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

SECOND SECTION

CASE OF AMAT-G LTD AND MEBAGHISHVILI v. GEORGIA

(Application no. 2507/03)

JUDGMENT

STRASBOURG

27 September 2005

FINAL

15/02/2006

In the case of Amat-G Ltd and Mebaghishvili v. Georgia,

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

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr R. TÜRMEN,
Mr K. JUNGWIERT,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 6 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 2507/03) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a limited liability company, Amat-G ("the applicant company"), and Mr Vazha Mebaghishvili, a Georgian national ("the second applicant"), on 10 December 2002.

2. The applicants were represented before the Court by Mr A. Kbilashvili, a lawyer practising in Tbilisi. The Georgian Government ("the Government") were represented by Ms T. Burjaliani, succeeded by Ms E. Gureshidze, the General Representative of the Georgian Government before the Court.

3. On 28 April 2004 the Court decided to communicate the applicants' complaints under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 to the Government. On the same date, the Court decided to apply Article 29 § 3 of the Convention and to examine the merits of the complaint at the same time as its admissibility.

4. The applicants and the Government each filed observations on the admissibility and merits (Rule 54A of the Rules of Court).

THE FACTS

5. The first applicant, a limited liability company, was incorporated on 6 September 1995 by a decision of the Didube District Court of Tbilisi, Georgia. The second applicant was born in 1960 and lives in Tbilisi.

I. THE CIRCUMSTANCES OF THE CASE

6. In 1995 the Amat Shipping Company Limited and the second applicant founded a limited liability company called Amat-G, the applicant company, in Georgia. The second applicant was appointed general manager of that company.

7. Amat-G imported fish products from African countries to Georgia. In the years 1996-98, the company paid more than 1,000,000 United States dollars (USD) (approximately 970,874 euros (EUR)[1]) to the State budget in taxes and was considered by the State Tax Department to be a "large tax payer".

8. In 1998-99 Amat-G supplied the Georgian Ministry of Defence with various types of fish products at different prices.

9. However, the Ministry of Defence paid only part of the amount due to Amat-G.

10. On 29 October 1999 the applicants brought civil proceedings against the Ministry of Defence in the Tbilisi Regional Court for breach of contract and consequential damage, claiming a total of 662,526 Georgian laris (GEL) (EUR 296,771).

11. In a judgment of 6 December 1999, the Panel for Civil and Commercial Affairs of the Tbilisi Regional Court partly allowed the action of the applicant company, ordering the Ministry of Defence to pay the company compensation of GEL 254,188 (EUR 113,860).

12. The judgment was never challenged and became binding on 6 January 2000.

13. On 22 March 2000 the applicants appealed to the execution department of the Ministry of Justice, requesting the immediate enforcement of the judgment.

14. On 23 March 2000 the enforcement officer of the execution department ordered the Ministry of Defence to pay the applicant company, voluntarily, within one month.

15. Upon the expiry of that period, the enforcement officer initiated the forcible execution procedure against the Ministry of Defence. He sent the centre of expertise of the Ministry of Justice a list of non-military buildings that could be put up for sale by tender in order to discharge the debt. However, that was the only step taken and the judgment of 6 December 1999 remained unexecuted.

16. On 10 July 2000 the Ministry of Defence appealed to the Tbilisi Regional Court, seeking a stay of execution of the judgment of 6 December 1999, in accordance with the provisions of Article 263 of the Code of Civil Procedure. However, the Regional Court dismissed the ministry's request on 3 August 2000, concluding that "postponement of the enforcement would

1. All conversions to euros are based on the exchange rate on 6 June 2005.

negatively affect the applicant company's interests and violate the principle of an equitable and adversarial hearing". The ministry was consequently obliged to enforce the judgment without delay, yet it still failed to pay the debt.

17. During the same period, Amat-G signed a contract with the Amat Shipping Company Corporation on 19 January 2000 for the lease of a ship at a monthly rate of USD 45,000 (EUR 43,689).

