court decided that the State authority concerned was the Ministry of Finance, and summoned their representative to take part in the proceedings on the side of the defendant.

68. On 22 July 2008 the Baltiyskiy District Court dismissed the claim. The court's findings were based on several arguments.

69. First, the court noted that it was impossible to ascertain the price of the alcohol, and consequently to calculate the amount of damages. The alcohol had been sold from the warehouses for RUB 44.50 per bottle on average. The contracts between the first and the second applicant set the price of one bottle at USD 7.25. The judgment in Mr Golovkin's case referred to the "*de facto* cost of one litre of alcohol", which was RUB 3.78.

70. Second, the District Court held that "unlawfulness of the actions of the investigative authorities must be established in the manner provided by the CCrP". The District Court added that the decision to destroy the alcohol had been taken by the Alcohol Commission and not by the investigator. The District Court concluded that there had been no causal link between the actions of the investigator and the loss of the alcohol.

71. In conclusion, the District Court held that it was impossible to consider that complaint under the provisions of Chapter 18 of the CCrP. However, in the operative part the District Court concluded that the second applicant's company tort claim must be "rejected".

72. On 9 September 2008 that judgment was confirmed by the Kaliningrad Regional Court.

(β) Second round

73. On 15 February 2010 the Presidium of the Kaliningrad Regional Court quashed the judgment of the Baltiyskiy District Court of 22 July 2008, which had been upheld on 9 September 2008, and remitted the case to the first-instance court for fresh examination. The Presidium indicated that such claims were to be examined under Chapter 18 of the CCrP.

74. On 7 April 2010 the Baltiyskiy District Court re-examined the second applicant company's tort claim and rejected it on the merits. The Baltiyskiy District Court held that the seizure of the alcohol had not been declared unlawful "in the manner defined by the applicable law". The fact that the Leningradskiy District Court had declared that the investigator's decision to send the alcohol to the Alcohol Commission had been unlawful was irrelevant. The decision to destroy the alcohol had been taken not by the investigator but by the Alcohol Commission. The Alcohol Commission's decision has not been challenged by the second applicant company. The District Court concluded that there was no causal link between the actions of the investigator and the alleged damage caused by the destruction of the alcohol.

75. On 18 May 2010 the Kaliningrad Regional Court upheld the judgment of 7 April 2010 on appeal.

(γ) Third round

76. On 8 November 2010 the Presidium of the Kaliningrad Regional Court quashed the lower courts' decisions and remitted the case for fresh consideration. The Presidium noted that the alcohol seized by the investigator had not been properly attached to the case as an item of "physical evidence" (physical evidence). The Presidium noted that on 25 November 2005 the Leningradskiy District Court had found that the investigator's decision of 26 January 1999 was unlawful. The Presidium noted that the alcohol had been destroyed as a direct result of the unlawful decision of 26 January 1999, and that no other option than destruction had

been provided for. Consequently, the lower courts' conclusion that there had been no causal link between the actions of the investigator and the loss of the alcohol was dubious.

77. On 28 December 2010 the Baltiyskiy District Court allowed the tort claim of the second applicant company in part. The second applicant company was represented in the proceedings by Mr Golovkin.

78. The District Court established that Belcourt was the lawful owner of the alcohol, and defined its price on the basis of the original contracts of importation, at USD 7.25 per bottle. The District Court noted that the defendant (the Ministry of Finance) did not contest that price. Having examined primary documents, the District Court established that *in toto* Belcourt had been deprived of 337,104 litres of alcohol.

79. In order to compensate for inflation-related losses, the District Court decided to apply the United States dollar exchange rate on the day of the judgment. The final amount the Ministry of Finance was to pay in compensation to the second company was RUB 74,418,700. That decision was not appealed against and entered into legal force.

80. On 14 March 2011 the writ of execution issued in the name of the second applicant company was received by the Ministry of Finance. However, the Ministry twice refused to enforce it, referring to various procedural irregularities: first because the applicant company had failed to indicate a bank account, and second because the bank account indicated was in a foreign bank, whereas under the applicable rule the Ministry could only transfer money to a bank operating on the territory of the Russian Federation.

81. According to the second applicant, on 5 April 2012 the amount awarded by the Baltiyskiy District Court was transferred to its account.

82. On 28 May 2012 the Moskovskiy District Court, Kaliningrad ("the Moskovskiy District Court") awarded the second applicant company RUB 596,242 on account of inflation losses relating to prolonged non-enforcement of the judgment of 28 December 2010. In the proceedings before the Moskovskiy District Court the applicant company was represented by Mr Golovkin.

83. On 27 November 2012 the amount of RUB 596,242 was transferred to Belcourt's bank account.

(b) Tort claims of Uniya against the State concerning the seizure and destruction of 120,317 bottles of alcohol

(i) Tort claim by Uniya in the commercial courts

(α) First round

84. In 2000 the first applicant company (Uniya) brought civil proceedings against the police department in charge of the criminal case

against Mr Golovkin, claiming damages for unlawful seizure and destruction of 120,377 bottles, constituting part of the first consignment.

85. On 23 July 2001 the Kaliningrad Region Commercial Court decided in favour of Uniya, stating that the alcohol at issue had been unlawfully seized and destroyed (case no. 4943/1968/1). The Commercial Court found that the alcohol belonged to the first applicant company. The alcohol had passed customs clearance. Its price thus corresponded to its "customs value" declared to the authorities at the border. The expert examination of the alcohol of 14 August 1998 had been defective in many respects and thus unreliable. Its findings had been discarded by an independent expert examination of 25 May 2000. Uniya had been operating without a special licence because in 1998 there had been no requirement to obtain a licence for the importation of alcohol. The court awarded Uniya the damages sought (RUB 25,930,253), to be recovered from the Ministry of Internal Affairs. On 10 October 2001 the appeal court upheld that judgment.

86. On 20 December 2001 the North-West Circuit Commercial Court quashed the lower courts' judgments and remitted the case to the first-instance court for fresh consideration. The court rejected the defendant's argument that the commercial courts did not have jurisdiction to examine the case; however, the court suggested that the proceedings should be stayed pending the criminal investigation. It also noted that the issue of the ownership of the alcohol was not clear.

87. On 12 March 2002 the Kaliningrad Region Commercial Court re-examined the case and again upheld Uniya's claims. The Commercial Court concluded, *inter alia*, that the civil dispute before it could be resolved independently of the criminal proceedings pending against Mr Golovkin. In particular, the criminal proceedings did not aim to establish whether the contract for sale of the first consignment between Uniya and Belcourt had been null and void within the meaning of the Civil Code. On the contrary, the court considered that the sale contract had been entered into by duly authorised persons, and that the parties had begun implementing it, declared the alcohol at the border, paid customs duties, and so on. The contract was therefore valid. The fact that Uniya had no direct contractual relationship with the firms which had produced the alcohol was immaterial. Therefore, Uniya was the legitimate owner of the 120,377 bottles of alcohol seized by the police investigator. As regards the quality of the alcohol, the expert examination of 14 August 1998 had been unreliable from the scientific point of view. Furthermore, the serial numbers of the bottle labels described in the expert report did not correspond to those of the bottles imported by the applicant company. The Commercial Court also noted that in 1998 that type of alcohol could be imported without any special licence. In conclusion, the court allowed the applicant company's claim in full, awarding it RUB 27,482,321 in damages. The defendant appealed.

88. On 6 November 2003 the Kaliningrad Region Commercial Court, sitting as a court of appeal, quashed the lower court's judgment. The court stated that the alleged unlawfulness of the seizure could only be established in the course of the criminal proceedings. The reasoning of the court in that case was almost identical to the reasoning of the same court in the case of the second applicant company, as stated in the decision of 15 November 2002.

89. On 24 February 2004 the North-West Circuit Commercial Court upheld the judgment of the appeal court rejecting the first applicant company's claims in full.

(β) Second round

90. On 7 December 2005 the first applicant company lodged an application with the Thirteenth District Commercial Court (appeal court) seeking the reopening of the proceedings on the grounds of newly discovered circumstances. On 14 March 2006 the Commercial Court rejected the application.

91. On 14 June 2006 the North-West Circuit, sitting as a court of appeal on points of law, quashed the decision of 14 March 2006 and remitted the case to the appeal court for fresh consideration.

92. On 15 January 2007 the Thirteenth District Commercial Court examined the claims anew. The first applicant company's claims against the State were dismissed in full. The first applicant company appealed. On 16 April 2007 the North-West Circuit Commercial Court examined the appeal on points of law against the decision of 15 January 2007 and upheld it.

93. In its judgment the Commercial Court referred to the decision of 3 September 2002 of the Leningradskiy District Court, which had found that the decision to seize and destroy the alcohol had been taken by the investigator and the Alcohol Commission within their powers.

94. The plaintiff (Uniya) claimed that the first consignment of alcohol belonged to it. The Commercial Court acknowledged that customs declarations, transportation documents and other documentary evidence showed that the alcohol had been imported by Uniya. However, later Uniya had informed the Commercial Court that the right to claim compensation for the seizure had been reassigned by Uniya to two other companies: DIVO Ltd and Belcourt.

95. The Commercial Court further endorsed the findings of the investigator in his decision of 26 January 1999, in particular as regards the return of the consignment to Belcourt and the description of the alcohol as "undrinkable".

96. According to the appeal court decision of 20 March 2001, some of the alcohol had been sold to retail shops not by Uniya but by Dionis Ltd, a

company affiliated with Mr Golovkin and his co-defendants in the criminal case, whereas that alcohol had earlier been imported into Russia by Uniya.

97. The Commercial Court referred to the assignment agreement signed on 18 March 1998 between Uniya, Dionis and Belcourt. According to that agreement, Uniya transferred ownership of the alcohol to Dionis because it did not have the appropriate licence. However, on 30 March 1998 Dionis returned 149,989 bottles to Uniya. According to the testimony of Mr Golovkin given to the investigator, the assignment agreement had not been implemented and the alcohol had been returned by Dionis to Uniya. At the same time, as can be seen from the judgment in the case against Mr Golovkin, 150,000 litres of alcohol had been transferred to Dionis as a contribution by Uniya to the company capital of Dionis. Some of the alcohol seized was physically located in Dionis' warehouses.

98. According to an audit report on Uniya's business activities, carried out at the request of the investigator, Uniya bought 2,459,756 bottles of alcohol from Belcourt; 1,769,014 bottles were returned to Belcourt some time later; 353,007 bottles were sold to retail shops; and 150,000 bottles were transferred to Dionis as a contribution to its capital. However, only 81,963 bottles were discovered in Uniya's warehouses.

99. On 12 January 2001 Uniya and Belcourt signed another reciprocal debt settlement agreement. It was clear from that agreement that Uniya had never paid Belcourt for the alcohol seized. The agreement stipulated that Uniya's non-fulfilment of its contractual obligations resulted from the unlawful seizure of the alcohol by the State authorities. Despite having signed that agreement in 2002, Belcourt brought proceedings against the State, claiming damages for the loss of 460,000 litres of alcohol, including part of the consignment which had allegedly belonged to Uniya.

100. In conclusion the Commercial Court found that "the above-mentioned contradictions had not been eliminated by the plaintiff". The court referred to Article 65 of the Code of Commercial Procedure, according to which the burden of proof in respect of the statement of claim was on the plaintiff.

101. The court then considered the amount of the damages. It noted that the damages had been calculated by Uniya on the basis of the value of the alcohol as declared to the customs authorities (USD 7.41 per bottle). The price stipulated in the contract between Uniya and Belcourt was USD 7.35 per bottle. The Commercial Court noted that Uniya had not explained why the customs value of the bottle had been the basis for calculating the amount of damages.

102. Finally, the Commercial Court found that there was no causal link between the actions of the investigating authorities and any losses suffered by Uniya. The alcohol had been destroyed on the initiative of the Alcohol Commission, and not on that of the investigator. The investigator had simply decided to transfer responsibility for the alcohol to the Alcohol

Commission; it had been up to the Commission to decide what to do with it. Consequently, the fact that the Leningradskiy District Court had earlier deemed the actions of the investigator to be unlawful did not mean that the Alcohol Commission had acted unlawfully. Uniya could have challenged the Alcohol Commission's decision to destroy the alcohol before the competent authorities, but had failed to do so.

103. As a result, the first applicant company's civil claim for damages was dismissed at the final level of jurisdiction.

(ii) Tort claim in the courts of general jurisdiction

(α) First, second, and third rounds of the proceedings

104. In 2007 the first applicant company reintroduced its action in tort against the State, referring to Article 139 of the CCrP in connection with the destruction of the 120,317 litres of alcohol. The damages sought amounted to RUB 56,412,995. During the following year the case was examined three times at two levels of jurisdiction. The last decision, by which the applicant company's tort claim was finally rejected, was taken on 5 August 2008 by the Kaliningrad Regional Court.

(β) Fourth round

105. On 1 February 2010 the Presidium of the Kaliningrad Regional Court quashed the judgment of 5 August 2008 by way of supervisory review and remitted the case to the first-instance court for a fresh examination.

106. On 2 April 2010 the Baltiyskiy District Court dismissed the applicant company's claim anew. Its central argument was that the destruction of the alcohol had been ordered by the Alcohol Commission and not by the investigator. On 25 May 2010 the Kaliningrad Regional Court confirmed that judgment on appeal.

(γ) Fifth round

107. The Government's submissions indicate that on an unspecified date in 2010 the Baltiyskiy District Court judgment of 2 April 2010, and the Kaliningrad Regional Court judgment of 25 May 2010, by which the applicant company's tort claims had been rejected, were quashed by way of supervisory review and the case was remitted for fresh consideration to the first-instance court.

108. On 27 January 2011 the Baltiyskiy District Court satisfied the first applicant company's claim in part. The Baltiyskiy District Court, referring to the decision of the Leningradskiy District Court of 25 November 2005, established that the investigator's decision of 26 January 1999 had been unlawful and that there existed a direct causal link between that decision and the destruction of the alcohol. The District Court noted in particular that

"the investigator's decision [of 26 January 1999] did not leave [the Alcohol Commission] any other option for its decision on the fate of the alcohol".

109. The District Court established that Uniya was the lawful owner of the alcohol, and set its price on the basis of the original contracts of importation, at the level of USD 7.35 per bottle. The District Court also found that the alcohol had undergone customs clearance, and that the customs office did not dispute the price of the alcohol. Having examined the primary documents, the District Court established that *in toto* Uniya had been deprived of 120,317 litres of alcohol.

110. In addition, the District Court observed that pursuant to the contract of sale of alcohol between Belcourt (the second applicant company) and Uniya (the first applicant company) the latter was under the obligation to pay the former a penalty equal to the amount of the underpayments, in the event of non-payment for the alcohol sold. The District Court decided that this penalty also constituted future losses for Uniya in connection with the destruction of the alcohol.

111. Finally, in order to compensate for inflation losses, the District Court decided to apply the United States dollar rate on the day of the judgment. The final amount awarded to the first applicant company was RUB 52,665,032.

