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

FIRST SECTION

DECISION

Application no. 24324/05
Vladimir Nikolayevich SMAGILOV
against Russia

The European Court of Human Rights (First Section), sitting on 13 November 2014 as a Chamber composed of:

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

Having regard to the above application lodged on 9 May 2005,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Vladimir Nikolayevich Smagilov, is a Russian national, who was born in 1959 and lives in Perm.

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

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. In 1999 the applicant bought a desktop computer from a private company F. He subsequently brought proceedings claiming that he had been

misled about the technical characteristics of the hardware, that he had not been provided with a user manual, that the seller had failed to comply with consumer protection legislation and that the warranty was partly void.

5. On 26 October 1999 the Sverdlovskiy District Court of Perm ("the District Court") issued a summary judgment in the applicant's favour annulled the sale and ordered payment of damages. However, on 19 October 2000 the judgment was set aside on appeal by the Perm Regional Court ("the Regional Court") and the case was sent back for reconsideration.

6. In order to secure enforcement of the future judgment the applicant requested the District Court to apply interim measures, namely the attachment of the hardware in the defendant's possession and an order for the defendant to deposit the amount of the damages claimed or, alternatively, the attachment of property in the same amount.

7. On 11 March 2001 the District Court granted the applicant's request in part and ordered the attachment of the hardware in the defendant's possession. The other requested measures were refused in view of the defendant's solvency and active participation in the proceedings. The applicant did not appeal.

8. On 5 February 2002 the District Court gave a new judgment allowing the applicant's claims in part concerning the warranty on the hardware and dismissing all the other claims. On 11 June 2002 the Regional Court set aside the judgment in part and required that the remaining claims be reconsidered.

9. In a summary judgment of 19 December 2002 the District Court awarded the applicant 357,319 Russian roubles (RUB) (10,900 euros (EUR)) in damages and ordered the defendant to replace the original desktop computer.

10. On 30 April 2003 the Bailiffs' Service at the request of the applicant initiated enforcement proceedings against the debtor company F.

11. In view of the apparent lack of progress in the enforcement proceedings, in 2004 the applicant lodged a new action seeking annulment of the sale and recovery of damages. On 15 June 2004 the District Court in a summary judgment granted his claims, annulled the sale and awarded the applicant an additional RUB 265,879 (EUR 8,100) in damages.

12. On 20 May and 8 October 2004 the competent authorities refused to open criminal proceedings against the debtor company for its failure to comply with the judgment. The decision of 8 October 2004 was upheld at last instance by the Regional Court on 8 February 2005.

13. Discontent with the lack of progress in the enforcement of the judgment of 19 December 2002, the applicant requested that the bailiff's actions and inaction be recognised as unlawful. On 10 November 2004 the District Court found that the enforcement proceedings were indeed tainted by unjustified delays and inaction and the bailiff's inaction was ruled unlawful.

14. In 2005 the applicant also brought proceedings against the regional Judicial Department seeking damages for the allegedly unlawful refusal of the District Court judge to apply the requested interim measures to secure enforcement of the judgment (see paragraphs 6-7 above).

15. On 5 September 2005 the District Court dismissed the complaint without consideration on the ground that it lacked legal basis. The dismissal was upheld on appeal by the Regional Court on 4 October 2005.

16. In 2007 the applicant attempted to initiate civil proceedings against the Treasury of the Russian Federation and the regional Bailiffs' Service for the failure to enforce the judgment in his favour. On 3 May 2007 the proceedings were adjourned by the District Court owing to the applicant's failure to formulate his claims against all of the defendants and to provide their postal addresses. The applicant was given time to correct these defects. On 12 July 2007 the Regional Court upheld the adjournment on appeal. It appears that the applicant has never corrected the defects indicated by the domestic courts and that the proceedings have remained adjourned.

B. Relevant domestic law and practice

17. The basic principles regarding compensation for damage caused by public authorities and their officials are enshrined in the Constitution of the Russian Federation of 1993. In Article 53 the Constitution provides that everyone is entitled to compensation for damage caused by unlawful actions (or inaction) of State bodies and their officials. Article 52 secures the above-mentioned right with a constitutional obligation of the State to ensure access to a court and compensation for damage in cases where public authorities and their officials infringe rights protected by law.

1. The Code of Civil Procedure of the Russian Federation of 2002

(a) Challenging of decisions of State authorities and officials

18. The Code of Civil Procedure of the Russian Federation of 2002, which entered into force on 1 February 2003, establishes the framework for challenging the decisions or actions (or inaction) of any State or local self-government authority or official.