18. On 20 January 2000 Amat-G contacted the Ministry of Defence, explaining that the money owed to it by the ministry was the only means which the applicant company had to pay for the lease of the ship. The applicant company waited eight months in vain to obtain payment of the debt from the Ministry of Defence. Meanwhile, the bill for the lease of the ship had risen to USD 511,200 (EUR 496,311). Amat-G also claimed that it had lost USD 1,344,421 (EUR 1,305,263) in business profits as a result of the ministry's failure to pay the debt on time. In addition, the applicant company faced a tax bill of GEL 41,213 (EUR 18,460).

19. For these reasons, in September 2001 Amat-G brought an action before the Panel of Administrative Law and Taxation Affairs of the Tbilisi Regional Court against the Ministries of Defence, Justice and Finance, in order to hold them collectively responsible for the harm caused by the non-execution of the judgment of 6 December 1999, in accordance with Article 411 of the Civil Code. The company claimed damages of USD 1,855,621 (EUR 1,801,574) and GEL 41,213 (EUR 18,460).

20. The Regional Court dismissed the claim on 20 February 2002 on the basis of the provisions of Article 412 of the Civil Code.

21. On 10 July 2002 the Supreme Court of Georgia dismissed the applicant company's appeal against the Regional Court's decision of 20 February 2002.

22. The judgment debt of 6 December 1999 has still not been paid, some five and a half years later.

II. RELEVANT DOMESTIC LAW

A. The Code of Civil Procedure

23. Article 263 §§ 1 and 3 ("Stay of execution or order for partial execution of a judicial decision") provides as follows:

> "1. A court of law, after giving a decision, may order a stay of its execution or its partial execution at the parties' request, taking into account their financial situation and other circumstances ...

...

3. The stay of execution or order for partial execution ... may be challenged in a court of law ...”

B. The Civil Code

24. The relevant provisions of the Civil Code are as follows:

Article 411 – Compensation for loss of income

“Damage shall be compensated not only in respect of actual financial loss, but also in respect of loss of income. Loss of income represents the amount which could have been obtained had the contractual obligations been properly fulfilled.”

Article 412 – Type of damage for which compensation is due

“Compensation shall be paid only when the damage could have been foreseen by the party in default and when there exists a causal link between its harmful action and the outcome in issue.”

C. The Criminal Code

25. Article 381 of the Criminal Code provides:

“The non-execution of a binding judgment or other judicial decision, or the obstruction of its execution by the State, government or local-government officials or by executives of a corporation or other organisation [shall be punished] ...”

D. The Enforcement Proceedings Act of 16 April 1999 (in force at the material time)

26. The relevant provisions of the Enforcement Proceedings Act are as follows:

Section 5(1)

“Enforcement officers at executive bureaux [of the Ministry of Justice] shall be responsible for the execution of the decisions provided for hereunder.”

Section 17(1) and (5)

"Requests by enforcement officers in the course of their duties shall be equally binding on any natural or legal person, irrespective of their hierarchical or juridical and structural status.

Enforcement officers shall take all lawful measures available in order to secure the speedy and effective enforcement of decisions, to explain to parties their rights and responsibilities, and to assist in the protection of their rights and legal interests."

Section 92(1) (as amended on 12 May 2000)

"... three months after the proposal to comply voluntarily with a judicial decision obliging budget-funded organisations to disburse money, forcible measures may be undertaken against them ..."

E. Governmental Ordinance (*mtavrobis gankarguleba*) no. 62 of 2 July 2004 on the payment of sums owed by budget-funded organisations pursuant to court decisions

27. By adopting this ordinance, the government introduced a mechanism for the staggered payment of outstanding debts. Under paragraph 2, the Ministry of Justice was ordered to give priority to the enforcement of court decisions concerning: (i) the payment of compensation for damage caused by injury or death; (ii) the payment of not more than three months' salary to workers; and (iii) the payment of compensation to rehabilitated people. At the same time, the Ministry of Justice was instructed to ensure the proportionate payment of other creditors, but only after the enforcement of the above-mentioned decisions.

Under paragraph 3 of the ordinance, the debtor budget-funded organisations and institutions, in agreement with the Ministry of Justice, have either to secure friendly settlements with their creditors, or to stagger, in accordance with Georgian legislation, the enforcement of judgments over a period of time, since, due to the scarcity of funds, the simultaneous payment of judgment debts is not feasible.