(δ) Execution of the judgment of 27 January 2011 and liquidation of Uniya

112. On 3 March 2011 the tax authorities requested the administration of the Unified State Register of Legal Entities to exclude Uniya from the Register for failure to produce tax returns for the past twelve months. According to the Government, information about that request and the ensuing proceedings was public, and all interested persons were notified through a publication in the State Registration Bulletin.

113. On 14 April 2011 the court issued a writ of execution in the above amount in the name of Uniya.

114. It appears that above amount was never transferred to Uniya since in the meantime, on 16 June 2011 at the request of the tax authorities Uniya was placed in liquidation (for more details see paragraph 214 below). Uniya's shareholders requested reinstatement of the company in the State register of legal persons, but this was refused by a decision of the Bashkkortostan Commercial Court of 10 December 2012.

115. On 19 July 2011 Mr Golovkin requested the District Court to replace the original writ of execution with a new one. He explained that on the date it went into liquidation Uniya had transferred to him the right to claim the award made on 27 January 2011 by the Baltiyskiy District Court. He produced a copy of the agreement dated 19 July 2011. A month later Mr Golovkin submitted an identical agreement dated 19 May 2011, with a decision of the shareholders' meeting approving that agreement.

116. On 22 December 2011 the Moskovskiy District Court refused to grant Mr Golovkin's request. The court noted that the original court judgment awarding pecuniary compensation was made in favour of Uniya. Mr Golovkin explained that the date on the original agreement transferring the rights to him and submitted by him to the court was wrong, and that the agreement had in fact been concluded on 19 May 2011. The court did not accept that argument, and found in essence that the agreement "of 19 May 2011" and the minutes of the shareholders' meeting had been backdated. As regards the agreement "of 19 July 2011", it was void, since it had not been approved by the shareholders, and because Uniya had been excluded from the list of companies on 16 June 2011. The court also held that claims based on unlawful acts on the part of a public authority were not transferable.

117. On an unspecified date Belcourt lodged an application with the Moskovskiy District Court seeking a judgment award in favour of Uniya, with reference to yet another cessation agreement between Uniya and Belcourt dated 15 June 2011. The proceedings in this case, according to the Government, are still pending.

C. The second consignment of alcohol (1,170,312 bottles)

118. Under an agreement dated 3 November 1997 Uniya was supposed to act as an agent selling alcohol which belonged to Belcourt. The ownership title was transferred to Uniya after the payment of the price of the alcohol.

119. On 27 April 1998 Uniya and Belcourt signed an additional agreement defining the conditions of sale of a second consignment of alcohol. In that additional agreement the parties set the price of the alcohol at USD 7.35 per bottle. Pursuant to that agreement, the alcohol would be shipped to Uniya without any advance payment being made. Uniya was required to pay for the alcohol within 180 days of the date of receipt. Point 9 of the contract provided for a penalty for failure by Uniya to pay for the alcohol, in the amount of 0.15% of the outstanding amount per day of delay, but not to exceed 100% of the price of the alcohol. Belcourt was defined as "the seller" in that agreement, whereas Uniya was referred to as "the buyer". Under that second agreement Uniya obtained ownership of the whole consignment of alcohol at the time it received it from Belcourt.

120. In May 1998 Belcourt imported into Russia the second consignment of alcohol, consisting of sixty-two containers (hereinafter "the second consignment"). The Government indicated in their observations that these sixty-two containers had been "received in May 1998 by KF OOO Uniya from Belcourt Trading Company". That alcohol was imported into Russia and submitted to the customs authorities with reference to the "agency agreement" of 3 November 1997 between Belcourt and Uniya.

121. According to the recent court judgments the second consignment consisted of 1,170,312 bottles (see below, in particular, the judgment of the Baltiyskiy District Court of 30 March 2010). It appears that the second consignment had not undergone customs clearance, so it was stored in the Kaliningrad customs office warehouse space rented by Uniya.

1. First decision to seize (attachment orders) and its review

(a) Seizure and expert examination of the second consignment

122. In May and June 1998 the investigator in charge of the case of Mr Golovkin and others ordered the seizure of the second consignment of alcohol from the Kaliningrad customs office warehouse. The alcohol was seized under three attachment orders (of 20 May, 26 May and 16 June 1998).

123. On 5 October 1998 the investigator commissioned an expert examination of the alcohol. It was entrusted to the same institution as had carried out the second examination of the alcohol from the first consignment (the Forensic Examination Centre of the Ministry of the Interior in Moscow), but to a different group of experts.

124. On 16 November 1998 the experts examined samples of alcohol from the second consignment and came to the same conclusions as their colleagues who had previously prepared the second expert report in respect of the first consignment, mainly that it had been made from non-food-grade raw spirit, and was therefore potentially harmful.

(b) First complaint by Mr Golovkin against the seizure

125. On 23 March 1999 the Constitutional Court of the Russian Federation ruled that an appeal lay against the seizure orders. A few days later Mr Golovkin challenged the seizure orders before a court.

126. On 14 April 1999 the Baltiyskiy District Court examined his complaint. The investigator participated in the proceedings and claimed, in particular, that the alcohol at issue belonged *de facto* to Uniya.

127. Having heard the parties, the District Court noted that the alcohol had been seized in order to secure "confiscation of property". However, the case had been opened under Article 171 (illegal trading), which did not provide for confiscation. Furthermore, at the moment of the seizure Mr Golovkin did not have the status in the proceedings of a suspect or an accused; therefore, seizing the alcohol with a view to eventual "confiscation" made no sense.

128. The court noted that on 29 March 1999 Mr Golovkin had been charged under Article 174 of the Criminal Code (money laundering), which did provide for confiscation as a possible sanction. That being said, that fact was, in the opinion of the court, irrelevant, since "attachment orders" may concern only property which belongs to the accused personally, whereas the

alcohol at issue, in the District Court's view, belonged to Belcourt, according to the contracts between Uniya and Belcourt, as the second consignment had not passed customs clearance and was not allowed on Russian territory.

129. Finally, the District Court noted that the totality of the State's pecuniary claims against Mr Golovkin amounted to a maximum of RUB 6,200,566, whereas the alcohol seized by the investigator was worth a minimum of RUB 120,304,800, if the State-defined "minimum price for strong alcohol" was to be applied.

130. In sum, the District Court quashed the attachment orders and ruled that the alcohol seized should be returned into the care of Uniya. The court also ordered the investigator to return Uniya's official stamps and seals.

131. On 23 August 1999 the decision of 14 April 1999 was challenged by way of supervisory review by the President of the Kaliningrad Regional Court. The proceedings were reopened and the case sent to the first-instance court for reconsideration (see paragraph 133 below).

2. Second decision to seize (removal of physical evidence) and its review

(a) Seizure

132. Following the District Court's decision of 14 April 1999 (see paragraphs 126-130 above), on 22 April 1999 the investigator issued an order of "removal of physical evidence" in respect of the alcohol stored in the Kaliningrad customs office warehouses: 1,170,312 bottles were then seized by a "removal order" as an item of "physical evidence".

(b) Second complaint by Mr Golovkin against the seizure

133. On an unspecified date Mr Golovkin complained about the second seizure. On 20 September 1999 the Baltiyskiy District Court again quashed the attachment orders of May and June 1998 and, in the same proceedings, also the removal order of 22 April 1999. It noted that the first attachment order had been issued by the investigator with a view to possible confiscation of the property. However, originally Mr Golovkin had been charged with "illegal trading", for which confiscation of property was not a possible sanction. Consequently, the first attachment order (of 20 May 1998) was void. The subsequent attachment orders and the removal order had been issued after the charges against the applicant had been extended. However, those orders concerned the property of Belcourt, and not that of Mr Golovkin or any other person within the jurisdiction of the Russian courts.

134. On 15 October 1999 the decision of the Baltiyskiy District Court of 20 September 1999 was quashed in part by the Presidium of the Kaliningrad Regional Court by way of supervisory review. The Presidium decided that

the investigator had acted within his powers when issuing the removal order of 22 April 1999. Furthermore, the Presidium ruled that the question of whether the alcohol belonged to Mr Golovkin or anybody else could only be resolved within the "main" proceedings against Mr Golovkin, since it was linked to the substance of the accusation against him. At the same time, the decision of 14 April 1999 by the Baltiyskiy District Court, to the extent that it declared unlawful the first decision of the investigator to seize the alcohol for the purposes of eventual confiscation, was not modified.

135. On 24 November 2000 the Baltiyskiy District Court acquitted Mr Golovkin in full and lifted the removal order of 22 April 1999 in respect of the second consignment. On the same day, in a special ruling (see paragraph 31 above), the Baltiyskiy District Court indicated that the seizure of the second consignment had been tainted by various breaches of the domestic law, and requested the regional prosecutor to take appropriate measures in respect of the alcohol seized. The judgment of acquittal was appealed against by the prosecution to the Kaliningrad Regional Court (see paragraph 141 below).

3. Attempts by Uniya to obtain the second consignment from the warehouses or to sell it

136. After the lifting of the removal order the second consignment of the alcohol remained in the Kaliningrad customs office warehouses. According to the first applicant company (Uniya), since the warehouses were not adequately equipped, and since the expiry date for the second consignment of the alcohol was 2001, its market value had significantly decreased, and it had ceased to be drinkable (at least without prior processing). In support of its submission, the first applicant company produced a report in this vein by the Commodity Testing Bureau, which had produced its conclusions on 30 July 2001.

137. On an unspecified date Uniya asked the customs office to allow customs clearance in accordance with the rules in force at the time of seizure of the second consignment. However, in a letter of 28 July 2001, no. 06-12/25461, the State Customs Committee required Uniya to immediately "re-export" the alcohol so that it could undergo a "special marking" procedure before entering Russian territory again. This was a costly operation, and since Uniya was unable to pay for it, the consignment remained in the warehouses of the customs office while Uniya looked for a prospective buyer for the consignment without customs clearance.

138. Uniya brought proceedings in the Kaliningrad Region Commercial Court, seeking an injunction against the customs office and authorisation to subject the second consignment to clearance pursuant to the "old" rules. On 31 August 2001 the Commercial Court dismissed the case. It held that Uniya had to comply with the new rules, irrespective of the fact that the alcohol had been seized when those rules did not yet apply.

139. On 15 September 2001 Uniya signed an agreement with Moscow Wines and Spirits GMBH, a firm based in Germany, which provided for the sale of the second consignment to the latter for USD 126,073. The agreement indicated that the alcohol was not drinkable without further processing, on account of the expiry of its storage life. The agreement also stipulated that the second consignment should remain physically in the customs office warehouses.

140. According to the Government, this contract had not been considered in the domestic proceedings within the case against Mr Golovkin.

4. Third decision to seize (removal of physical evidence) and its review

(a) Third seizure

141. In the meantime the proceedings against Mr Golovkin were resumed, following the decision of the Kaliningrad Regional Court of 20 March 2001 (see paragraph 135 above).

142. On 21 September 2001 the second consignment of alcohol was again declared an item of physical evidence by the investigator, who ordered its removal. According to the removal order, the consignment consisted of 1,170,312 bottles of alcohol, stored in sixty-two containers. The investigator considered that the sixty-two containers of alcohol "were an object of criminal actions and an instrument of crime". The seizure order referred to Articles 83 and 84 of the old CCrP.

(b) Third complaint by Mr Golovkin

143. Mr Golovkin appealed to a supervising prosecutor. On 26 September 2001 the Baltiyskiy District Deputy Transport Prosecutor quashed the removal order of 21 September 2001 as unlawful and insufficiently reasoned.

144. On 29 October 2001 the Kaliningrad Regional Prosecutor confirmed the validity of the removal order. Mr Golovkin then challenged the prosecutor's decision before the court, claiming that the alcohol did not belong to him personally.

145. On 9 July 2002 the Chief of the Transport Police wrote a letter to the head of the Kaliningrad customs office, asking for the sixty-two containers of alcohol to be sent to a firm designated by the police for further storage.

146. On 7 August 2002 the head of the customs office refused to remove the second consignment from the customs warehouse. He explained to the Chief of the Transport Police that the containers had not undergone customs clearance according to the new rules, so could not be released into circulation on the territory of the Russian Federation.

147. On 7 August 2002 the Baltiyskiy District Court dismissed the complaint by Mr Golovkin against the "removal of physical evidence" order of 21 September 2001. It decided that the law on criminal procedure, namely Article 83 of the old Code of Criminal Procedure, corresponding to Article 82 of the new Code of Criminal Procedure (see "Relevant domestic law" below), provided that items could be removed for use as physical evidence.

148. As regards ownership of the alcohol, the court held that that issue could be raised by the companies claiming ownership in separate court proceedings. The fact that the first removal order had been declared invalid did not affect the validity of the second order, which had been issued after the reopening of the proceedings against Mr Golovkin. On 17 September 2002 the Kaliningrad Regional Court upheld the decision of 7 August 2002.

(c) Complaint by Uniya under Article 125 of the CCrP about the seizure

149. On an unspecified date Uniya lodged a complaint under Article 125 of the Code of Criminal Procedure, challenging the seizure orders.

150. On 22 October 2004 the Baltiyskiy District Court dismissed the first applicant company's complaint on the ground that the same court had already found earlier that the seizure of the sixty-two containers of alcohol had been lawful (decision of 7 August 2002). Furthermore, the District Court noted that the criminal proceedings against Mr Golovkin were pending and that it was therefore premature to rule on the issue relating to the physical evidence. On 7 December 2004 the Kaliningrad Regional Court upheld the Baltiyskiy District Court decision of 22 October 2004.

5. Destruction of the second consignment and its judicial review

(a) Destruction

151. Throughout the proceedings the second consignment remained in the "temporary storage warehouse" belonging to the Kaliningrad Maritime Customs Port (KMCP). According to the Government, on 17 June 2002 the KMCP's licence for the operation of that warehouse expired. On the same date, the head of the Kaliningrad customs office informed the investigator that the goods must be removed from the territory of the port.

152. On 7 August 2002 the head of the Kaliningrad customs office refused permission for the alcohol to be removed from the territory of the port without payment of customs duties (see paragraphs 145-146 above).

153. On 2 September 2002 the investigator ordered the alcohol to be sent for further storage to a private firm specialising in alcohol processing. The investigator indicated that the alcohol in the second consignment had been kept as an item of physical evidence; however, it was impossible for it to be kept in the customs warehouse any longer, as the warehouse's operating licence had expired in 2002. The investigator decided that the

alcohol must be disposed of in accordance with Articles 38, 81 and 82 of the new CCrP.

154. On 30 September 2002 the Head of the Investigation Department of the Ministry of the Interior wrote a letter to the Chairman of the State Customs Committee asking for permission for the transferral of the sixty-two containers of alcohol to a private firm without prior customs clearance. On 25 November 2002 the Deputy Chairman of the State Customs Committee allowed the transferral without payment of customs duties.

155. On 19 December 2002 the investigator concluded that the alcohol seized had been imported into Russia under invalid contracts, and, moreover, was not drinkable under State standards. On that ground the investigator ordered the private firm to destroy the whole consignment.

156. On 25 December 2002 the second consignment was sent to the private firm. In the following months it was processed and transformed into windscreen wiper fluid. According to the official records signed by the firm and the police, 8,584 litres of alcohol had been lost during transportation of the consignment, owing to "breakage".