19. Chapter 25 of the Code of Civil Procedure, entitled "Proceedings to challenge decisions and actions (or inaction) of State bodies, local self-government authorities, officials or State or municipal civil servants" provides in the relevant part as follows:

Article 254 - Submission of application challenging a decision or action (or inaction) of a State or local self-government authority, official, or a State or municipal civil servant

"1. A citizen or legal person may challenge before a court any decision, action (or inaction) of a State or local self-government authority, official, or a State or

municipal civil servant if they consider that their rights and freedoms have been violated. A citizen or legal person may lodge an application directly with a court or with a superior, in order of subordination, State or local self-government authority or official, or State or municipal civil servant.

...

4. The court may suspend enforcement of the challenged decision until entry into force of the judicial decision."

Article 255 - Decisions, actions (or inaction) of State or local self-government authorities, officials, or of State or municipal civil servants which may be challenged in civil proceedings

"The decisions, actions (or inaction) of State or local self-government authorities, officials, or State or municipal civil servants, which may be challenged in civil proceedings are collective and independent decisions, actions (or inaction) resulting in:

- a violation of a citizen's rights and freedoms,
- a restriction on the exercise by a citizen of his rights and freedoms,
- an obligation or legal responsibility of a citizen that is devoid of lawful basis."

Article 258 Judicial decisions and their enforcement

"1. Where the court establishes that an application is well-founded, it shall adopt a decision ordering the relevant State or local self-government authority or official, or State or municipal civil servants to provide full redress for the violation of the rights and freedoms or the restriction on the exercise by a citizen of his rights and freedoms. ...

4. The court shall dismiss an application if it establishes that the challenged decision or action was adopted or performed within the scope of powers of a State or local self-government authority or official, or State or municipal civil servant, and that the rights and freedoms of a citizen were not violated."

(b) Other relevant procedural provisions

20. Article 136 of the Code of Civil Procedure governs the handling of lawsuits submitted in disregard of the procedural requirements and provides as follows:

Article 136 - Adjourning proceedings on a lawsuit

"1. A judge who establishes that a lawsuit has been submitted to the court without following the requirements [as regards its form, necessary elements and supporting documents] shall adjourn the proceedings, inform the plaintiff about the adjournment, and set a reasonable time-limit for correction of the defects.

2. The lawsuit shall be considered lodged on the date of its initial submission if the plaintiff complies with the instructions of the judge. Otherwise the lawsuit shall be considered as not submitted and returned to the plaintiff with all of the attached documents.

3. An appeal shall lie against a ruling to adjourn proceedings on a lawsuit."

21. Chapter 13 of the Code governs all matters related to interim measures within the civil proceedings. In the relevant parts it provides as follows:

Article 139 - Grounds for application of an interim measure

"Upon an application of a party to the proceedings a judge or a court may order an interim measures. An interim measure may be ordered at any stage of the proceedings, if a failure to order it may impede or prevent enforcement of a court's decision."

Article 145 - Appeals against interim measures

"1. An appeal shall lie against any ruling ordering an interim measure ..."

2. The Civil Code of the Russian Federation of 1995

22. Title II of the Civil Code of the Russian Federation of 1995, which entered into force on 1 March 1996, governs liability for damage. Article 1064, establishing basic principles of civil liability for damage, provides in the relevant parts as follows:

Article 1064 - General provisions on liability for damage

"1. Damage caused to an individual or his property, as well as damage to the property of a legal entity, shall be subject to full compensation by the person who caused the damage.

The law may prescribe that compensation for damage be due from a person other than the person who caused the damage ...

2. A person who causes damage shall not be liable for compensation in respect thereof if he proves that it was not caused by any fault on his part. However, the law may prescribe that compensation for damage be due even where there was no fault on the part of the person who caused it.

3. Damage caused by lawful actions shall be subject to compensation where prescribed by law ..."

23. Article 1069 of the Civil Code dealing with damage caused by a State or local self-government authority or official provides as follows:

Article 1069 - Liability for damage caused by State authorities, local self-government authorities and their officials

"Damage caused to an individual or a legal entity as a result of unlawful actions (or inaction) of State authorities, local self-government authorities or their officials, including damage resulting from an act of a State authority or local self-government authority that is incompatible with a law or another legal act, shall be subject to compensation. The damage shall be compensated for at the expense of the Treasury of the Russian Federation, the treasury of a subject of the Russian Federation, or the treasury of a municipal authority, respectively."