F. The Law on the structure, authority and functioning of the Georgian government (adopted on 11 February 2004)

28. The relevant provisions of the Law on the structure, authority and functioning of the Georgian government are as follows:

Section 1

"The government of Georgia (hereinafter 'the government'), shall exercise executive power ... in accordance with the laws of the country."

Section 6(1) and (3)

"The government shall adopt decrees and ordinances under and for the implementation of the laws of Georgia and presidential normative acts.

A governmental decree is a normative act. The procedures for its preparation, adoption, issue and entry into force are defined by the Law on normative acts."

G. The Law on normative acts of 29 October 1996

29. Pursuant to sections 2(2) and 4(1), as amended on 24 June 2004, while a legal act can be either "normative" or "individual", a governmental ordinance (*mtavrobis gankarguleba*) is an "individual" legal act. A "normative" act prescribes a general rule of conduct for permanent or temporary and recurrent applications (section 2(3)). Pursuant to section 2(4), an individual legal act is valid for one specific purpose and must conform to a normative act. The individual legal act can only be issued on the grounds envisaged by a normative act and within the limits prescribed by the latter. Its scope and force are comparable to an administrative directive.

According to section 5, as amended on 17 February and 24 June 2004, the legislative acts of Georgia are as follows: the Constitution of Georgia, the constitutional law, the organic law, statutes, rules of parliament and presidential decrees. Only two categories of legal act constitute Georgian secondary legislation: decrees (*dadgenileba*) and orders (*brzaneba*, *brzanebuleba*) issued by various authorities. Governmental ordinances are thereby excluded.

Under section 13-1, incorporated into the Law on normative acts on 24 June 2004, decrees are the only normative acts of the government of Georgia. They are adopted under the Constitution, statutes or normative acts of the President of Georgia, for the purpose of implementing legislation.

H. The Companies Act of 28 October 1994

30. Section 9(4) of the Companies Act provides:

"... [In a limited liability company] ... directors represent the company in its relations with third parties ..."

THE LAW

31. The applicants complained of the failure of the State authorities to execute the judicial decision of 6 December 1999 delivered in favour of the applicant company. They alleged that there had been a violation of Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1, the relevant parts of which read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Article 1 of Protocol No. 1

"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 ..."

I. ADMISSIBILITY

A. The second applicant

32. The Court reiterates that the term "victim" used in Article 34 of the Convention denotes the person directly affected by the act or omission in issue (see, among other authorities, *Vatan v. Russia*, no. 47978/99, § 48, 7 October 2004).

33. In the present case, Amat-G, a limited liability company, entered into a contractual relationship with the Georgian Ministry of Defence. It acted through the second applicant, its general manager, who represented the company in its relations with third parties and in the domestic courts. The judgment of 6 December 1999 was delivered in favour of the applicant company, not the second applicant (see paragraph 11 above). Consequently,

the non-enforcement of that judgment has only directly affected the interests of the applicant company. Moreover, the second applicant did not complain of a violation of the rights vested in him as the general manager of the applicant company (contrast *Agrotexim and Others v. Greece*, judgment of 24 October 1995, Series A no. 330-A, pp. 23-26, §§ 62-72). His complaint is based exclusively on the non-enforcement of the judgment given in favour of "his" company. Moreover, there is nothing in the file to suggest that the second applicant may claim to be an indirect victim of the alleged violation of the Convention affecting the rights of the limited liability company (contrast *G.J. v. Luxembourg*, no. 21156/93, § 24, 26 October 2000, and *Vatan*, cited above, §§ 49-50).

34. In these circumstances, the Court considers that the application, in so far as it concerns the second applicant, is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3, and must be rejected in accordance with Article 35 § 4.

B. The applicant company

1. Complaint under Article 6 § 1 concerning the judicial proceedings of 2002

35. As regards the second set of judicial proceedings terminated by the decision of 10 July 2002, the applicant company contested the findings of the domestic courts. It alleged a violation of its right to a fair hearing under Article 6 § 1 of the Convention.

36. The Court reiterates that, under Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties under the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a domestic court, unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *Poleshchuk v. Russia*, no. 60776/00, § 36, 7 October 2004).