(b) Constitutional complaint by Mr Golovkin

157. On an unspecified date Mr Golovkin lodged a complaint with the Constitutional Court of the Russian Federation concerning the provisions of the new Code of Criminal Procedure (see Relevant domestic law below) which had allowed the seizure and destruction of the alcohol without prior judicial authorisation. In his opinion, the impugned provisions of the Code of Criminal Procedure violated the Constitution of the Russian Federation.

158. On 10 March 2005 the Constitutional Court issued Ruling no. 97-*O* (*opredeleniye*). It held that the provisions of the Code of Criminal Procedure, namely Article 82 § 3, did not as such contradict the Constitution, in so far as they were interpreted in the light of the earlier case-law of the Constitutional Court on that matter.

159. The Constitutional Court held that provisional measures such as the temporary seizure of property may be required in criminal proceedings, and should not be considered a violation of constitutional rights, including property rights. Judicial authorisation of such measures should encompass an assessment of whether other measures would be inappropriate, with due regard to the seriousness of the charges in relation to which the provisional measures have been taken, as well as to the nature of the property concerned, its importance for its owner or holder, and other possible negative effects that the seizure might have. Thus, it was incumbent on the investigator, and subsequently on the reviewing court, to satisfy themselves as to whether the property subject to the charge should or should not be returned to its owner for safe keeping until the closure of the criminal proceedings.

160. The Constitutional Court held that the temporary seizure of property in criminal proceedings was permissible provided that there was an *ex post facto* judicial review. However, where the seizure involved definitive deprivation of property, a prior court review of such a measure was necessary. In particular, such prior control was required where alcohol had been seized for further processing or destruction on the grounds of the danger it posed to public health. Article 82 did not, however, exclude prior judicial control over such measures, when read in conjunction with other provisions of the Code of Criminal Procedure and the Constitution itself.

(c) Complaint by Uniya under Article 125 of the CCrP about the destruction of the alcohol

(i) First round

161. On an unspecified date Uniya lodged a complaint against the decision of the investigator of 19 December 2002 to destroy the alcohol (see paragraph 155 above).

162. By the decision of 22 October 2004 of the Baltiyskiy District Court, confirmed on 7 December 2004 by the Kaliningrad Regional Court, the decision to destroy the alcohol was found lawful.

(ii) Second round

163. On 17 October 2005, in the light of Constitutional Court Ruling no. 97-*O* of 10 March 2005, the Presidium of the Kaliningrad Regional Court quashed the earlier judgments and ordered the reopening of the proceedings.

164. On 7 November 2005 the Baltiyskiy District Court examined the complaint. Referring to the Ruling of the Constitutional Court of the Russian Federation of 10 March 2005, the District Court held that the destruction of the alcohol had been unlawful because it had been ordered by the investigator without a court order. Furthermore, the law provided that any seizure and subsequent destruction had to be authorised in separate administrative proceedings. No such proceedings had been instituted in the case at hand. Consequently, the Baltiyskiy District Court declared the decision of the investigator of 19 December 2002 unlawful and quashed it. That decision was not challenged, and entered into legal force.

6. Tort claim brought by Belcourt against Uniya

165. On an unspecified date Belcourt brought tort proceedings against Uniya in the Kaliningrad Region Commercial Court, claiming damages for its failure to pay for the second consignment of alcohol. In those proceedings Uniya claimed that it was not its fault that the alcohol had been seized by the authorities.

166. On 4 December 2001 the Kaliningrad Region Commercial Court awarded the plaintiff (Belcourt) USD 17,203,586 in damages (USD 8,601,793 corresponding to the price of the alcohol lost and USD 8,601,723 corresponding to the penalty). It found that sixty-two containers of alcohol had been sold by Belcourt to Uniya. The contract of sale provided that any unsold portion of the consignment could be returned by the buyer to the seller. However, the consignment had neither been paid for in full nor returned to Belcourt. The court noted in particular that Uniya "had not denied that it had received [the alcohol] into its ownership". The fact that the consignment had been seized by the authorities was irrelevant, since it was part of the professional risks incurred by Uniya. In analysing the obligations of Uniya before Belcourt the commercial court took into account the original agency agreement of 3 November 1997. That judgment was not appealed against and became final.

167. It appears that Belcourt tried to seek forced execution of the judgment of 4 December 2001 against Uniya. However, Uniya did not have sufficient assets, so Belcourt obtained only RUB 17,835 under the writ of execution issued by the commercial court. The remaining part of the award was not paid, and the writ of execution was returned to Belcourt. It appears that in the following years Belcourt did not try to resubmit the writ for forced execution through the bailiffs' service.

168. On 9 January 2003 Uniya and Belcourt concluded an agreement whereby Uniya acknowledged its debt in the amount of RUB 548,450,322. The level of the debt was set on the basis of the exchange rate of the United States dollar, which on the day of the signature was RUB 31.88 to one dollar.

7. Tort claims by Uniya against the State

(a) Proceedings before the commercial courts

(i) First round

169. On an unspecified date the first applicant company (Uniya) brought proceedings against the State claiming damages for unlawful seizure on 22 April 1999 of the second consignment of alcohol (see paragraph 132 above).

170. On 21 May 2002 the Kaliningrad Region Commercial Court stayed the proceedings pending the criminal investigation. On 14 August 2002 this decision was upheld by the appeal court. On 22 October 2002 the North-West Circuit Commercial Court upheld the findings of the lower courts and held that it was impossible to rule on the issue of damage allegedly caused by the investigating authorities to the applicant company before the criminal investigation was over.

(ii) Second round

171. Following the judgment in the case of Mr Golovkin (of 31 May 2005, as partially modified on 22 September 2005), Uniya reintroduced its tort claim against the State in the commercial courts. It claimed RUB 550,250,790 in direct damages and loss of income in respect of the alcohol seized in 1998 and destroyed later. In support of its claims the applicant company referred, *inter alia*, to the debt to Belcourt established by the judgment of 4 December 2001 (see paragraph 166 above).

172. On 19 April 2006 the Moscow Commercial Court dismissed the applicant company's claims. The relevant part of its judgment was as follows:

> "The plaintiff has not proved, in a reliable and unquestionable manner, that it sustained any damage [as a result of the seizure], and [has not substantiated] the amount of damages. The calculation of damages has not been supported by primary documentary evidence, which would support [its allegations about] the cost of the goods, and the amount of lost income has not been proven."

173. As regards the judgment of the Commercial Court of 4 December 2001 (in the case between Uniya and Belcourt) the Commercial Court held that it did not have the force of *res judicata* for the purposes of the proceedings before it, since the proceedings that ended in 2001 involved only Uniya and Belcourt as litigants. The State authorities had not participated in those proceedings in any capacity. Furthermore, the Commercial Court noted that the execution order issued to Belcourt against Uniya had never been implemented, and its three-year time-limit had already expired. The Commercial Court concluded that Uniya had not sustained any damage in connection with the seizure.

174. On 5 September 2006 the Ninth District Commercial Court examined an appeal by Uniya against the judgment of 19 April 2006. It repeated the reasons given by the first-instance court. In addition, it noted that Uniya had not proved that it had paid Belcourt for the alcohol seized by the investigating authorities. Furthermore, it was unclear whether the alcohol seized in the criminal proceedings against Mr Golovkin did indeed belong to Uniya, and if it was the same consignment of alcohol that had been the subject matter of the proceedings between Uniya and Belcourt which had ended in 2001. It also noted that the execution order had been returned to Belcourt by the court bailiffs and had not since then been resubmitted for enforcement.

175. On 10 January 2007 the Moscow Circuit Commercial Court upheld the judgment of 19 April 2006 and the appeal court decision of 5 September 2006.

(b) Proceedings before the courts of general jurisdiction

(i) Early rounds

176. On 12 October 2006 Uniya reintroduced its tort claim against the State before a court of general jurisdiction, with reference to Article 139 of the CCrP. They sought RUB 548,450,322 in damages. Uniya was represented by Mr Golovkin.

177. In the following years the case concerning seizure of the second consignment of the alcohol went through several rounds of proceedings at two levels of jurisdiction (judgments of 18 December 2006 and 13 March, 22 June, and 20 November 2007). On 25 December 2007 the Baltiyskiy District Court allowed Uniya's tort claim and awarded the amount sought in full. However, on 19 February 2008 the Kaliningrad Regional Court quashed that judgment and remitted the case for a fresh examination. On 4 June 2008 the applicant company's tort claim was rejected. That judgment was confirmed by the Kaliningrad Regional Court on 5 August 2008.

(ii) Final round

178. On 1 February 2010 all the judgments were quashed by way of supervisory review by the Presidium of the Kaliningrad Regional Court. In its decision the Presidium disagreed with the lower court's conclusions that Uniya had not proved ownership title to the alcohol and had not provided evidence as to the price of the alcohol. The case was remitted to the first-instance court for a fresh examination.

179. On 30 March 2010 the Baltiyskiy District Court examined the tort claim again and rejected it, with the following arguments.

180. The District Court found that the agency agreement of 3 November 1997 between Uniya and Belcourt (see paragraph 118 above) provided that Uniya had been acting as "depositary and agent" in respect of the alcohol imported by Belcourt to Russia. However, Uniya had not acquired ownership rights to the alcohol. Under the 1997 agreement Belcourt remained the owner of the alcohol until it received payment for it.

181. The next agreement concluded between Uniya and Belcourt (that of 27 April 1998, see paragraph 119 above) provided for the immediate transferral of the ownership title to the alcohol at the moment of receipt. That agreement concerned 1,170,312 bottles of alcohol, worth USD 8,601,793.

182. In the proceedings Uniya claimed that the 1997 agreement had been superseded by the 1998 agreement; however, the court did not accept that argument. The court noted that Uniya's customs declarations had been drafted with reference to the first agreement (that of 1997). Mr Golovkin, in his criminal-law complaints concerning the seizure and destruction of the alcohol, had referred to the 1997 agreement and had identified Belcourt as the lawful owner of the second consignment. It had been the 1997 contract,

and not that of 1998, that had been referred to in the proceedings before the commercial court in 2001 and 2006. The District Court concluded that the second consignment had been imported under the 1997 agreement and that Belcourt retained ownership rights to it, since no payment from Uniya had been received.

183. According to the District Court, the Kaliningrad Region Commercial Court judgment of 4 December 2001 (see paragraph 166 above) did not establish that Uniya had obtained ownership title to the alcohol. It simply established that Uniya had failed to pay for that alcohol. Even though that judgment awarded damages to Belcourt, Uniya had not paid anything, and the writ of execution had never been produced for enforcement and had expired. Consequently, Uniya was under no binding obligation to pay Belcourt. The agreement of 9 December 2003 (see paragraph 168 above), whereby Uniya had recognised its debt to Belcourt and confirmed its willingness to pay, was now irrelevant, since that agreement had been concluded by the parties voluntarily and bore no relation to the impugned acts of the investigator.

184. As regards Uniya's alternative claim that the alcohol had been in its *de facto* possession, the District Court observed that the alcohol at issue had not cleared customs. Therefore, it was not permitted into free circulation in Russia. The District Court noted that under Article 131 of the Customs Code, as a general rule, "nobody can use goods or dispose of goods which have not cleared customs". The District Court concluded that:

> "Since the sixty-two containers of alcohol had not cleared customs, nor had duty been paid, Uniya had no right to use the alcohol or dispose of it, and therefore the alcohol was not in its ownership or possession".

185. On 25 May 2010 the Baltiyskiy District Court judgment was confirmed by the Kaliningrad Regional Court.

8. Tort action by Belcourt against the State

186. On an unspecified date Belcourt (the second applicant company) brought an action in tort against the State, with reference to Article 139 of the CCrP, referring to the unlawful seizure and destruction of the second consignment. They claimed RUB 548,450,322 in damages for the destruction of the second consignment of alcohol. In the proceedings Belcourt referred to the Baltiyskiy District Court judgment of 30 March 2010 (see paragraphs 179-185 above) which in their view had established that the ownership title to the second consignment of alcohol, at the moment of its seizure, was held by Belcourt. The company was represented in the proceedings by Mr Golovkin.

187. On 14 October 2011 the Moskovskiy District Court refused to examine the claim, on the ground that Mr Golovkin had not produced documents showing that he was entitled to represent Belcourt after it had

been registered in Belize. This decision was confirmed on appeal on 27 December 2011.

188. Mr Golovkin resubmitted his claims, but on 25 January 2012 the Moskovskiy District Court again refused to examine them.

189. Mr Golovkin reintroduced the claim again on behalf of Belcourt. On 19 July 2012 the Moskovskiy District Court examined the claim and dismissed it. The District Court found that, pursuant to the judgment of the Kaliningrad Region Commercial Court of 4 December 2001 (see paragraph 166 above), Uniya was under an obligation to pay Belcourt RUB 548,450,322 for non-fulfilment of its contractual obligations, plus penalties provided by the contract. On 9 January 2003 Uniya and Belcourt concluded an agreement whereby Uniya confirmed its debt to Belcourt in that amount. The District Court concluded that Uniya had been under an obligation to pay Belcourt, but that the State could not be held responsible for the non-fulfilment of Uniya's contractual obligations to Belcourt.

190. As regards the Baltiyskiy District Court judgment of 30 March 2010, the Moskovskiy District Court held that the judgment of 30 March 2010 had only established that Uniya was not entitled to claim damages not actually already incurred but in the form of future losses. However, it did not establish that the alcohol at issue belonged to Belcourt. Neither did it establish that Uniya was no longer obliged to pay Belcourt under the Commercial Court judgment of 4 December 2001.

191. On 11 September 2012 the above judgment was confirmed by the Kaliningrad Regional Court, sitting as a court of appeal.

D. Seizure of 37,184 bottles of alcohol and compensation proceedings

192. On 23 September 1999 the Krasnoznamenskiy District local police in the Kaliningrad Region discovered 37,184 bottles of alcohol branded "Uniya" and "Extra-Uniya". The bottles were being stored in a garage belonging to a third party. Mr Golovkin suspected that those bottles were a part of the alcohol which had been seized earlier by the investigator within his criminal case and allegedly "destroyed" by the Alcohol Commission. Several months later he wrote a formal letter to the local police on behalf of Uniya, seeking the return of the alcohol. In support of his allegations he submitted copies of shipment orders and "excise duty stamps" for that alcohol, which would permit the alcohol seized from the consignments imported into Russia in 1997-98 to be traced. In the following months Uniya sent several letters to the authorities claiming that the alcohol discovered was theirs.

193. On 4 August 2000 the investigator in charge of the case decided to sever the evidence concerning the 37,184 bottles of alcohol found in the garage into a separate investigation.

194. On 21 November 2000, at the request of the Krasnoznamenskiy District Prosecutor, the Krasnoznamenskiy District Court declared that alcohol "derelict property". In those proceedings the District Prosecutor asserted to the court that nobody had claimed ownership of that alcohol. Neither Uniya nor Mr Golovkin was informed about the court proceedings, and did not participate in them. As a result of that decision, the State obtained ownership of the alcohol. It appears that that alcohol was destroyed or reprocessed some time later.