24. In addition to the general provisions on compensation for unlawful actions (or inaction) of State authorities and their officials Title II of the

Civil Code stipulates specific rules for damage caused by law-enforcement authorities and the courts:

> **Article 1070 - Liability for damage caused by unlawful actions of inquiry and preliminary investigation authorities, prosecutor's offices and courts**
>
> "1. Damage caused to an individual as a result of unlawful conviction, unlawful criminal prosecution, unlawful detention or release on his recognizance, unlawful administrative arrest, and damage caused to a legal entity as a result of unlawful administrative suspension of activities, shall be fully compensated for by the Treasury of the Russian Federation, and where prescribed by law by the treasury of a subject of the Russian Federation or the treasury of a municipality, in full regardless of any guilt on the part of any official of an inquiry or preliminary investigation authority, prosecutor's office or court.
>
> 2. Damage caused to an individual or a legal entity by unlawful actions of inquiry and preliminary investigation authorities and prosecutor's offices, where they do not entail the consequences mentioned in paragraph 1 of this Article, shall be subject to compensation under Article 1069 of the present Code. Damage caused in the administration of justice shall be subject to compensation if the guilt of a judge has been established by a final and binding judgment of conviction."

3. Jurisprudence of the Constitutional Court of the Russian Federation

25. The Constitutional Court in its judgments and decisions has provided a constitutional interpretation of Article 1069 of the Civil Code in conjunction with Articles 52 and 53 of the Russian Constitution (see *Judgments No. 1-P of 4 June 2009, No. 9-P of 16 June 2009, and Decisions No. 22-O of 20 February 2002, No. 1005-O-O of 4 June 2009*), including the following principles:

(a) Article 1069 of the Civil Code, in its constitutional meaning, ensures the full and effective restoration of rights, which entails an award of damages even if a specific type of damage is not expressly mentioned in a relevant legal provision.

(b) The State assumes responsibility for the unlawful actions (or inaction) of its bodies and officials and provides compensation for damage caused by their actions (or inaction), but only if all elements of legal responsibility (unlawfulness of an action or inaction, damage in fact, guilt, and the causal link between them) are present. No-fault liability is possible only if expressly prescribed by law.

(c) The exercise of the right to compensation presumes not only formal review of an action (or inaction) as falling within or outside the powers of a specific body or official, but also an assessment of its reasonableness as defined by the constitutional requirements of fairness, proportionality and legal security.

26. In its decision no. 338-O of 4 October 2005 the Constitutional Court emphasised with reference to the case-law of the Court that enforcement of a judgment was an integral part of the judicial protection of rights and that

the review of bailiffs' actions (or inaction) must be performed by their superiors and by the courts.

27. Following the constitutional review of the specific rules stated in paragraph 2 of Article 1070 of the Civil Code on damage caused by law-enforcement authorities and the courts, the Constitutional Court found them constitutional in so far as they provided for special conditions as to State liability for damage caused in the administration of justice (Ruling no. 1-P of 25 January 2001). However the Ruling clarified that the term "administration of justice" applied only to judicial decisions on the merits of the case, while procedural rulings fell outside its scope. State liability for damage caused, unlawful procedural acts or failure to act could arise even in the absence of a final criminal conviction of a judge, if the fault of the judge had been established in civil proceedings.

4. Jurisprudence of the Supreme Court of the Russian Federation and the Supreme Commercial Court of the Russian Federation

28. Both the Supreme Court and the Supreme Commercial Court of the Russian Federation (which until unification of the courts in 2014 was the highest court for commercial disputes) have issued case-law reviews and guidelines clarifying various procedural and substantive aspects of the right to receive compensation under Article 1069 of the Civil Code as established in the practice of the Russian courts. These decisions of the Supreme Commercial Court of the Russian Federation remain in force unless superseded by newly adopted decisions of the unified Supreme Court of the Russian Federation.

29. In decree no. 23 of 2006 of the Plenum of the Supreme Commercial Court it was stressed that a defendant to a lawsuit under Article 1069 should always be a public entity, but not a structural unit thereof or an official in a personal capacity. The compensation must accordingly be recovered only from the public entity.