The Court finds that there is nothing to indicate that the domestic courts' assessment of the facts and evidence presented in the case was contrary to Article 6 of the Convention. The Court has not found any reason to consider that the proceedings did not comply with the fairness requirement of Article 6 § 1. The complaint is, consequently, manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

2. Complaint under Article 6 § 1 as to non-enforcement

37. The Government contended that the applicant company had not exhausted domestic remedies as it had not brought criminal proceedings against the enforcement officer for his alleged inactivity (Article 381 of the

Criminal Code). The Government maintained that there were no irregularities in the way the enforcement officer had conducted the execution proceedings.

38. The applicant company did not reply to the Government's observations on this point.

39. The Court notes that the enforcement officer, who is a State officer in charge of the execution of judicial decisions, took certain measures to ensure the execution of the judgment of 6 December 1999. However, in the present case the debtor is a State body and the enforcement of a judicial decision against it depends on the allocation of provisions from the State budget (see paragraph 27 above). Consequently, the enforcement of the judgment of 6 December 1999 was contingent upon appropriate budgetary measures rather than on the enforcement officer's conduct (see *Romashov v. Ukraine*, no. 67534/01, § 31, 27 July 2004). The applicant company cannot therefore be reproached for not having brought criminal proceedings against him (see *Shestakov v. Russia* (dec.), no. 48757/99, 18 June 2002), and it has therefore complied with the requirements of Article 35 § 1 of the Convention.

40. Accordingly, the Court dismisses the Government's objection. The applicant company's complaint under Article 6 § 1 of the Convention must therefore be declared admissible.

3. Complaints under Article 13 of the Convention and Article 1 of Protocol No. 1

41. The Court notes at the outset that Protocol No. 1 came into force with respect to Georgia on 7 June 2002. The applicant company's complaint under Article 1 of that Protocol, in so far as it concerns the period before 7 June 2002, therefore falls outside the Court's jurisdiction *ratione temporis* (see, among other authorities, *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 56, ECHR 2002-VII).

42. The Court refers to its reasoning in paragraphs 39-40 above, which is equally pertinent to the applicant company's complaint under Article 13 of the Convention and the remainder of its complaint under Article 1 of Protocol No. 1. The Court finds, therefore, that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

4. Complaint under Article 17 of the Convention

43. The applicant company did not provide any argument in support of its complaint under Article 17 of the Convention.

44. Having examined all the particulars of the case, the Court finds that the application does not reveal any appearance of a violation of that

provision and that the complaint must therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

II. MERITS

A. Alleged violation of Article 6 § 1 of the Convention as to the non-enforcement of the judgment

45. The applicant company complained, under Article 6 § 1 of the Convention, of the State authorities' failure to execute the judgment of 6 December 1999.

46. The Government replied that there had been no violation of Article 6 § 1 of the Convention in view of the grave socio-economic situation of the country. Given the limited budgetary resources, the Government alleged that it had been impossible to pay the total amount of the State's debt of GEL 47,000,000 (EUR 20,956,397.32) as required by different judicial decisions throughout the country. They acknowledged that, in the present case, there had been a stay of the execution of the judgment of 6 December 1999. However, in the Government's opinion, that measure had been "strictly necessary to enable a satisfactory solution to be found to public order problems", those problems having already been addressed through the governmental ordinance of 2 July 2004.

47. The Court reiterates that the right to a fair hearing includes the right to have a binding judicial decision enforced. That right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. The execution of a judgment given by any court must be regarded as an integral part of the "trial" for the purposes of Article 6 (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, pp. 510-11, § 40).

48. The Court also reiterates that it is not open to a State authority to cite a lack of funds as an excuse for not honouring a judgment debt (see *Popov v. Moldova (no. 1)*, no. 74153/01, § 54, 18 January 2005, and *Shmalko v. Ukraine*, no. 60750/00, § 44, 20 July 2004). Admittedly, a delay in the execution of a judgment may be justified in particular circumstances. However, the delay may not be such as to impair the essence of the right protected under Article 6 § 1 (see *Prodan v. Moldova*, no. 49806/99, § 53, ECHR 2004-III).