195. On 17 August 2004 the Kaliningrad Tsentralniy District Court ("the Tsentralniy District Court") declared the investigator's decision of 4 August 2000 unlawful. On 28 August 2004 the Kaliningrad Regional Court confirmed the decision of the first-instance court of 17 August 2004.

196. Uniya introduced a tort claim against the State before the commercial courts, seeking damages for the alcohol destroyed. By a final judgment of 3 February 2004 the Kaliningrad Region Commercial Court dismissed that claim in full.

197. On 15 May 2006 the Presidium of the Kaliningrad Regional Court quashed, by way of supervisory review, the Krasnoznamenskiy District Court judgment of 21 November 2000 whereby the alcohol had been declared "derelict property".

198. On an unspecified date Uniya introduced a tort claim against the State with reference to Article 139 of the CCrP.

199. On 11 July 2007 the Tsentralniy District Court awarded Uniya RUB 17,433,259 for that consignment of alcohol, against the Ministry of Finance. In the proceedings the Ministry of Finance alleged that the alcohol at issue had been received by Uniya from Belcourt without any advance payment, and that the seller (Belcourt) had not yet recovered the price of the alcohol or the penalty payments from Uniya. They concluded that Uniya had incurred no losses in relation to the seizure and destruction of that alcohol.

200. The Kaliningrad Regional Prosecutor, who had also participated in the proceedings on behalf of the State, insisted that Uniya's tort claim should be rejected because the exact price of the alcohol was unclear.

201. The District Court, however, rejected both arguments. It noted that Uniya had a contractual obligation to pay for that alcohol, and that it was clear from the correspondence between Belcourt and Uniya that the former was insisting on payment of the outstanding amounts. Therefore, the fact that Belcourt had not brought an action against Uniya in respect of that consignment of alcohol was irrelevant.

202. On the second point the District Court observed that the price of the alcohol was indicated in the contracts between Uniya and Belcourt (USD 7.35 per bottle), that it corresponded to the price declared in the customs declarations, and that it had not changed throughout the time in question.

203. Finally, the District Court held that the alcohol at issue belonged to Uniya, since the property title, under the contracts, had been transferred to the buyer at the moment of receipt.

204. On 18 September 2007 the Kaliningrad Regional Court upheld the award in part, reducing it to RUB 8,716,629. This excluded penalty payments which Uniya would have to make to Belcourt.

205. On 20 July 2009 the Presidium of the Kaliningrad Regional Court quashed the decision of the Regional Court and remitted the case for a new examination at the appeal level.

206. On 18 August 2009 the Kaliningrad Regional Court confirmed the decision of 11 July 2007, reaffirming that Uniya's losses consisted of the price of the alcohol seized plus the amount of the penalty payments Uniya would have to make to Belcourt. The final award for the 37,184 bottles of alcohol seized was therefore RUB 17,433,259.

E. Other court proceedings related to the seizure of the alcohol

207. It appears that Uniya has been involved in other court proceedings which concerned the seizure of alcohol.

208. Thus, by a judgment of 15 June 2009 the Kaliningrad Region Commercial Court awarded Belcourt USD 1,000 on account of penalty payments due from Uniya under a contract with Belcourt, plus court costs (RUB 33,522 *in toto*).

209. In February 2009 Uniya lodged a claim against the State, seeking to recover the amount awarded earlier in favour of Belcourt in the proceedings before the Commercial Court.

210. On 10 September 2009 the Baltiyskiy District Court rejected the applicant company's tort claim. On 20 October 2009 the Kaliningrad Regional Court quashed that judgment and remitted the case to the first-instance court. On 23 November 2009 the tort claim in the amount of RUB 33,522 was examined again by the Baltiyskiy District Court and rejected. On 9 February 2010 the Kaliningrad Regional Court confirmed the judgment of 23 November 2009.

211. In June 2010 Uniya lodged a claim against the State, seeking compensation for the protracted examination of its case against the State concerning the second consignment of alcohol, which had ended with the judgment of 25 May 2010. Uniya sought RUB 1,000,000 in damages.

212. On 12 July 2010 the Kaliningrad Regional Court allowed the claim in part, awarding Uniya RUB 25,000 for breach of the "reasonable-time" requirement.

213. The Government did not produce copies of the judicial decisions they referred to, and did not indicate the names of the courts which had taken those decisions. The applicant did not provide any additional information on those proceedings either.

F. Information on the status of the applicant companies.

214. It appears that after the seizure of the alcohol Uniya (the first applicant company) did not engage in any economic activity and at some point ceased to submit annual tax returns. According to the applicant company, Mr R., Uniya's shareholder, met representatives of the tax authorities on several occasions and explained that despite the fact that Uniya had not been engaging in any economic activity it had been involved in court proceedings against the State, and that all its working documents had been seized by the investigating authorities as part of the criminal case against Mr Golovkin.

215. On 16 June 2011, at the request of the tax authorities and referring to Uniya's failure to submit tax returns for the past twelve months, Uniya was placed in liquidation and its name was formally removed from the State register of legal persons.

216. According to Uniya's representatives, they were not notified of the liquidation by the tax authorities; they submitted that the liquidation procedure had been conducted surreptitiously. Mr. R., the sole shareholder of the company, brought court proceedings challenging the decision to place the company in liquidation. From the latest information obtained from the representative of Uniya, the courts refused to order restoration of the company's legal personality in 2013.

217. The second applicant company (Belcourt) was first registered under the law of the Republic of Ireland and then became domiciled and was registered in the State of Delaware, USA. On 12 August 2001 Belcourt changed its domicile again and was registered in Belize. It produced a "notarial certificate" which confirmed that before its registration in Belize Belcourt had been registered in Delaware, USA, and that the director of the Belize-based company was Mr Golovkin. In the domestic proceedings the Russian courts accepted the Belize-based company as the successor to the Irish/American "Belcourt".

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. Criminal responsibility for the offences imputed to Mr Golovkin

218. Articles 171 and 199 of the Criminal Code of 1996 ("Illegal trading" and "Tax evasion by a legal entity") at the time did not provide for confiscation of property as a form of punishment. Article 174 ("Money laundering") provided, under certain conditions, for confiscation of property of the convict as an additional form of punishment.

2. Alcohol market regulations

219. The Federal Law on Circulation of Alcoholic Beverages (hereinafter "the Alcohol Act", Law no. 171-FZ of 22 November 1995) requires a person involved in the alcohol trade to obtain a licence. The law provides several exceptions from this general rule, for example, for retail sales of alcohol or for sales of non-food-grade alcohol.

220. Section 25 of the Alcohol Act establishes that alcohol products should be "removed from circulation" if they are being traded without a licence, or without hygiene and sanitary certificates of compliance with State standards, or if they do not meet State standards, or if they are made from non-food-grade raw spirit (except for non-food-grade alcohol), or if they are, *inter alia*, derelict property (Article 25(1)). The "removal from circulation" must be conducted in accordance with the legislation of the Russian Federation. Section 25 provides that alcohol products made from non-food-grade raw spirit should be transformed on a contractual basis into technical ethanol (*технический этиловый спирт*) or into non-food-grade alcohol products (Article 25(4)).

221. On 8 July 1999 the Law on Administrative Liability for Irregular Alcohol Trading was enacted ("the Administrative Liability (Alcohol Trading) Act"). Section 2 provided that wholesale trading in alcohol without the appropriate licences was punishable by a fine and confiscation of the alcohol at issue. Section 3 of the Act provided that alcohol produced from non-food-grade raw spirit should be confiscated. The Act established a procedure for implementing various administrative measures: an administrative offence report was to be drawn up and submitted for consideration to an appropriate State authority (the tax authority for trading in alcohol without a licence, and the sanitary and epidemiological authority for use of alcohol made from non-food-grade spirit). Under section 13(3), confiscation of alcohol could be ordered only by a judge.

222. On 30 December 2001 the new Code of Administrative Offences was enacted (in force from 1 July 2002), which repealed the Administrative Liability (Alcohol Trading) Act of 1999. Article 6 § 14 of the new Code of Administrative Offences (as in force at the material time) provided for the confiscation of alcohol which did not correspond to State standards, sanitary rules and hygiene standards. The Code established the rules of administrative procedure applicable in such cases.

223. On 11 December 2002 the Government of the Russian Federation adopted decree no. 883, by which it determined the procedure for the destruction or processing of "illegal alcohol" removed from circulation pursuant to the Alcohol Act, or confiscated alcohol. Point 2 of the decree states that alcohol may be seized by the investigating authorities as an item of physical evidence in a criminal case.

224. According to Order No. 372 by the Federal Alcohol Market Regulation Service of 13 December 2012, in 2003 the minimum retail price of vodka in Russia was RUB 170 for 0.5 litre.

3. Physical evidence (exhibits)

(a) Under the old CCrP

225. Under Article 83 of the Code of Criminal Procedure of 1960 ("the old CCrP", or "the old Code", in force until 1 July 2002), the notion of "physical evidence" (or exhibits, *вещественные доказательства*) meant physical objects which had served as instruments of a crime, or which bore traces of a crime, or were the target of criminal activity, or money and other valuables acquired by the accused by criminal means, as well as "other objects which may facilitate solving of the crime, establishment of the facts of the case, identification of the guilty person or rebutting the accusations, or extenuating the guilt".

226. Under Article 84 of the Code, an item of physical evidence could be seized by an investigator in order to be attached to the materials in the case file. If the physical evidence taken was too bulky, it could be sent to third parties for safe keeping.

227. Under Article 85, those items had to be kept until the court judgment in the case became final. If they were "easily perishable but could not be returned to their owner, they [had to be] transmitted to a competent authority for disposal according to their intended purpose. If necessary, the owner [could] be compensated by items of the same kind or monetary payment of equivalent value" (Article 85, part 3, of the old CCrP).

228. Pursuant to Article 86 of the old Code, the court had to specify in its judgment what should be done with physical evidence taken by the investigating authorities. Thus, "money and other valuables acquired by criminal means" or "derelict property" could be appropriated by the State. "Instruments of the crime which belong to the accused" were also subject to forfeiture. Property prohibited from free circulation or unusable objects could be transferred to a competent authority or destroyed.

229. Article 167 concerned removal (*выемка*) of documents and physical evidence by the investigator. Removal had to be ordered by a reasoned decision of an investigator. That Article stipulated that physical evidence could be removed "when it has importance for the case".

230. Articles 169-72 of the old CCrP regulated the process of conducting seizures and searches and recording the results thereof.

231. Pursuant to the Ruling of the Plenary Supreme Court of the USSR no. 2 of 3 February 1978 "smuggled items must be forfeited as physical evidence". The Supreme Court also indicated that "vehicles and other means of transport are also liable to forfeiture as instruments of the offence

if they are equipped with special hiding places for concealing goods or other valuables."

232. The Presidium of the Supreme Court of the Russian Federation in the case of *Petrenko* (decision no. 446p98pr of 10 June 1998) granted the prosecution's appeal against the judgment, by which Mr Petrenko had been found guilty of smuggling foreign currency but the money had been returned to him on the ground that Article 188 of the Criminal Code did not provide for confiscation as a penal sanction. The Presidium held as follows:

> "Confiscation of property as a penal sanction must be distinguished from forfeiture of smuggled objects which were recognised as physical evidence. These issues must be addressed separately in the judgment ...
>
> Within the meaning of [Article 86 § 1 of the RSFSR Code of Criminal Procedure] and also Article 83 of the CCrP, an instrument of the offence is any object which has been used to carry out actions which constitute a danger to the public, irrespective of the main purpose of the object. Accordingly, the notion of an instrument of the offence comprises the object of the offence.
>
> A mandatory element of a criminal offence under Article 188 of the Criminal Code is an object of smuggling that is being illegally transported across the customs border ... The court found Mr Petrenko guilty of [attempted smuggling], noting that the United States dollars were the object of the offence. Accordingly, the court was required to decide on what should happen to the physical evidence in accordance with Article 86 § 1 of the CCrP – that is, according to the rules on the instruments of the offence – but failed to do so."

(b) Under the new CCrP

233. Article 82 of the new Code of Criminal Procedure (in force from 1 July 2002, "the new Code" or "the new CCrP") deals with the storage of physical evidence. Its relevant provisions, as in force at the material time, can be summarised as follows.

234. If there is a dispute concerning title to property seized as "physical evidence", it should be resolved in civil proceedings. For bulky objects, large batches of commodities, or goods which require very expensive conditions of storage, three options are provided:

(a) such physical evidence may be photographed or video-recorded, sealed and kept at a place indicated by the investigator.

(b) the evidence may be returned to its owner if this is possible without detriment to the normal course of justice;

(c) such objects may be sold in accordance with the rules specified by the Government. The proceeds of the sale shall be kept on the deposit account of the investigating body.

235. For perishable products options (b) and (c) are applicable. In addition, perishable products can be destroyed if they can no longer be used. Alcohol withdrawn from circulation must be examined and sent for reprocessing, or destroyed. Money or other valuables that are the proceeds of a crime should be attached with a view to possible confiscation.

236. On 16 July 2008 the Constitutional Court of the Russian Federation (Judgment no. 9-*P*) ruled that the destruction or sale of physical evidence could not be ordered by a simple decision of the investigator without prior judicial review of the matter.

237. Article 38 of the new CCrP defines the powers of the investigator, which include the right to perform investigative actions unless there is a need to obtain a court sanction for them.

4. Attachment of property within criminal proceedings

238. Under the old Code of Criminal Procedure a person who has sustained pecuniary damage or loss as a result of a criminal offence had the right to lodge a civil claim against the accused. He or she could exercise this right from the commencement of the criminal proceedings until the opening of the trial (Article 29 of the old Code).

239. Articles 175 and 176 of the old Code authorised the attachment of property pending trial in order to secure enforcement of civil awards made in connection with the imputed criminal offences or possible confiscation of the suspect's property. Under that provision the investigator could impose an attachment order on the property of the suspect himself, as well as on the property of anyone who was liable for a tort committed by the suspect. Property acquired as a result of the suspect's criminal activities but kept by other persons could also have a charge placed on it under these provisions.

240. Such decisions could be appealed against to a higher prosecutor but not to a court (Articles 218 and 220). On 23 March 1999 the Constitutional Court of the Russian Federation struck down the latter two provisions as unconstitutional in so far as they prevented the parties concerned from appealing against such decisions to a court.

241. Article 303 of the old Code obliged the trial court to decide in its judgment, *inter alia*, the civil claim and the amount to be paid.

242. Under Article 115 § 1 of the new Code, in order to ensure execution of a judgment in the part pertaining to a civil claim, to satisfy other pecuniary penalties or (possibly) confiscate property, an inquirer or investigator, subject to the prosecutor's consent, or a prosecutor, has to apply to a court for an attachment order in respect of the suspect's or accused's property. The court has to examine such a request under the procedure set out in Article 165 of the Code. An attachment of property prohibits the proprietor or owner from disposing of, and, if appropriate, using the property; it may require that property to be impounded and transferred for safe keeping to its proprietor or owner or a third person (§§ 2 and 6). An attachment order is lifted by the authority dealing with the criminal case when it is no longer necessary (§ 9).