30. In joint Decree no. 30 / 64 of 23 December 2010 of the Plenum of the Supreme Court and the Plenum of the Supreme Commercial Court, the courts highlighted that while the post-*Burdov 2* legislative scheme only guaranteed compensation for non-enforcement of judgments against the State, nothing precluded lawsuits from being brought in other disputes concerning the non-enforcement of judgments under Articles 151 and 1069 of the Civil Code.

31. Information Letter no. 145 of the Presidium of the Supreme Commercial Court of 31 May 2011 in particular mentioned the following points:

(a) Where the unlawfulness of an action (or inaction) has been previously established by a court, then in compensation proceedings this conclusion may not be re-examined and will stand on *res judicata* grounds.

(b) There is nothing to prevent a court from considering a compensation claim if no previous judicial decision has established the unlawfulness of an action (or inaction), because this issue may well be considered in compensation proceedings.

(c) The burden of proof regarding the unlawfulness of an action (or inaction) lies with the plaintiff, while the burden of proof regarding the reasonableness of an action (or inaction) lies with the defendant.

(d) Where enforcement of a judgment is prevented by the actions (or inaction) of the bailiffs, compensation will have to be recovered, but should be limited to the amount that would have been recoverable in enforcement proceedings unhindered by the bailiffs.

COMPLAINTS

32. The applicant complained under Article 6 of the Convention that the national authorities had failed to assist him in enforcing a judgment against a private party and that he had been deprived of the access to court in a dispute concerning compensation for a judge's refusal to order an interim measure in civil proceedings. Furthermore, the applicant submitted a number of accessory complaints under Articles 6 and 13 of the Convention.

THE LAW

A. Alleged failure of the State to assist the applicant in enforcing a judgment against a private party

33. The applicant complained under Article 6 of the Convention that the final and binding summary judgment in his favour issued by the Sverdlovskiy District Court of Perm on 19 December 2002 (see paragraph 9 above) had not been enforced by the Bailiffs' Service. The relevant part of Article 6 of the Convention provides as follows:

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

1. The parties' submissions

34. The Government conceded in their submissions that there had been certain defects in the bailiff's actions, as established by the judgment of the Sverdlovskiy District Court on 10 November 2004 (see paragraph 13 above). In their opinion, notwithstanding these irregularities, the applicant himself had failed to collaborate with the authorities in the enforcement of

the judgment in his favour. They further argued that, in any event, under Article 35 § 1 of the Convention the applicant's complaint was inadmissible for non-exhaustion of available and effective domestic remedies, since he had failed to pursue a civil action for the alleged damage caused by the unlawful actions and inaction of the Bailiffs' Service under Article 1069 of the Civil Code. In support of their arguments they cited the judgment in *Kunashko v. Russia* (no. 36337/03, § 47, 17 December 2009) where this remedy had been considered by the Court to have been duly exhausted, provided examples from the practice of Russian courts of general jurisdiction and commercial courts, and referred to the authoritative guidelines issued by the highest courts on the application of the relevant statutory provisions.

35. The applicant stated in his submissions to the Court that the enforcement proceedings had been tainted by the bailiff's inaction or significant delays, preventing him from obtaining the award, and that the conduct of the authorities had barred any prospect of enforcement. In reply to the Government's plea of non-exhaustion the applicant alleged that the courts of general jurisdiction were unable to provide any remedy to individuals, unlike the commercial courts with regard to legal entities.

2. The Court's assessment

(a) General considerations

36. The Court reiterates at the outset that execution of a final and binding judicial decision given by a court is regarded as an integral part of the trial within the meaning of Article 6 § 1 of the Convention, otherwise the right of access to court would be illusory and situations incompatible with the principle of the rule of law would arise (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II). However, the right to a court, including the enforcement phase of a relevant court decision, is not absolute and may be subject to legitimate restrictions (see *Ashingdane v. the United Kingdom*, 28 May 1985, § 57, Series A no. 93).

37. In situations where the party liable to pay is a State, the constant approach of the Court is that the judicial award should be enforced fully, virtually unconditionally, and without any unjustified delay (see *Burdov v. Russia*, no. 59498/00, § 35, ECHR 2002-III). In contrast to a weighty obligation of a High Contracting Party to comply expediently with the judgments against it, within the domain of enforcement of a final and binding judicial decision against a private party a State's obligations are limited to providing a creditor with the necessary legal assistance and ensuring the effective operation of the procedure (see *Fuklev v. Ukraine*, no. 71186/01, § 84, 7 June 2005; *Anokhin v. Russia* (dec.), no. 25867/02, 31 May 2007; and *Kunashko*, cited above, § 38). In various instances the Court has previously noted that such legal assistance must be adequate,

sufficient, and diligent, and that it should form part of the legal arsenal (*l'arsenal juridique*) available to an individual (see *Dachar v. France* (dec.), no. 42338/98, 10 October 2000; *Fociac v. Romania*, no. 2577/02, § 69, 3 February 2005; and *Fuklev*, cited above, § 84).