The Court finds that Ordinance no. 62 concerning the payment of such State debts (see paragraph 27 above) cannot be taken as a particular circumstance which could justify the delay of well over five years which has already occurred in the present case (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, §§ 69-74, ECHR 1999-V). Consequently, it considers that the

applicant company should not have been prevented from benefiting from the decision given in its favour, which was of vital importance for its functioning, on the ground of the State's financial difficulties.

49. By failing for five years and eight months to ensure the execution of the binding judgment of 6 December 1999, the Georgian authorities have deprived the provisions of Article 6 § 1 of the Convention of all useful effect.

50. There has accordingly been a violation of Article 6 § 1 of the Convention.

B. Alleged violation of Article 13 of the Convention

51. The applicant company complained of a violation of Article 13 of the Convention, claiming that it had no effective remedy for its Convention claims.

52. The Government maintained that the applicant company had at its disposal effective criminal-law remedies to challenge the non-enforcement of the court judgment given in its favour. The Government referred, in this regard, to their earlier arguments on the exhaustion of domestic remedies (see paragraph 37 above).

53. However, the Court refers to its findings on this point (see paragraphs 39-40 above). For the same reasons, it concludes that the applicant company did not have an effective domestic remedy, as required by Article 13 of the Convention, to redress the damage created by the delay in the proceedings in issue (see *Voytenko v. Ukraine*, no. 18966/02, §§ 46-48, 29 June 2004).

54. Accordingly, there has been a breach of this provision.

C. Alleged violation of Article 1 of Protocol No. 1

55. The applicant company submitted that the non-payment of the judgment debt had deprived it of its property, in violation of Article 1 of Protocol No. 1.

56. The Government accepted that the amount awarded to the applicant company by the domestic courts constituted a possession within the meaning of Article 1 of Protocol No. 1, and that there had been interference with its right of property on account of the non-enforcement. Nevertheless, they maintained that the provision had not been breached since the interference was reasonably justified and pursued a legitimate aim in the general interest.

The Government submitted that, given the scarcity of funds in the State budget, Ordinance no. 62 of 2 July 2004 had been adopted in order to introduce a plan for the staggered enforcement of court decisions, taking into consideration the needs of society and the public interest. The

Government maintained that the ordinance was a "legislative measure" which pursued a legitimate aim and was not disproportionate to that aim.

57. The applicant company did not comment on the Government's submissions.

58. The Court reiterates that the essential object of Article 1 of Protocol No. 1 is to protect a person against unjustified interference by the State with the peaceful enjoyment of his or her possessions (see *Broniowski v. Poland* [GC], no. 31443/96, § 143, ECHR 2004-V). In accordance with the Court's case-law, the inability of an applicant to obtain the execution of a judgment in his or her favour constitutes an interference with the right to the peaceful enjoyment of his or her possessions, as secured in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, among other authorities, *Bakalov v. Ukraine*, no. 14201/02, § 39, 30 November 2004).

In the present case, it is not disputed by the Government that the Tbilisi Regional Court's judgment of 6 December 1999 provided the applicant company with an established, enforceable claim which constituted a "possession" within the meaning of Article 1 of Protocol No. 1 (see *Dimitrios Georgiadis v. Greece*, no. 41209/98, § 31, 28 March 2000, and *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III). The Government also conceded that there had been an interference with the applicant company's property rights. This interference amounts neither to an expropriation nor to a control of the use of property, but comes under the first sentence of the first paragraph of Article 1 (see *Dimitrios Georgiadis*, cited above, § 32).

59. 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: the second sentence of the first paragraph authorises a deprivation of possessions "subject to the conditions provided for by law" (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II). It follows that the issue of whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights becomes relevant only once it has been established that the interference in question satisfied the requirement of lawfulness and was not arbitrary (ibid.).

In the instant case, the Court notes that, before 2 July 2004, the date on which Ordinance no. 62 was adopted, the competent State authorities had been requested to comply with the judgment of 6 December 1999 which had been binding since 6 January 2000. The inability of the applicant company to obtain the execution of that judgment constituted an interference with its right to the peaceful enjoyment of its possessions, within the meaning of the first paragraph of Article 1 of Protocol No. 1. The Government have not advanced any convincing justification for this interference. The Court considers that a lack of budget funds cannot justify such an omission.