5. "Complaints" against unlawful administrative acts and "tort claims" against the State

243. Under the Code of Civil Proceedings of 2002 ("the new CCP"), a person affected by an unlawful administrative act or omission by a State authority disposes of two types of remedies: a "complaint" or a "claim" (*иск*) against the State. "Claims" - for example, tort claims - are governed by Sub-Section II of the new CCP. "Complaints" are governed by Chapter 25 of the Code ("Challenging decisions, actions or inaction of State and municipal bodies and officials").

244. The new CCP provides for judicial review of decisions and other acts of State officials if those acts breach the rights and freedoms of the interested person. Article 258 point 3 provides that a complaint must not be allowed if the action challenged in court "is in compliance with the law, has been taken within the jurisdiction of the State body or official ... and the rights and freedoms of the citizen have not been violated". Since the CCP repeatedly refers to "citizens" in the text of the Code, and since generally the Code applies only to proceedings involving physical persons as plaintiffs or defendants, it is unclear whether the remedy provided by Chapter 25 is available to legal persons.

245. Article 258 of the new CCP indicates that a successful plaintiff under Chapter 25 of the CCP may obtain an injunction against the State body or official concerned. By that injunction the court must require "the breach of the rights and freedoms to be eliminated in full". The Code is silent on whether Chapter 25 allows the plaintiff to seek other relief provided by the law, in particular to seek damages.

246. Before the enactment of the new CCP "complaints" about unlawful acts of public authorities or their omissions were governed by Federal Law No. 4866-1 on Judicial Review of Measures and Decisions Infringing Individual Rights and Freedoms dated 27 April 1993 (hereinafter "the Judicial Review Act"), as amended in 1995. Section 3 of the Act provided that this did not apply to situations for which the law established a different legal avenue of judicial review. The Ruling of the Plenary Session of the Supreme Court of the Russian Federation of 21 December 1993 (no. 10) specifies that a civil-law complaint provided for by the Judicial Review Act is not an appropriate legal remedy against decisions of prosecution authorities taken in criminal proceedings. Such decisions are to be challenged under the provisions of the Code of Criminal Procedure.

247. "Claims" involving legal persons and the State as opposing parties are considered, as a general rule, by the commercial courts and governed by the provisions of the Code of Commercial Proceedings. Article 27 of the Code of Commercial Proceedings, in so far as relevant, defines jurisdiction of commercial courts as follows: under point 1 of that Article, commercial courts hear cases "related to entrepreneurial or other economic activity"; under point 2, those cases must involve legal persons and, where provided

by the Code, the Russian Federation and its subsidiary bodies. Article 29 point 2 specifically provides that commercial courts hear cases arising from administrative relations if, as a result of a non-normative act of an administrative authority, "rights and legitimate interests of the claimant in the area of entrepreneurial or other economic activity" are affected by that act. Under the Code of Commercial Proceedings, a legal person disposes of two types of remedy in the event of a dispute with State authorities: a complaint about unlawful administrative or other "public" acts of the State authorities (akin to the remedy provided by Chapter 25 of the Code of Civil Proceedings for physical persons), which is governed by Article III of the Code of Commercial Proceedings, or a "claim" related to an "economic dispute or a case originating from civil relations", which is governed by its Section II.

6. Judicial review of the investigator's orders under the CCrP

(a) Under the old CCrP

248. Under the old Code, decisions ordering the attachment of property or removal of physical evidence in criminal proceedings could be challenged before a higher prosecutor, but not a court.

249. In accordance with the Judgment of the Constitutional Court of the Russian Federation of 23 March 1999, no. 5-*P*, third parties whose rights and legitimate interests are affected by a decision of the investigating authorities taken in the course of a criminal investigation can challenge those decisions in court. Any such challenge must be examined separately from the main criminal proceedings, without waiting for those proceedings to end.

(b) Under the new CCrP (complaints under Article 125)

250. Under Article 125 of the new Code, read in conjunction with Article 123, decisions of the investigator can be appealed against to the court by persons who are not parties to the criminal proceedings if the decisions at issue affect their rights or legitimate interests.

(c) Special rulings

251. Under Article 21.2 of the old CCrP if the trial court discovers a violation of the law or a breach of the rights of the persons during the pre-trial investigation it may issue a "special ruling" addressed to the competent bodies and requiring them to take "appropriate measures".

7. Right to compensation for unlawful criminal prosecution

252. The new CCrP contains Chapter 18 ("Rehabilitation") which deals, in particular, with compensation for damage caused by unlawful actions by the State authorities directed at participants in criminal proceedings.

253. Article 133 of the new CCrP (which is in Chapter 18) establishes the right to claim compensation for pecuniary damage "caused to the citizen as a result of a criminal prosecution". Compensation shall be made by the State in full, regardless of whether the law-enforcement bodies or officials concerned have been found "guilty" or not (strict liability). Under paragraph 3 of that Article a right to compensation is also vested in "any person who has been unlawfully subjected to coercive procedural measures in the course of proceedings in a criminal case." "Coercive procedural measures" are defined in Article IV of the Code. That Article mentions attachment orders as a coercive measure (Article 115 of the new CCrP), but not the seizure of physical evidence.

254. Under paragraph 4 of that Article, there is no right to compensation "when the coercive procedural measure or the conviction ... have been set aside or modified in view of ... the expiry of the prescription period for criminal liability".

255. Under Article 139 of the CCrP ("Damage caused to legal persons": this Article also belongs to Chapter 18) "damage caused to legal persons by unlawful actions (or inaction) or decisions on the part of a court, a prosecutor, investigator, inquirer, or inquiry body, must be compensated for by the State in full and in the order and within the time-limits set by the present Chapter". However, most of the provisions of Chapter 18 concern the right of former accused to "rehabilitation" and compensation for pecuniary and non-pecuniary damage. It is unclear what the "order and time-limits" are for claiming compensation under Article 139 of the CCrP.

8. Rules on tort liability of the State

256. Article 1064 of the Civil Code contains general provisions on liability for damage. It provides that damage caused to the person or property of an individual shall be compensated for in full by the person who caused the damage (Article 1064 § 1).

257. Articles 1069 and 1070 of the Civil Code determine liability for damage caused by unlawful actions of law-enforcement authorities or courts. Paragraph 1 of Article 1070 establishes the principle of strict liability of the State Treasury for damage caused to individuals by (i) unlawful conviction; (ii) unlawful institution of criminal proceedings; (iii) unlawful application of a preventive measure in the form of placement in custody or an undertaking not to leave their place of residence, and (iv) unlawful administrative detention or mandatory labour. In other situations, where damage is caused by an investigative or prosecuting

authority within criminal proceedings but not by actions described in Article 1070, Article 1069 of the Civil Code applies. Article 1069 provides for liability of the State Treasury for damage caused to an individual or a legal person by an unlawful action or inaction by a State authority or official. Article 1069 does not provide for strict liability; consequently, the liability of the State arises where the impugned act was, first, unlawful, and, second, where there was a "fault" on the part of the State authority or official concerned.

THE LAW

I. PRELIMINARY ISSUES

A. The Government's request for the case to be discontinued

258. The Court observes that the first applicant company (Uniya) ceased to exist in 2011. The Government claimed that following its liquidation the first applicant company's application should be struck out of the list of cases before the Court. The Government maintained that the Court cannot examine a case in the absence of a victim of the alleged violation. Following the liquidation of OOO Uniya its rights and obligations were extinguished; consequently, it has no successor to pursue proceedings in its stead and claim just satisfaction under Article 41 of the Convention.

259. The Court observes that it is undisputed between the parties that the first applicant company existed at the time application no. 4437/03 was lodged, on 28 December 2002, that the case on behalf of that company was properly introduced, and that the company was still in existence, at least formally, on the day its application was declared admissible by the Court (7 October 2010). In the Court's opinion, the fact that after its decisions on admissibility the first applicant company was liquidated does not call for its application to be struck out of the Court's list of cases under Article 37 § 1 (a) to (c), for the following reasons.

260. The Court reiterates that in cases which, as is the case with the one at hand, primarily involve pecuniary claims, they can be transferred to other persons, namely their legal successors (see *Capital Bank AD v. Bulgaria*, no. 49429/99, § 78, ECHR 2005-XII (extracts)). In addition, the case may be pursued even in the absence of successors where respect for human rights so requires, because of the "moral dimension" of human rights cases before the Court (ibid.)

261. As regards the first criterion (transferability of claims to successors) the Court notes that the claims forwarded by the first applicant company against the State were essentially of a pecuniary character. By

their very nature they were "transferable", as well as any award which the domestic courts made in respect of those claims, or the award under Article 41 which the Court may make in this case if a violation of the Convention is found.

262. The Court also reiterates that in the case of *Metalco Bt. v. Hungary* (revision, no. 34976/05, §§ 13 and 14, 26 June 2012), the loss of legal personality by the applicant company shortly before the adoption of the judgment did not deprive the applicant company of *locus standi* before the Court. In that case the Court also noted that under the relevant rules of Hungarian insolvency law, the award, once paid by the Government, would fall under the provisions governing property distribution proceedings. In *Metalco Bt.* the Government did not object to the continuation of the proceedings. In the present case, by contrast, the Government did object; however, in the Court's opinion, the cases cannot be distinguished on that ground. Whether the Government has or has not objected is relevant only where it is unclear who had the power to represent the legal entity in liquidation before the Court – its managers, shareholders, receivers, or others. In the present case no such question arose.

263. The Court further notes that the company had a shareholder. Even if, in domestic terms, the first applicant company's obligations and claims were formally extinguished after its liquidation, the dispute before Court under the Convention remains unresolved, and the company's successor has a legitimate interest in obtaining a final determination of that case by the Court (see for comparison *RF spol. s.r.o. v. Slovakia* (dec.), 9926/03, 20 October 2010).

264. As regards the second criterion ("respect for human rights") the Court notes that one of the central complaints of the applicant companies was their protracted inability to obtain compensation for the alcohol seized and destroyed by the authorities in 1998-2011. If the case is struck out now, without examination of the applicant companies' claims on the merits, it may appear that the authorities might have benefited from their own wrongdoing, if any. In addition, the case raises questions of general interest concerning the power of the authorities to seize and destroy property within criminal proceedings, which transcends the facts of the present case and the applicant companies' private interest.

265. The Court concludes that it may continue the examination of application no. 4437/03 on the basis of the submissions on the merits prepared by Ms Alekseyenkova (the lawyer for the first applicant company who represented it until its liquidation).

266. As regards the second applicant company, the Court notes that it changed its place of registration. The Government did not claim in express terms that its being registered in Belize prevented the Court from examining the application introduced by it when it was registered in Ireland and the United States. Furthermore, Belcourt has continued to participate in the

domestic proceedings in the capacity of a claimant, and its status has never been questioned. The Court concludes that "Belcourt Trading Company Ltd", registered in the International Business Companies Registry of Belize at no. 108605, can claim to pursue application no. 13290/03.

B. Withdrawal by the first applicant company of a part of its complaints; a complaint by the second applicant company about the same facts

267. In their letter of 25 September 2012 the applicant companies informed the Court that, in view of the recent developments in the domestic proceedings, and in particular in view of the judgment of 19 July 2012 by the Moskovskiy District Court, upheld on appeal on 11 September 2012 by the Kaliningrad Regional Court (see paragraphs 188-191 above), they considered Belcourt a victim in respect of the loss of the second consignment of alcohol. On 1 March 2013 the applicant companies confirmed their position and asked the Court again to consider the second applicant company an applicant in relation to the loss of the second consignment of alcohol.

268. The Government objected. They observed that in the previous proceedings the claimant was Uniya, not Belcourt. Consequently, Uniya considered itself the lawful owner of the alcohol at issue and Belcourt had no standing before this Court.

269. In the light of the applicant companies' submissions of 25 September 2012 and 1 March 2013, the Court concludes that the first applicant company (Uniya) wishes to withdraw its application insofar as it concerns the loss of the second consignment of alcohol. In the circumstances the Court decides that this part of application no. 13290/03 must be struck out pursuant to Article 37 § 1 (a) of the Convention.

270. As to the request by the second applicant company (Belcourt) to take Uniya's place in the proceedings related to the second consignment, the Court notes that Belcourt's complaint in this respect was brought before the Court on 25 September 2012, i.e. almost immediately after Belcourt had lost the case in the domestic proceedings which ended with the judgment of 11 September 2012 by the Kaliningrad Regional Court and which concerned the compensation for the loss of the second consignment. The complaint in respect of the second consignment was therefore brought by Belcourt within the time-limit provided by Article 35 § 1 of the Convention and after all ordinary domestic remedies had been exhausted. The Government had ample opportunity to comment on all issues related to seizure and destruction of the second consignment. In addition, the Government commented on the second applicant company's recent claims to the second consignment, and on the domestic courts' judgments in respect of those claims.

271. In the circumstances, and having regard to the original application as submitted by Belcourt and the further developments at the national level the Court considers that it is empowered to examine whether the destruction of the second consignment breached Belcourt's rights under Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF THE DESTRUCTION OF THE ALCOHOL

272. The applicant companies complained that the seizure and destruction of the consignments of alcohol breached their right under Article 1 of Protocol No. 1.

273. Article 1 of Protocol No. 1 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."

274. The Court has stated on many occasions that Article 1 of Protocol No. 1 comprises three distinct rules. However, these three rules are not "distinct in the sense of being unconnected" and should be construed in the light of the general principle contained in the first rule, which enunciates the principle of the peaceful enjoyment of property (see *Broniowski v. Poland* [GC], no. 31443/96, § 134, ECHR 2004‑V). Thus, the Court has to determine whether the interference was in accordance with the domestic law of the respondent State and whether it achieved a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see, among many other authorities, *Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 89, ECHR 2000‑XII, with further references).

275. The Court observes that the applicant companies' complaint concerned two distinct events: first, the seizure of the alcohol by the investigative authorities, and second, the destruction of the two consignments. The seizure and the destructions of the alcohol were ordered on different legal grounds and pursued different aims. In the circumstances the Court considers that it must examine those two situations separately. It will start with the destruction of the two consignments.

A. Destruction of the first consignment

1. The Government's objection as to the loss of victim status by the applicant companies

(a) The Government's submissions

276. In the light of later developments in the case the Government seemed to accept that the two applicant companies were the legal owners of the first consignment, and that its destruction amounted to an unlawful interference with the applicant companies' right to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1.

277. The Government referred to the judgment of 27 January 2011 (see paragraphs 108-111 above) thereby Uniya had been awarded compensation for the destruction of its part of the first consignement. The Government maintained that the amount awarded to Uniya had been defined correctly. The domestic courts had not applied the exchange rate defined in the agreement between the first and second applicant companies, but the rate on the day of the judgment, which was in any event higher than the rate which had existed in 1998, when the alcohol was seized. In the 2003 agreement the parties had established a fixed exchange rate to calculate Uniya's debt to Belcourt; however, that was their own choice, and was not binding on the courts. In their most recent observations (those of 10 May 2012), the Government indicated that the applicant companies had failed to appeal against the judgments in which they had been awarded compensation for the destruction of the first consignment.