38. In considering the parties' submissions, the Court is mindful that the principle that an applicant must first make use of the remedies provided by the national legal system before applying to an international court is an important aspect of the machinery of protection established by the Convention. The European Court of Human Rights is intended to be subsidiary to the national systems safeguarding human rights and, where an application is nevertheless brought before it, it should have the benefit of the views of the national courts, which are in direct and continuous contact with the forces of their countries (see *Burden v. the United Kingdom* [GC], no. 13378/05, § 42, ECHR 2008).

39. The rule of exhaustion of domestic remedies is an indispensable part of the functioning of the protection system under the Convention and one of its basic principles (see *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04 and 21819/04, §§ 69 and 97, ECHR 2010). However, it is well established that such remedies must be available and effective, that is, existing not only in theory but also in practice, capable of providing redress in respect of the complaints and offering reasonable prospects of success (see *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II; *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 71, 17 September 2009; and *Paksas v. Lithuania* [GC], no. 34932/04, § 75, ECHR 2011 (extracts)).

40. In the present case, the Court must examine the plea of inadmissibility raised by the Government and decide whether or not the applicant exhausted the available and effective domestic remedies.

(b) Availability and effectiveness of a remedy

41. The Court reiterates that the only remedies which Article 35 § 1 requires to be exhausted are those that relate to the breach alleged and are available and effective; it falls to the respondent State to establish that these conditions are satisfied (see *McFarlane v. Ireland* [GC], no. 31333/06, § 107, 10 September 2010, with further references).

42. In their submissions the Government stated that, in cases involving an alleged failure of the national authorities to assist an individual in enforcing a judgment against a private party, a civil action for damages under Article 1069 of the Civil Code (the "Article 1069 remedy") is both an available and an effective remedy. Accordingly, the Court will examine whether this domestic remedy indicated by the Government satisfies the various criteria of availability and effectiveness previously identified in the case-law on such matters.

43. The Court notes at the outset that at the material time the applicant himself apparently regarded the Article 1069 remedy as available and effective in his case. In 2007 he attempted to initiate the relevant civil proceedings against the Treasury of the Russian Federation and the regional Bailiffs' Service, but failed to comply with the reasonable procedural requirements of the domestic law by failing to formulate his claims against all of the defendants and to provide their postal addresses. Nothing in the parties' submissions indicates that the applicant corrected these defects or attempted to do so, despite being given the opportunity by the domestic courts (see paragraph 16 above), and he therefore failed to discharge his duty to test the extent of protection afforded by the domestic legal system (see *A, B and C v. Ireland* [GC], no. 25579/05, § 142, ECHR 2010). The Court is of the opinion that the absence of any result in these proceedings may not be construed as demonstrating a lack of either availability or effectiveness in respect of this remedy.

44. Having regard to the parties' submissions and the documents in the case file, the Court is satisfied that the domestic remedy advanced by the Government has a clear basis in domestic law and is sufficiently certain in law and practice (see, by contrast, *Vernillo v. France*, 20 February 1991, §§ 26-27, Series A no. 198, and *Sürmeli v. Germany* [GC], no. 75529/01, §§ 110-112, ECHR 2006-VII). Article 1069 of the Civil Code is the clear basis for the remedy advanced by the Government. Its provisions stipulate with sufficient certainty the scope of the right to compensation (damage caused by actions, inaction or legal acts of State authorities and their officials), the appropriate redress (compensation for damage), the grounds for obtaining the redress (unlawfulness of acts, actions or inaction), and the State institutions responsible for payment (the federal, regional or local treasury). Moreover, the general provisions on damage in paragraph 1 of Article 1064 of the Civil Code specify that the relevant damage must be compensated for in full. Taken together, paragraph 2 of Article 1064 and Article 1069 of the Civil Code also indicate the distribution of the burden of proof: the unlawfulness of actions (or inaction) is to be proved by a plaintiff and the absence of fault by a defendant.