60. The Government claimed that, from 2 July 2004 onwards, the interference was lawful following the adoption of Ordinance no. 62 which, in their submission, was a "legislative measure".

61. The Court has consistently held that the terms "law" or "lawful" in the Convention do "not merely refer back to domestic law but also [relate] to the quality of the law, requiring it to be compatible with the rule of law" (see *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, pp. 40-41, § 67).

In the instant case, the Court considers that the adoption of the impugned governmental ordinance amounted to the authorities' second attempt to interfere with the applicant company's right to the peaceful enjoyment of its possession (see, *mutatis mutandis*, *Antonakopoulos, Vortsela and Antonakopoulou v. Greece*, no. 37098/97, § 31, 14 December 1999, and *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, pp. 84-88, §§ 58-75).

Under Georgian legislation, a governmental ordinance does not fall within the category of normative legal acts (those being the Constitution, statutes, decrees and orders) and constitutes an "individual legal act". Such an act is valid for one specific purpose alone and is not intended to prescribe a general rule of conduct for recurrent applications. Neither is an individual legal act a part of legislation, the latter being formed by normative acts of primary or secondary legislation (see paragraphs 28 and 29 above).

The individual act must conform to a normative act and may only be issued on the grounds envisaged by such an act and within the limits prescribed by it (see paragraph 29 above). In the instant case, the Court finds nothing in the Government's submissions to indicate that the postponement of the execution of a binding judicial decision and the staggering of the payment of different judgment debts by way of a governmental ordinance were in accordance with, or prescribed by, a normative act of domestic legislation at the material time.

In any event, it must be recalled that the rule of law, one of the fundamental principles of a democratic society, is inherent in all provisions of the Convention (see *Zvolský and Zvolská v. the Czech Republic*, no. 46129/99, § 65, ECHR 2002-IX) and entails a duty on the part of the State to comply with judicial orders or decisions against it (see *Antonetto v. Italy*, no 15918/89, § 35, 20 July 2000).

Further, the Court notes that the language of the impugned ordinance did not enable the applicant company to foresee the inordinate delay in the payment of the judgment debt, particularly as it did not fall within the three priority categories of creditors. Nor did the ordinance specify when the applicant company would be entitled to receive the payment within the general framework of the ordinance's scheme or what its legitimate expectations would be as regards its rank during "the proportionate payment of other creditors". In the Court's view, the ordinance did not sufficiently

satisfy the requirements of precision and foreseeability implied by the concept of law within the meaning of the Convention (see *Hentrich v. France*, judgment of 22 September 1994, Series A no. 296-A, p. 19, § 42).

62. In view of the above, the Court considers that the interference with the applicant company's right to the peaceful enjoyment of its possession cannot be regarded as based on legal provisions that meet the Convention requirements of lawfulness.

That being so, the Court is not required to determine whether the interference with the applicant company's right to the peaceful enjoyment of its possessions pursued a legitimate aim and, if so, whether a fair balance has been struck between the demands of the general interest of the community, as suggested by the Government, and the protection of the individual's fundamental rights.

63. Accordingly, the Court finds that, since 7 June 2002 (see paragraph 41 above), there has been a violation of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

65. The Court points out that under Rule 60 of the Rules of Court, any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part (see *Romashov*, cited above, § 49).

66. In the instant case, the applicant company submitted its claims for just satisfaction on 27 July 2004 and requested EUR 245,116 in respect of pecuniary damage. EUR 137,685 of this sum corresponded to the principal amount awarded in the judgment of 6 December 1999 (taking inflation into account) and the remainder represented the compound interest payable at the default interest rate of the Georgian National Bank for the period from 6 January 2000 until 21 July 2004. In support of these claims, the applicant company submitted a letter from the National Bank regarding the inflation rate and an auditor's report.

67. As to further pecuniary damage, the applicant company also claimed EUR 1,627,604 for the loss of profits resulting from the non-enforcement of the judgment.

68. The applicant company did not submit any claim for non-pecuniary damage.

69. The Government considered that the applicant company's claims were excessive and unsubstantiated. They also noted that, should the Court find a violation in this case, that in itself would constitute sufficient just satisfaction.