278. The Government further informed the Court about the liquidation of Uniya for failure to submit tax returns. The Government argued that the liquidation of Uniya could not be attributed to the authorities. All Uniya's working documents seized by the investigator within the criminal case against Mr Golovkin and others had been duly attached to the case file. Mr Golovkin was aware of that, and consequently the cessation of Uniya's business activities could not be attributed by him to the seizure of its documents by the law-enforcement authorities. As regards the amount awarded to Belcourt by the judgment of 28 December 2010 (RUB 74,418,700), which was not appealed against, it was paid to the second applicant company on 5 April 2012, after all procedural errors relating to the writ of execution had been corrected (see paragraphs 77-83 above).

(b) The applicant companies' submissions

279. In their latest observations the applicant companies informed the Court about the recent developments in their case. In particular, they confirmed that the amount sought by Belcourt in respect of the seizure of the first consignment of alcohol had been paid. However, the applicant

companies claimed that the amount awarded to Belcourt in respect of the seizure of the first consignment did not cover all their losses, and, in particular, did not compensate them for the non-pecuniary damage suffered. They also complained of insufficiency of the award made in favour of Uniya and that it was impossible to receive it because of the liquidation of the first applicant company.

2. The Court's assessment

(a) The victim status of the second applicant company

280. The Court reiterates that to deprive an applicant of victim status the authorities must fulfil two conditions: acknowledge, at least in essence, a violation of the Convention, and provide the applicant with "sufficient redress" (see *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; and *Rotaru v. Romania* [GC], no. 28341/95, § 35, ECHR 2000-V). In the present case the unlawfulness of the destruction of the first consignment of alcohol was acknowledged, first by the decision of 25 November 2005 by the Leningradskiy District Court (see paragraph 52 above), and then by the judgment of 28 December 2010 by the Baltiyskiy District Court (see paragraphs 77-83 above). Thus, the first condition ("acknowledgment") has been met. In respect of the "redress", the Court observes that on 28 December 2010 the Baltiyskiy District Court, on the basis of Article 139 of the CCrP, awarded the first applicant company (Belcourt) RUB 74,418,700 in compensation for the destruction of the 337,104 bottles of alcohol from the first consignment. That sum was paid on 5 April 2012. In addition, on 27 November 2012 Belcourt received RUB 596,242 in compensation for the delayed implementation of the judgment of 28 December 2010.

281. The Court observes that according to the information available to it the judgment of 28 December 2010 was not appealed against and became final without further review. Although Belcourt claimed before the Court that the amount awarded to it was insufficient, the failure of Belcourt to lodge an appeal precludes it, by virtue of Article 35 §§ 1 and 4 of the Convention, from challenging the adequacy of the compensation received by virtue of the judgment of 28 December 2010. In the light of the materials of the case the Court does not consider that the amount of compensation received by Belcourt was inadequate. It follows that the breach of the second applicant's rights, as far as the destruction of the first consignment is concerned, was acknowledged, and that the second applicant company received "adequate redress" in this connection. Thus, it has no longer victim status in respect of the destruction of its part of the first consignement.

(b) The victim status of the first applicant company

282. The Court reiterates that the unlawfulness of the destruction of the first consignment of alcohol was acknowledged, first by the decision of 25 November 2005 of the Leningradskiy District Court, and then confirmed on 27 January 2011 by the Baltiyskiy District Court in the proceedings initiated by the first applicant company (Uniya; see paragraphs 108-111 above). As regards the "redress" for the property lost, the tort claim by the first applicant company in relation to the destruction of its part of the first consignment resulted in a court award in the applicant company's favour under Article 139 of the CCrP. Thus, on 27 January 2011 the Baltiyskiy District Court awarded Uniya RUB 52,665,032 for the 120,317 bottles belonging to it. The first applicant company did not contest the amount of compensation awarded to it in the domestic proceedings, so the Court is prepared to accept that the compensation awarded was adequate. However, by contrast with the second applicant company, the award in favour of the first applicant company has never been paid, since the company was liquidated in the meantime. The question is whether in such a situation it can be said that the first applicant company obtained "sufficient redress" for the violation of its rights under Article 1 of Protocol No. 1.

283. Where the liquidation of an applicant company is related to the interference by a State authority with the company's rights under Article 1 of Protocol No. 1 complained of, the Court may continue the examination of such a case even where the company formally ceases to exist (see *OAO Neftyanaya Kompaniya Yukos v. Russia* (dec.), no. 14902/04, §§ 439 et seq., 29 January 2009). Otherwise there is a risk that the States might benefit from their own wrong and evade the Court's control by liquidating the company which started the proceedings in Strasbourg. In the present case the Court does not discern a direct causal link between the liquidation of the company and the violation of the Convention complained of, namely the destruction of the alcohol. As transpires from the materials of the case, the liquidation of the first applicant company was related to its failure to submit tax returns. Thus, the liquidation was related to an external reason not linked to the facts which gave rise to the present application.

284. The Court is mindful of the principle of effective protection of the rights guaranteed by the Convention. Normally, to redress a violation of someone's rights under Article 1 of Protocol No. 1 the State should not only award an adequate compensation but actually pay it to the victim. The Court stresses that the money due by the State to the first applicant company by virtue of the court judgment of 27 January 2011 became a part of that company's "assets". Thus, either the applicant company itself or its legal successors should benefit from the award. If, by virtue of operation of certain provisions of the domestic law, the applicant company or its legal successor would be incapable of receiving that money, such a situation may give rise to a separate complaint under Article 1 of Protocol No. 1. In fact,

the liquidation of the first applicant company and the inability of the company's shareholder to benefit from the award of 27 January 2011 is the subject of a separate application before the Court brought by Mr R., the company's sole shareholder.

285. However, in the specific circumstances of the present case the Court considers that those two issues must be dealt with separately. As to the liquidation of the first applicant company and subsequent proceedings related to the distribution of the applicant company's assets, these facts relate to another case which will be examined separately. As regards the original complaint of the first applicant company about the destruction of the first consignment alcohol, the Court concludes that by making the money available to the first applicant company the authorities redressed the wrong done to it. It follows that the first applicant company lost its victim status in respect of that part of the complaint.

B. Destruction of the second consignment

1. The Government's non-exhaustion plea and the Court's assessment thereof

286. The Court observes that in its admissibility decision of 7 October 2010 it joined to the merits the Government's plea of non-exhaustion under Article 35 § 1 of the Convention. Assuming that the Government wished to maintain that plea, the Court observes that the destruction of the second consignment was declared unlawful by a decision of 7 November 2005 by the Baltiyskiy District Court. Uniya'a claim in respect of the second consignment has been withdrawn (see paragraphs 267 et seq. above). A tort claim on behalf of Belcourt was rejected on 19 July 2012 by the Moskovskiy District Court (confirmed on appeal by the Kaliningrad Regional Court on 11 September 2012). That appeal decision was final; no ordinary appeal lay against that decision and the Government did not refer to any other remedy which Belcourt might use in order to obtain compensation for the destruction of the second consignment of alcohol. The Court concludes that Belcourt properly exhausted domestic remedies as required by Article 35 § 1 of the Convention. The Government's non-exhaustion objection in this respect should therefore be rejected.

2. The parties' submissions on the merits

(a) The applicant companies

287. In its original observations following the Court's decision on admissibility the applicant companies argued that the destruction of the second consignment was unlawful and unjustified, and that the refusal of

the domestic courts to award it compensation for the lost property was arbitrary.

288. In their letters of 25 September 2012 and of 1 March 2013 the applicant companies informed the Court that they considered the second applicant company (Belcourt) a victim in respect of the loss of the second consignment. They claimed that the judgment of 19 July 2012, whereby the Moskovskiy District Court dismissed Belcourt's claims in respect of the second consignment of alcohol, had been contrary to the judgment of 30 March 2010 by the Baltiyskiy District Court which, in the applicant companies' opinion, acknowledged that Belcourt was the lawful owner of the second consignment of alcohol. If that company was the owner, then it had suffered losses as a result of the destruction of the second consignment, and should therefore be entitled to full compensation for it.

(b) The Government

289. In the light of the recent developments in the case the Government seemed to concede that the destruction of the second consignment of alcohol was unlawful. However, the Government insisted that the applicant companies were not entitled to any compensation in relation to the destruction.

290. Thus, the Government referred to the judgment of 30 March 2010 by the Baltiyskiy District Court, in which Uniya's tort claim against the State was rejected. The Government reiterated the main arguments of that judgment. In particular, it repeated the District Court's findings that the ownership title to the alcohol should have been defined under the 1997 agreement and not under the additional agreement of 1998. The alcohol was imported into Russia under the 1997 agreement; that was the agreement referred to by Uniya and Mr Golovkin in other legal proceedings, both criminal and civil. According to the 1997 agreement, at the time of the seizure Uniya was not the lawful owner of the second consignment, since the agreement defined Uniya as a commissioner (agent). The District Court did not accept the plaintiff's argument that the 1997 agreement had been cancelled and replaced by the 1998 agreement, since Uniya had failed to produce any document in support of this claim. Furthermore, it was not clear whether the 1998 agreement concerned exactly the same consignment as the sixty-two containers destroyed on the orders of the investigator.

291. The Government analysed the content of the 1997 agreement, which defined the ownership status of the alcohol, in the following terms (quoting from the Government's observations of 3 February 2011):

> "According to the contract of agency of 03/11/97 of 3 November 1997 concluded between Belcourt Trading Company (Principal) and the Kaliningrad branch of OOO Uniya (Agent) the Principal entrust and the Agent assume the pursuance of the following duties: the receipt, customs clearance and safe custody of the goods purchased for the sale [through the Continel customs warehouse ...] . Under item 5 of

> the agreement the Principal is the owner of the consignment until such time as the goods have been paid for. The Agent is responsible for the safety of the goods storage and receipt before the Principal until payment is made. Under item 7 of the agreement, in the event of impossibility of the sale of the goods [by the Agent to the consumers] they should be returned to the Principal or to another party specified by the Principal at the expense ... of the Principal. Thus according to the provisions of the agreement of 3 November 1997 the owner of goods up to the time of payment appeared not to be the Agent – not OOO Uniya"

292. Furthermore, Uniya had never paid for the alcohol. Uniya's debt to Belcourt arising from the judgment of the Commercial Court of 4 December 2001 had never been paid in full, and the writ of execution had expired. Consequently, Uniya had suffered no damage related to the seizure of the alcohol. The Government further commented on the judgment of 14 October 2011 by the Moskovskiy District Court, in which the court had refused to examine the tort claims lodged by Mr Golovkin on behalf of Belcourt.

293. Finally, the Government commented on the judgment of 19 July 2012 in which the claims by Belcourt against the State had been rejected. In that judgment the District Court had held that Belcourt was not the lawful owner of the second consignment. As established in the domestic proceedings, the judgment of the Baltiyskiy District Court of 7 November 2005 in which the destruction of the alcohol had been declared unlawful had no relationship with the establishment of the ownership title to the alcohol. As regards the judgment of the Commercial Court of 4 December 2001 in which Belcourt was awarded damages against Uniya, the Government claimed that it had no force of *res judicata* for the tort proceedings opposing Belcourt and the State, since the factual background of the two cases was different. The fact that the commercial court acknowledged that Uniya and Belcourt were parties to a contract of sale of the alcohol did not mean that ownership title of either of those companies to the alcohol was established.

3. The Court's assessment

(a) Whether the alcohol in the second consignment was the second applicant company's "possessions"

294. The central argument relied on by the Government in respect of the second consignment concerns the title to the alcohol. The position of the Government, as well as the latest position of the Russian courts in this respect can be summarised as follows: even though the authorities acted unlawfully in destroying the second consignment of alcohol, the applicant companies failed to prove that the alcohol belonged to them.

295. The Court observes that for many years Uniya was regarded by the domestic authorities as the owner of the second consignment. Thus, the customs authorities considered that Uniya was under an obligation to pay customs duty (see paragraph 137 above). The investigator seized that

alcohol within criminal proceedings related to allegedly unlawful operations by the managers of Uniya, and therefore must have considered it Uniya's property (see paragraph 126 above). The courts seemed to depart from the same assumption and did not dispute Uniya's standing (see paragraph 150 and 164 above). The argument that Uniya had failed to prove its property title to the alcohol appeared in the reasoning of the Russian courts quite late (see the decision of the Ninth District Commercial Court of 5 September 2006, paragraph 174 above). Even after that decision the courts were not unanimous on the issue of ownership (see paragraph 177 above).

296. Finally, in 2010 the Baltiyskiy District Court reconsidered the issue and concluded that Uniya was nothing more than a "depositary and agent" in respect of the second consignment. The Baltiyskiy District Court reasoned as follows (see paragraphs 178 et seq. above): the property title to the second consignment was required to have been defined pursuant to the contract of 3 November 1997 between Uniya and Belcourt, and not its later amendments. That contract provided that Uniya was acting as depositary and agent in respect of the alcohol imported by Belcourt into Russia. Under the 1997 contract Belcourt retained the title to the alcohol until it received payment for it. Since no payment was received by Belcourt, Uniya did not become the owner of the alcohol. In addition, the alcohol did not clear customs and therefore was not in Uniya's possession.

297. The reasoning of the Baltiyskiy District Court in the 2010 proceedings was seemingly at odds with the position of the Russian authorities in previous years, when Uniya was implicitly regarded as the lawful owner of the second consignment. Be that as it may, it was based on a reasonable assessment of evidence, so the Court is prepared to defer to the national judge on this point. The Court accepts that at the moment of the seizure of the second consignment Uniya was not the owner but the depositary and sales agent in respect of that part of the alcohol. The question is therefore who the owner was.

298. The Court recalls that when Uniya lost its case, Belcourt brought a similar tort action under Article 139 in its own name (see paragraph 186 above). Belcourt argued that if Uniya was not the lawful owner of the alcohol the title remained with Belcourt, and therefore it was entitled to receive compensation for the unlawful destruction of the alcohol (see paragraph 118 above). In reply to that argument the Moskovskiy District Court found that the judgment of the Baltiyskiy District Court rejecting Uniya's claims against the State had not established that Belcourt was the lawful owner of the alcohol (see paragraph 190 above).

299. The findings of the judgment of 19 July 2012 by the Moskovskiy District Court on the issue of ownership title were inconclusive. The District Court did not hold directly that the second consignment did not belong to Belcourt. The judgment of the Moskovskiy District Court in this part was limited to a finding that the earlier judgments concerning the second

consignment, and in particular the judgment of 30 March 2010 by the Baltiyskiy District Court, cannot be interpreted as establishing that Belcourt was the lawful owner of the alcohol. Thus, although Belcourt lost the case, the question of ownership title to the second consignment remained open. In such circumstances the Court has to review the situation afresh.

300. The Court observes that from the moment of the seizure of the first consignment until now nobody else except Uniya or Belcourt tried to seek damages from the Russian authorities in connection with its seizure and destruction. Indeed, at some point Uniya made an attempt to sell the alcohol in the second consignment to a third party – Moscow Wines and Spirits GMBH (see paragraph 139 above). However, it appears that this agreement has never been executed, and, in any event, the Government did not claim that the second consignment belonged to Moscow Wines and Spirits.