45. The Court finds that the Article 1069 remedy is capable of providing redress in respect of the relevant complaints and in the light of the existing domestic case-law this remedy is capable of offering reasonable prospects of success (see *Scoppola*, cited above, § 71).

46. Turning to the effectiveness of the remedy, the Court notes that in their submissions the Government provided a list of relevant examples from national case-law of individuals and legal persons who had had recourse to the Article 1069 remedy in the domestic courts of general jurisdiction and the commercial courts. The applicant, in his submissions, disagreed with the existence of such practice without providing any evidence to the contrary. Accordingly, the Court concludes that the Government's position is sufficiently supported by the relevant practice at national level (see, *mutatis*

mutandis, *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 43-44, 2 November 2010, and *Johtti Sapmelaccat Ry and Others v. Finland* (dec.), no. 42969/98, 18 January 2005).

47. The Court further considers that the availability and effectiveness of the Article 1069 remedy is further supported by the authoritative interpretations of the relevant statutory provisions given by the Constitutional Court and the guidelines issued by the highest courts in the Russian court system. These interpretations and guidelines referred to by the Government and cited above (see paragraphs 25 and 28-31 above) prove the existence of an extensive domestic legal practice as regards compensation for damage caused by the unlawful actions and inaction of State authorities and their officials.

48. Having regard to the considerations above, the Court concludes that the Government, in raising a plea of non-exhaustion, proved the existence of an available and effective domestic remedy (a civil action for damages under Article 1069 of the Civil Code) in respect of an alleged failure of the national authorities to assist the applicant in enforcing a judgment against a private party.

(c) Whether the applicant used the available and effective domestic remedy

49. The Court must now examine whether or not the applicant used the available and effective domestic remedy indicated by the Government.

50. As has been established above, the applicant attempted to have recourse to the Article 1069 remedy and to obtain monetary compensation for damage at national level (see paragraph 43 above). However, for unspecified reasons he decided not to pursue those proceedings after the domestic courts requested that he correct certain procedural defects of his complaint. In his submissions to the Court the applicant, without providing any evidence to support his allegations, stated that he would have had no prospects of success in such proceedings. This argument does not appear convincing, since it has been a consistent approach of this Court that the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust domestic remedies (see, as a recent authority, *Valcheva and Abrashev v. Bulgaria* (dec.), nos. 6194/11 and 34887/11, § 91, 18 June 2013 with further references). Furthermore, there is nothing in the applicant's submissions to the Court to indicate that there had been any obstacles in the legislative framework or specific circumstances in the case to prevent him from correcting the defects identified by the domestic courts and further pursuing his claims. Accordingly, the Court concludes that the applicant did not have recourse to the available and effective remedy under Article 1069 of the Civil Code.

51. The Court further finds it relevant that the declaratory remedy to which the applicant had successful recourse in the present case, namely

recognition of the bailiff's inaction as unlawful by the Sverdlovskiy District Court on 10 November 2004 (see paragraph 13 above), may not be considered as parallel or alternative to the Article 1069 compensatory remedy. In accordance with long-established principles, an applicant may not be expected to avail himself of more than one legal avenue if the use of another remedy has essentially the same purpose (see *Kozacıoğlu v. Turkey* [GC], no. 2334/03, §§ 40 *et seq*., 19 February 2009, and *Karakó v. Hungary*, no. 39311/05, § 14, 28 April 2009). However, in the present case, the purposes of the two types of civil proceedings were distinctly different – declaratory and monetary relief, respectively. Should the applicant have been denied declaratory relief, his chances of obtaining monetary compensation would have been greatly diminished, but in the present case the District Court's ruling recognising the unlawfulness of the bailiff's inaction provided him, on the contrary, with solid *res judicata* grounds for an Article 1069 claim (see paragraph 13 above).

52. Having regard to the considerations above, the Court finds that the applicant failed to exhaust the available and effective domestic remedies in respect of his complaint under Article 6 of the Convention concerning the alleged failure of the national authorities to assist him in enforcing a judgment against a private party. Therefore the complaint must be declared inadmissible under Article 35 § 1 of the Convention.

B. Alleged denial of access to a court

53. The applicant complained under Article 6 § 1 of the Convention that he had been denied access to a court, because the domestic courts had refused to examine his claim for compensation for the alleged damage caused by a refusal of a judge to order interim measures to secure enforcement of a judgment. The ground for the domestic courts' refusal to consider the action was a lack of legal basis. The relevant parts of Article 6 § 1 have been cited above.