301. It was not disputed by the Government that the second consignment had been imported into Russia under a valid agreement concluded between Uniya and Belcourt. Whatever the exact role of each company was, it is clear that Belcourt was the "shipping party" and Uniya the "receiving party" (see paragraph 9 above). In the judgment of 4 December 2001 by the Kaliningrad Region Commercial Court (see paragraphs 165 et seq. above) Belcourt was repeatedly referred to as "seller", and Uniya as "buyer". At the moment of the sale of the second consignment Belcourt exercised the powers of its owner; Uniya was supposed to pay Belcourt the price which corresponded to the declared customs value of the whole second consignment and sell the alcohol to other customers. The 1997 agreement, on which both the Government and the domestic courts in the last round of proceedings relied, stipulated that the ownership title to the second consignment would not pass to Uniya until such time as Uniya paid full price, which never happened. Even if Belcourt was named "Principal" in the 1997 agreement, at the moment of its signature Belcourt acted as the *de facto* owner of the alcohol in the relations with Uniya and with the third parties in Russia.

302. The Court does not know how Belcourt acquired the title to the second consignment in the place where it had been purchased, or what contractual obligations Belcourt might have had in relation to that alcohol. However, the Court does not need to make a final determination of the question of ownership under Russian law or any other national law. The Court's role is not to define the exact legal title to the contested property under the domestic law but rather to assess, for the purposes of the case before it and on the basis of materials and information produced by the parties, whether that property may be characterised as Belcourt's "possessions" within the autonomous meaning of Article 1 of Protocol No. 1. "The issue that needs to be examined is whether the circumstances of the case, considered as a whole, may be regarded as having conferred on the applicant title to a substantive interest protected by

that provision" (see *Iatridis v. Greece* [GC], no. 31107/96, § 54, ECHR 1999-II, and *Öneryıldız v. Turkey* [GC], no. 48939/99, § 124, ECHR 2004-XII).

303. In the present case the authorities, referring to the 1997 agreement, refused to recognise that the title to the second consignment ever passed to Uniya; in the absence of other contenders, and in the light of the circumstances of its importation to Russia the inevitable conclusion is that the alcohol for all practical purposes remained the "possession" of the seller, i.e. Belcourt. The Court will proceed with the examination of the case on the basis of this assumption.

(b) Whether the destruction of the second consignement was contrary to the Convention

304. The Government seemed to argue, with reference to the reasoning of the domestic courts in the tort proceedings, that the applicant companies had suffered no pecuniary loss as a result of the destruction of the second consignment and that their rights under Article 1 of Protocol No. 1 were not consequently affected (see paragraphs 172 et seq. above, where the findings of the commercial courts are summarised; see also paragraphs 179 and 189 which describe the findings of the courts of general jurisdiction).

305. The Court accepts that the amount of damage caused by an interference with someone's possessions is a question apart, and one which should be addressed separately from the question of the existence of an interference and the legitimacy thereof. It is possible to imagine a situation where an interference with possessions has little or even no effect on the pecuniary interests of the person concerned. However, in the present case the interference took the form of the destruction of property apparently worth several million US dollars (see, for example, paragraph 13 above). That property was not prohibited from circulation and was openly imported to Russia for sale on the retail market. In such circumstances the Court has no doubt that the destruction of the second consignment amounted to an interference with the second applicant's possessions, whatever was the exact value of those "possessions".

306. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful (*Guiso-Gallisay v. Italy*, no. 58858/00, § 82, 8 December 2005). The Court observes that by virtue of the investigator's decision of 2 September 2002 the alcohol in the second consignment was sent to a Moscow-based firm and destroyed. The investigator's decision was declared unlawful by the decision of 7 November 2005 by the Baltiyskiy District Court. That fact alone is sufficient for the Court to conclude that the destruction of the alcohol was contrary to Article 1 of Protocol No. 1 (see, for example,

Belvedere Alberghiera S.r.l. v. Italy, no. 31524/96, §§ 61-63, ECHR 2000-VI).

307. The Court further notes that although the authorities acknowledged the unlawfulness of the destruction, they refused to award the second applicant company (Belcourt) any compensation for the alcohol destroyed.

308. In these circumstances the Court concludes that the destruction of the second consignment of alcohol, as well as the refusal of the domestic courts to pay Belcourt any compensation for the destruction, violated the second applicant company's rights under Article 1 of Protocol No. 1.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF THE SEIZURE OF THE ALCOHOL

309. The Court observes that the applicant companies' complaint under Article 1 of Protocol No. 1, cited above, has a second limb, namely the allegedly arbitrary seizure of the two consignments of alcohol. The Court observes that before their destruction both consignments were seized and retained by the investigative authorities for the purposes of the criminal proceedings in Mr Golovkin's case. In other circumstances such measures as removal or attachement of property within criminal porceedings would warrant a separate examination under Article 1 of Protocol No. 1. However, in the present case the alcohol seized was, after a certain lapse of time, destroyed for the reasons which had not been directly related to the reasons for its seizure. Thus, a temporary dispossession transformed into a definite loss of the property, which was a significantly more serious interference with the applicant companies' rights under Article 1 of Protocol No. 1. Although in the domestic proceedings the applicant companies complained of both types of interference with their possessions, their primary objective was to obtain damages in connection with the destruction of the alcohol. In such circumstances, bearing in mind that the applicant companies' main grievance about the destruction has been sufficiently addressed above, the Court decides that the question of the seizures of the alcohol do not require a separate examination.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

310. Under Article 6 § 1 of the Convention the applicant companies complained that they had been unable to obtain an effective judicial review of the seizure and destruction of the alcohol. Article 6 § 1, in so far as relevant, reads as follows:

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

A. The parties' submissions

311. The Government claimed that the applicant companies had had access to the courts in respect of their complaints concerning the seizure and destruction of the alcohol. Thus, the courts had examined their claims, and had even satisfied them in part. Although those decisions were subsequently quashed, and the outcome of the proceedings was unfavourable to the applicants, this did not mean that they had been deprived of the right to have their claims examined by the courts. The Government also asserted that the applicant companies did not make proper use of remedies available to them to complain about the seizure and destruction of the alcohol.

312. The applicant companies maintained that the proceedings concerning the alcohol seized had been unnecessarily protracted. For many years the commercial courts and the courts of general jurisdiction had declined to review the lawfulness of the seizure orders and rule on the applicant companies' claims for damages, referring to the pending investigation in the criminal case against Mr Golovkin. The applicant companies maintained that they used all possible legal avenues to complain about the seizure and destruction of the alcohol.

B. The Court's assessment

313. Before turning to the merits, the Court notes that the Government's objection of non-exhaustion, which was joined to the merits, related inter alia to their complaint under Article 6 of the Convention. Consequently, while addressing the merits of their Article 6 complaint the Court will, at the same time, examine whether the applicant companies used appropriate domestic procedures and thus complied with the requirements of Article 35 § 1 of the Convention.

1. Scope of the case

314. The Court observes that the first applicant company (Uniya) withdrew its complaint concerning the seizure and destruction of the second consignment. The Court accepted that withdrawal; furthermore, it accepted that the second applicant company (Belcourt) could complain, in its own name, about the loss of the second consignment under Article 1 of Protocol No. 1 (see the "Preliminary issues" section above). However, the complaint under Article 6 § 1 concerning the first applicant company's (Uniya's) right to a court cannot be treated in the same way. The Court notes that Belcourt participated as a plaintiff only in the last round of the proceedings which ended on 11 September 2012. It is clear that Belcourt did not whish to submit any particular complaint under Article 6 about that last round. As to the previous rounds, which are at the heart of the present case, they were intiated by the first applicant company, which alone has a

standing to complain under Article 6 of the Convention in respect of those proceedings.

315. The question is whether Uniya whished to maintain its complaint under Article 6 in this part, or drop it, as it did in respect of the complaint under Article 1 of Protocol No. 1. The Court considers that if the second consignment did not belong to Uniya, all its claims, complaints, applications etc. before the domestic courts in that part become to a large extent moot. Uniya did not show sufficiently whether it had any substantive interest in those proceedings; in such circumstances the Court infers that Uniya whished to withdraw its application concerning the seizure and destruction of the second consignment in its integrity, not only under Article 1 of Protocol No. 1, but also under Article 6 of the Convention.

316. It follows that the Court will only examine whether the applicant companies had a right to a court in respect of their complaints concerning the seizures and destruction of the first consignment. That being said, in analysing that complaint the Court will not loose sight of the proceedings in which the seizure and destruction of the second consignment was examined.

2. General principles

317. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way the Article embodies the "right to a court", of which the right of access, that is, the right to institute proceedings before courts in civil matters, constitutes one aspect only (see *Golder v. the United Kingdom*, 21 February 1975, p. 18, § 36, Series A no. 18, and *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 50, ECHR 1999-I). The "right to court" is not absolute, and may be subject to limitations permitted by implication. The State enjoys a certain margin of appreciation in regulating that right. Those limitations, however, must not impair its very essence (see, *mutatis mutandi*s, *Melikyan v. Armenia*, no. 9737/06, § 45, 19 February 2013; *Zborovský v. Slovakia*, no. 14325/08, § 47, 23 October 2012; and *Guérin v. France*, 29 July 1998, § 37, *Reports* 1998-V).

318. Most often the Court cites "the right to court" in situations where examination of a civil claim by a court is precluded once and for all by a procedural barrier, such as a time-limit or the immunity of the defendant. There is, however, other situations where the Court is confronted with such limitations and obstacles which make "the right to court" *de facto* ineffective, without formally depriving the person of the right. In the case of *Västberga Taxi Aktiebolag and Vulic v. Sweden* (no. 36985/97, § 102, 23 July 2002), the Court found, in the context of tax assessment proceedings, that an undue delay in the court determination of the main issue concerning the imposition of additional taxes and tax surcharges made access to the courts ineffective. In the case of *Stankov v. Bulgaria* (no. 68490/01, §§ 59 et seq., 12 July 2007) the Court considered that the

imposition of a considerable financial burden on the plaintiff after the conclusion of proceedings could act as a restriction on the right to a court (see also *Klauz v. Croatia*, no. 28963/10, §§ 86 et seq., 18 July 2013).

319. In the present case the applicant companies obtained a determination of their claims related to the seizure and destruction of the alcohol. However, for many years the domestic courts refused to examine their claims in this respect awaiting completion of the proceedings in Mr Golovkin's criminal case or for other reasons. In essence, the applicant companies alleged that they did not have a "clear, practical opportunity to challenge an act that [was] an interference with [their] rights" (see *Bellet v. France*, 4 December 1995, p. 42, § 36, Series A no. 333-B).

3. Application to the present case

320. The Court observes that the applicant companies and Mr Golovkin made many attempts to challenge seizure and destruction of the alcohol. They also brought several tort claims before different courts, seeking pecuniary compensation from the State. Some of the complaints brought by the applicant companies were not examined on the merits, the domestic courts having decided that those complaints were premature, that the applicant companies had no standing, or for other reasons. The Court, however, does not need to examine all legal proceedings which the applicant companies initiated in this case. Instead, the Court will concentrate on two central episodes which, in its opinion, contributed most to the delayed determination of the applicant companies' claims.

(a) Effects of the "special ruling" of 24 November 2000

321. It appears from the reasoning of the Russian courts that in order to claim damages for the property seized and then destroyed the applicant companies had to obtain a declaration of unlawfulness of the investigator's actions, and only then bring tort claims against the State (see, in particular, Article 1069 of the Civil Code, paragraph 257 above).

322. Usually, a declaration of unlawfulness of an administrative action may be obtained within proceedings governed by Chapter 25 of the new CCP ("Chapter 25 Proceedings"; before the enactment of the new Code similar proceedings were provided by the Judicial Review Act of 1993). However, Chapter 25 of the CCP did not apply where the impugned administrative action was taken within the framework of a criminal investigation (see the decision by the Baltiyskiy District Court of 29 December 2005, paragraph 43 above; see also, *mutatis mutandis,* the ruling of the Supreme Court of 21 December 1993, cited in paragraph 246 above). In such situations the declaration of unlawfulness must have been obtained within separate proceedings governed by the Code of Criminal Proceedings.

323. The applicant companies believed that the "special ruling" issued by the Baltiyskiy District Court of 24 November 2000 under Article 21.2 of the Code of Criminal Procedure was sufficient to show that the investigator's action had been unlawful. The applicant companies' reading of the law was not unreasonable: indeed, in the "special ruling" the Baltiyskiy District Court indicated various irregularities in the actions of the investigator concerning the first consignment and found in essence that those actions had been unlawful (see paragraph 31 above; see also Article 21.2 of the CCrP defining the purpose of the special ruling, summarised in paragraph 251 above).

324. However, the domestic courts decided otherwise – see the decisions of 15 November 2002 and 6 November 2003 by the Kaliningrad Region Commercial Court (paragraphs 55 and 88 above), and the decision of 21 May 2002 by the same court (paragraph 170 above). The commercial courts ruled that the applicant companies should go again to the courts of general jurisdiction and obtain another declaration of unlawfulness, now within the proceedings governed by Article 125 of the CCrP. Article 125 provides for judicial review of the lawfulness of actions of an investigator taken within a criminal case. Although the old CCrP did not contain a provision identical to Article 125, such a legal avenue existed from 1999 onwards by virtue of the Judgment of the Constitutional Court of the Russian Federation of 23 March 1999, no. 5-*P* (see paragraph 249 above). The Court will refer to this remedy as "Article 125 proceedings", irrespective of the period concerned.

325. The Court is prepared to admit that the "special ruling" did not amount to a formal declaration of unlawfulness required under the domestic law as a precondition for a successful tort claim against the State. On the other hand, even if the courts interpreted the domestic law correctly, such interpretation objectively resulted in the over-complication of the process of claiming damages from the State. Thus, having obtained a "special ruling" which affirmed that the investigator's actions had been unlawful, the applicant companies were required to go again to the same court and obtain another declaration of unlawfulness, now within Article 125 proceedings.

(b) A temporary ban on complaints under Article 125

326. As appears from the judgments of the commercial courts, Article 125 proceedings constituted a necessary preliminary phase before claiming damages under the Civil Code (see, in particular, the judgments of 15 November 2002 by the Commercial Court of the Kaliningrad Region, of 4 March 2003 by the Federal Commercial Court of the North-West Circuit, and of 21 May 2002 by the Commercial Court of the Kaliningrad Region).

327. The applicant companies followed that direction and lodged a complaint under Article 125 of the Criminal Procedure Code. However, the

domestic courts were uncertain as to the moment when that remedy could be used and the person who might bring such complaints.

328. Thus, when Mr Golovkin brought a complaint under Article 125 about the seizure and destruction of the first consignment, the Baltiyskiy District Court dismissed the complaint primarily because (a) criminal proceedings against Mr Golovkin were still pending and (b) his personal property had not been affected by the seizure and destruction, so he had no standing to complain about the investigator's actions (see the decision of 17 June 2003, confirmed on appeal on 22 July 2003 by the Kaliningrad Regional Court, cited in paragraphs 36 et seq. above).

329. When a complaint in similar terms was lodged by Belcourt in 2003, it was returned without examination, on the ground that Belcourt had not been a party to the criminal proceedings against Mr Golovkin and others (see the letter of the Baltiyskiy District Court of 16 June 2003, paragraph 44 above).