54. The Court reiterates, in that connection, that Article 6 § 1 extends to "*contestations*" (disputes) over "civil rights" which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether they are also protected under the Convention (see *Boulois v. Luxembourg* [GC], no. 37575/04, §§ 90-92, ECHR 2012, and *Enea v. Italy* [GC], no. 74912/01, § 103, ECHR 2009). While the term "dispute" should not be construed too technically and should be given "a substantive rather than a formal meaning" (see *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, § 45, Series A no. 43) any such "dispute" must be genuine and of a serious nature (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 81, Series A no. 52). Furthermore "a tenuous connection or remote consequences" are not sufficient to bring it within the

scope of Article 6 (see *Le Compte, Van Leuven and De Meyere*, cited above, § 47).

55. In the present case, the Court does not find itself able to follow the applicant's position, since the civil action in question fails to meet the above-mentioned Convention standards for the following reasons.

56. It is evident from the provisions of the Civil Code and the Code of Civil Procedure (see paragraphs 18-24 above) that the Russian legal system provides a legal basis for seeking compensation for damage caused to an individual by the unlawful actions or inaction of national authorities and their officials, including courts and judges. This inference is further supported by the authoritative constitutional interpretation of the provisions relating to compensation for the unlawful actions and inaction of judges and courts given by the Constitutional Court (see paragraph 27 above). Accordingly it must be concluded that there are solid arguable grounds for recognition of the civil right to obtain damages for the unlawful actions of the national authorities.

57. At the same time, nothing in the material available to the Court or the submissions of the parties indicates the existence of a comparable right to obtain damages for the lawful actions of judges and courts. Furthermore, paragraph 3 of Article 1064 of the Civil Code clearly states that damage caused by lawful actions is compensated for only where prescribed by law and the applicant did not refer in his submissions to any such legal provision.

58. In the present case, there is nothing to demonstrate that the judge's refusal to order the interim measures desired by the applicant (see paragraphs 6 and 7 above) was *ultra vires* or otherwise unlawful. On the contrary, the refusal can be seen as a reasonable exercise of judicial discretion inherent in the administration of justice and compliant with the relevant provisions of domestic law (see paragraph 21 above). Accordingly, it must be concluded that the dispute in question did not concern a "civil right" recognised under domestic law.

59. The Court further finds the current approach of Russian law to be compatible with the spirit of Article 6 of the Convention requirement of an independent and impartial tribunal. Judicial independence does not imply immunity from responsibility for misconduct, but does require the freedom of a judge to decide according to his or her best knowledge, convictions, and reasonable considerations, without fear of sanctions. The possibility of a civil damages lawsuit following a lawful and reasonable ruling on an interim measure would inevitably curb the discretion necessarily afforded to a judge. The regular avenues of appeal against rulings on interim measures should normally constitute an appropriate remedy for a party to the proceedings. In this regard the Court notes that the applicant failed to lodge any such appeal (see paragraph 16 above), even though the Russian procedural legislation provided him with an opportunity to do so (see paragraph 21 above).

60. In the Court's opinion, the applicant's civil action against the Judicial Department was nothing more than an attempt to bypass the ordinary enforcement procedure and to effectively compel the State to assume responsibility for the debt of a private party. The applicant's evident intention in those proceedings was to recover the award made to him by the court; however, he chose to seek enforcement not from the debtor who failed to make payment, but from a judge who had considered it unreasonable to impose restrictions before the final determination of civil rights. Thus it must be concluded that the civil action had merely a tenuous connection to the substantively desired outcome and consequently may not be considered as a genuine dispute of a serious nature (see paragraph 54 above).

61. The Court concludes that the applicant's civil action seeking compensation for damage allegedly caused by a lawful refusal of a judge to order interim measures does not satisfy the Convention standards for a genuine dispute of a serious nature over civil rights. Accordingly the complaint about denial of access to a court in those proceedings is incompatible *ratione materiae* with the provisions of Article 6 of the Convention and must be declared inadmissible under Article 35 § 3 (a) of the Convention.

C. Other complaints

62. Lastly, the applicant complained under Articles 6 and 13 of the Convention about the authorities' refusal to institute criminal proceedings against the debtor and the lack of domestic remedies in respect of his complaints. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that this complaint does not disclose any violation of the provisions invoked. Therefore it must be rejected in accordance with Article 35 § 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President