330. Some of the decisions of the commercial courts can also be interpreted as suggesting that complaints concerning the seizure and destruction of the alcohol could not be determined before the completion of the criminal proceedings in Mr Golovkin's case (see paragraph 55 above).

331. In contrast, all complaints by Mr Golovkin under Article 125 of the CCrP concerning the seizures of the second consignment were examined on the merits and dismissed in 1999-2002 (see above, the sections starting with paragraphs 125, 133, and 143). Similarly, when Uniya complained about the destruction of the second consignment, that complaint was examined on the merits and dismissed by the Baltiyskiy District Court on 22 October 2004 (see paragraph 150 above), before the end of the criminal proceedings in Mr Golovkin's case.

332. Finally, the decision of 22 October 2004 concerning the second consignment contained mutually exclusive findings. In that decision the Baltiyskiy District Court held that the seizure of the alcohol had been lawful and, at the same time, stated that it was premature to rule on the issue of physical evidence before the end of the criminal proceedings in Mr Golovkin's case (see paragraph 150 above).

333. The Court reiterates that as early as 1999 the Consitutional Court established a rule under which a third party whose rights were affected by a decision of the investigating authorities was enabled to challenge those decisions in court, and that such a complaint had to be examined independently of the main criminal proceedings and without waiting for those proceedings to end (see paragraph 249 above).

334. The Court notes that in the proceedings concerning the second consignment, the courts seemed to follow that rule: thus, the complaints under Article 125 were determined on the merits without waiting for the outcome of the proceedings in Mr Golovkin's case (see, for example, the decision of 22 October 2004 by the Baltiyskiy District Court,

paragraph 150; see also paragraphs 125, 133, and 143 above). In contrast, complaints under Article 125 concerning the first consignment were not examined before the end of the criminal proceedings in Mr Golovkin's case. In addition, the courts denied Mr Golovkin or Belcourt the right to bring such complaints without explaining who else, if not the owner or the defendant in the criminal case, would have such a right.

335. The Court notes that the proceedings in the case of Mr Golovkin lasted over seven years. That situation gave rise to a finding of a violation of Article 6 § 1 of the Convention in the case of *Golovkin v. Russia* (no. 16595/02, §§ 35 and 44, 3 April 2008). For all that period the applicant companies were precluded from challenging, under Article 125 of the CCrP, the lawfulness of the investigator's actions concerning the first consignment of alcohol. The Court stresses that the decisions to seize and destroy the alcohol were taken by the investigator alone, without any involvement of the interested parties and without any prior judicial inquiry. The same investigating authority which had ordered the seizure and destruction of the alcohol also conducted criminal proceedings against Mr Golovkin. Consequently, by protracting those proceedings the investigator delayed the examination of the lawfulness of his own actions, and thus evaded their effective review. This situation was aggravated by the fact that the unlawfulness of the investigator's actions has already been acknowledged by the "special ruling" issued under Article 21.2 of the CCrP; however, the commercial courts refused to consider it as a proper "declaration of unlawfulness" required under the domestic law.

336. The Government did not propose any rationale behind those procedural barriers which delayed examination of the applicant companies' tort claims. It also appears that the Russian courts themselves were not sure about the correct interpretation of the relevant provisions of the Russian law. Having regard to what was at stake for the applicant companies, the Court concludes that those procedural barriers were unjustified.

337. On account of the Government's non-exhaustion plea, the Court observes that it does not see what other remedies the applicant companies might have used to defend their rights and obtain determination of their claims earlier or more efficiently. The Court considers that the Government's objection must be dismissed.

338. On the merits, the Court observes that destruction of the first consignment was declared unlawful within Article 125 proceedings (see the decision of 25 November 2005 by the Leningradskiy District Court). That decision opened the way for tort proceedings against the State under Article 1069 of the Civil Code, which lasted for several years and ended in 2010-2011 (see paragraphs 77 and 108 above).

339. Thus, whereas the applicant companies eventually succeeded in obtaining a final determination of their claims towards the State, the Court should not loose sight of the fact that both applicant companies were

commercial enterprises whose businesses had been paralysed by the seizures and destruction of the alcohol in the first consignment. In the circumstances it was crucial for them to obtain a speedy judicial review of the actions of the investigator and, if they were successful, lodge a tort claim against the State.

340. However, for several years the Russian courts precluded them from claiming compensation. In particular, the courts (a) refused to give any effect to the "special ruling" of 2000, (b) denied the applicant companies' standing in the judicial review proceedings under Article 125, and (c) refused to review the lawfulness of the investigator's actions before the completion of the criminal proceedings in Mr Golovkin's case which were unnecessarily protracted.

341. In sum, the Court concludes that the procedural barriers described above deprived the applicant companies' of the effective "right to a court". There was therefore a violation of Article 6 § 1 of the Convention on that account.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

342. 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. The parties' submissions

1. The applicant companies

343. The first applicant company (Uniya) claimed 56,412,995 Russian roubles (RUB) in connection with the seizure and destruction of its part of the first consignment of alcohol. The second applicant company (Belcourt) claimed RUB 105,924,818 in connection with the seizure and destruction of its part of the first consignment. The amount claimed in connection with the destruction of the second consignment was RUB 548,450,322.

344. In their additional observations of 8 February 2012 the applicant companies indicated, in the light of recent developments in the case, that the amount of RUB 548,450,322 should have been recovered in favour of the second applicant company, as the owner of the alcohol in the second consignment.

345. Furthermore, each applicant company claimed 500,000 euros (EUR) for the loss of their respective businesses as a result of the investigator's actions.

346. The applicant companies also indicated that they should be awarded compensation for "non-material" damage related to "years of humiliation leading to undisguised embezzlement of the [companies'] property, for not calling the responsible individuals to account".

347. Under the head of legal costs the first and second applicant companies claimed 27,400 United States dollars (USD) and USD 23,200 respectively. The applicant companies produced a legal services agreement which provided for a lawyer's hourly rate of USD 200. They also submitted bills specifying work done by the lawyer at the domestic level and in preparation of the case for the European Court of Human Rights.

2. The Government

348. The Government maintained that the rights of the applicant companies in respect of the seizure and destruction of the first consignment had been fully restored at the domestic level. As regards the second consignment, it was not Uniya's property and Uniya had not paid for it, so Uniya could not have suffered any loss in connection with its seizure and destruction. The Government also maintained, in the light of the domestic courts' judgments, that Belcourt was not entitled to any compensation in relation to the second consignment.

349. The applicant companies' claims for loss of business were excessive and unsubstantiated. In addition, the applicant companies had never tried to introduce such claims before the Russian courts.

350. As regards the legal costs claimed by the applicant companies, they were excessive, and there was no evidence that the amounts owed by the applicant companies pursuant to the legal services agreement were ever actually paid to the lawyer. In addition, the applicant companies did not try to claim those costs before the domestic courts.

B. The Court's assessment

351. The Court will start by summarising its findings on the merits of the present case. The Court has established that, in view of the compensation awarded to the two applicant companies at the domestic level in connection with the destruction of the first consignment, they have lost their victim status in this respect. The Court also established that the destruction of the second consignment, which was the second applicant company's "possessions", was unlawful and thus contrary to Article 1 of Protocol No. 1. The Court also found a breach of the applicant companies' "right to court" in view of the lengthy and uncessarily complex legal proceedings in which their claims concerning the loss of the first consignment were determined.

1. Pecuniary damage

(a) "Loss of business"

352. Both applicant companies claimed about EUR 500,000 for the loss of their respective businesses as a result of the investigator's actions. However, in absence of any specific calculations and documents which would describe the "business" the applicant companies have allegedly lost, the Court considers that it cannot quantify that loss and consequently cannot make any award under this head.

(b) Loss of the first consignment

353. As regards the claims of the applicant companies concerning the first consignment, the Court notes that both Belcourt and Uniya lost their victim status in this respect (see paragraphs 281 and 283 above). Consequently, the Court cannot award anything to the applicant companies under this head.

(c) Loss of the second consignment

354. As regards the loss of the second consignment, the Court recalls its finding under Article 1 of Protocol No. 1, to the effect that at the time of its seizure it was Belcourt's "possessions". The Court reiterates that after the termination of the criminal proceedings against Mr Golovkin the alcohol seized by the investigator should normally have been returned to its owners. However, since in the meantime the alcohol had been unlawfully destroyed, restitution in kind became impossible. In such circumstances Belcourt is entitled to receive a sum of money corresponding to the value of the alcohol (see *Hentrich v. France*, 22 September 1994, § 71, Series A no. 296-A), plus compensation for any consequential damage.

355. Belcourt claimed RUB 548,450,322 for 1,170,312 bottles of alcohol. It appears that this amount includes penalties which Belcourt might have received from Uniya in relation to the latter company's failure to pay for the second consignment of alcohol and which were awarded by the Kaliningrad Region Commercial Court on 4 December 2001. However, in the circumstances the Court does not consider that such penalties, which were fixed in an agreement between Uniya and Belcourt, can be associated with Belcourt's losses, which resulted from the unlawful expropriation of its property by the authorities.

356. The Court notes that in 1997-98 the alcohol was declared at the price of USD 7.25 and USD 7.41 per bottle (see paragraph 9 above). The additional agreement of 1998 between Belcourt and Uniya, which specifically concerned the second consignment, set the price of the alcohol in it at USD 7.35 per bottle (see paragraph 119 above). The Court also notes that in the tort proceedings concerning Uniya and Belcourt the domestic courts estimated the value of the second consignment at USD 8,601,793,

which was broadly equivalent to USD 7.35 per bottle (see paragraphs 165 et seq. above).

357. That being said, Court observes that the net pecuniary loss of Belcourt was, by all appearances, less than USD 8,601,793, and that is for the following reasons.

358. First, the Court reiterates that its findings on the merits concerned only the destruction of the second consignment. The alcohol was destroyed in 2002, and it is unclear whether at that time Uniya would have been able to sell all the alcohol for the price fixed in the agreements between Uniya and Belcourt in 1998. The Court also observes that Belcourt's operations consisted of wholesale trade in alcohol. Having regard to the price at which the alcohol was purchased in Europe, namely between 1.09 and 1.12 German marks per bottle (see paragraph 9 above), to the dynamics in the change of prices of alcohol in Russia, taking into consideration the nature of the commercial relations between the first and the second applicant companies, and considering other relevant factors and economic data available to it, the Court considers that the price of USD 7.35 per bottle, fixed in the 1998 agreements, was excessive.

359. Second, it appears that Belcourt had to pay taxes and customs duties, and to cover storage and transportation expenses and any other costs in order to sell alcohol in Russia in 2002. It is thus evident that the net profit of Belcourt from the operations with the second consignment of alcohol, after all taxes, dues, costs and expenses would be paid, should be lower than the full value of the second consignment of the alcohol.

360. On the other hand, the Court notes that the unlawful interference with Belcourt's possession took place in 2002, whereas no compensation has been paid to date. In such circumstances the Court considers that it should add to the value of the alcohol an interest which could have accrued.

361. The Court considers that in view of the multitude of factors involved, the amount of pecuniary damage sustained by the second applicant company does not lend itself to a precise calculation, and that instead the Court has to make a global assessment (see *Negrepontis-Giannisis v. Greece* (just satisfaction), no. 56759/08, § 27, 5 December 2013). In the light of all the materials in its possession and the information available to it, taking into account possible costs and expenses of Belcourt, including tax payments and custom dues, the Court awards the second applicant company USD 3,050,000 (three million and fifty thousand US dollars) under the head of pecuniary damages. That amount includes compensation for consequential damage related to the destruction of the second consignment of alcohol in 2002. Given that Belcourt is a foreign company, the Court deems it appropriate to denominate the award in US dollars.

2. Non-pecuniary damage

362. The Court observes that the applicant companies appear to claim compensation for non-pecuniary damage (see paragraph 346 above). However, in the circumstances of the case the Court considers that its findings of a violation of the Convention constitute a sufficient just satisfaction in respect of non-pecuniary damages.

3. Costs and expenses

363. The first and second applicant companies claimed USD 27,400 and USD 23,200 respectively in compensation for lawyers' fees. The Court reiterates that under its case-law an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court emphasises that the extreme complexity of the present case justify the overall amount claimed on account of the lawyer's assistance in litigating before the domestic courts and in the preparation of the applicant companies' submissions to Strasbourg.

364. The Government, however, contended that those amounts have not actually been paid to the applicant companies' lawyer. The Court reiterates that even where legal fees have not yet been actually paid by a client they remain recoverable (see *Fadeyeva v. Russia*, no. 55723/00, § 147, ECHR 2005-IV). The Court has no doubts that those amounts are "recoverable" from Belcourt. The Court concludes that the whole amount claimed by the second applicant company under the head of legal costs – USD 23,200 (twenty three thousand two hundred US dollars) must be paid to Belcourt. Given that Belcourt is a foreign company, the Court deems it appropriate to denominate the award in US dollars.

365. In contrast, the amounts claimed by Uniya are not formally "recoverable" from that company, since Uniya was liquidated and its debts formally extinguished. That should not, however, preclude the Court from making an award under the head of "legal costs". The Court considers that the amount claimed by Uniya – USD 27,400 (twenty seven thousand four hundred US dollars) – should be paid in full and transferred directly to the first applicant's lawyer, converted into Russian roubles at the rate applicable on the day of settlement.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's request to strike out the case in respect of the first applicant company;

2. *Decides* to strike out the first applicant company's complaint concerning the loss of the second consignment pursuant to Article 37 § 1 (a) of the Convention, and to continue examination of that part of the case with the second applicant company as the purported victim;

3. *Holds* that the applicant companies have lost their victim status on account of the destruction of the first consignment of alcohol;

4. *Dismisses* the Government's plea of non-exhaustion related to the complaint of the second applicant company under Article 1 of Protocol No. 1 on account of the destruction of the second consignment and *holds* that there has been a violation of this provision in this respect;

5. *Holds* that there is no need to decide separately on the applicant companies' complaints under Article 1 of Protocol No. 1 concerning the seizures of the two consignments of alcohol;

6. *Dismisses* the Government's plea of non-exhaustion related to the applicant companies' complaint under Article 6 § 1 of the Convention that they had been unable to obtain an effective and timely judicial determination of their claims related to the seizure and destruction of the first consignment, and *holds* that there has been a violation of this provision in this respect;

7. *Holds* that the findings of a violation constitutes a sufficient just satisfaction in respect of non-pecuniary damages;

8. *Holds*

(a) that the respondent State is to pay the second applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) USD 3,050,000 (three million and fifty thousand US dollars), in respect of pecuniary damage, plus any tax that may be chargeable on this amount to the second applicant company;

(ii) USD 23,200 (twenty three thousand two hundred US dollars), plus any tax that may be chargeable to the second applicant company, in respect of legal costs and expenses;

(b) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, to be converted into Russian roubles at the rate applicable at the date of settlement, on account of legal costs and expenses, USD 27,400 (twenty seven thousand four hundred US dollars) directly to the lawyer for the first applicant company;

(c) 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;

9. *Dismisses* the remainder of the applicant companies' claim for just satisfaction.

Done in English, and notified in writing on 19 June 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President