70. As to pecuniary damage, the Court notes that the judgment debt of 6 December 1999 has not yet been discharged. Since the Government have failed to pay the debt for a lengthy period of time and have not indicated that it will be discharged in the foreseeable future, the Court considers that the applicant company has sustained certain pecuniary damage over and above the judgment debt. Having regard to the documents submitted in support of the claim (see paragraph 66 above) and ruling on an equitable basis, the Court awards the applicant company EUR 200,000.

71. However, the Court does not discern any causal link between the violation found and the applicant company's claim for loss of profits, which was not supported by any documentation. Therefore the Court rejects this aspect of the claim in respect of pecuniary damage.

72. As to non-pecuniary damage, the Court likewise makes no award in the absence of a claim from the applicant company.

B. Costs and expenses

73. The applicant company claimed EUR 165,276 for the costs and expenses incurred in proceedings before the domestic courts and this Court.

74. The Government maintained that the claim was unsubstantiated and excessive. They submitted that the applicant company had failed to submit any documents indicating the time spent by the lawyer on the preparation of the case and representation before the domestic courts and this Court. The applicant company had not submitted invoices or any other records from its lawyer to document and justify such high fees.

75. According to the Court's case-law, an applicant is entitled to the reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum (see, among many other authorities, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII).

76. In the present case, regard being had to the information in its possession and the above criteria, the Court considers that the applicant company's claim is excessive. Making its assessment on an equitable basis, the Court awards the applicant company EUR 2,000 for costs and expenses.

C. Default interest

77. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the part of the application concerning Mr Mebaghishvili inadmissible;

2. *Declares* the complaints of Amat-G Ltd under Articles 6 and 13 of the Convention as well as its complaint under Article 1 of Protocol No. 1, in so far as the latter concerns the period after 7 June 2002, admissible and the remainder of its application inadmissible;

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

4. *Holds* that there has been a violation of Article 13 of the Convention;

5. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

6. *Holds*
   (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following sums, to be converted into the currency of the respondent State at the rate applicable on the date of settlement:
      (i) EUR 200,000 (two hundred thousand euros) in respect of pecuniary damage;
      (ii) EUR 2,000 (two thousand euros) for costs and expenses;
      (iii) any tax that may be chargeable on the above amounts;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 27 September 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Mrs Mularoni is annexed to this judgment.

J.-P.C.
S.D.

CONCURRING OPINION OF JUDGE MULARONI

I agree with the conclusion of the majority that there has been a violation of Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1.

However, as to paragraphs 60, 61 and 62 of the judgment, I would make the following observations.

Contrary to the Government's submission, it is clear that a governmental act is not a "legislative measure". It is equally clear that, under Georgian legislation, a governmental ordinance does not fall within the category of normative legal acts, and constitutes an "individual legal act", valid for one specific purpose and not intended to prescribe a general rule of conduct for recurrent applications (see paragraphs 28 and 29 of the judgment).

This suffices for me to conclude that the interference with the applicant company's right to the peaceful enjoyment of its possession as from 2 July 2004 onwards was not "lawful" under the terms of Article 1 of Protocol No. 1.

However, I have some difficulty in sharing the majority's view that the adoption of the impugned governmental ordinance amounted to the authorities' second attempt to interfere with the applicant company's right to the peaceful enjoyment of its possessions. I believe that this case should be distinguished from the judgments in *Stran Greek Refineries and Stratis Andreadis v. Greece* (judgment of 9 December 1994, Series A no. 301-B) and *Antonakopoulos, Vortsela and Antonakopoulou v. Greece*, (no. 37098/97, 14 December 1999) for two important reasons: unlike what happened in those two cases, in the present case the respondent Government never denied the existence of the debt owed to the applicant company, and no attempt was made at the national level to cancel, through legislation, a property right that had been recognised by national courts. Having considered that, due to the scarcity of funds, the simultaneous payment of all judgment debts was not feasible, the Georgian government introduced a mechanism for the staggered payment of outstanding debts, establishing an order of priority as to the enforcement of court decisions (see paragraph 27 of the judgment).

I consider that if an emergency or a deep economic crisis affects a country, and if there are insufficient funds available to pay all judgment debts simultaneously, the introduction by a respondent State of a lawful temporary measure aimed at the gradual payment of all outstanding debts should not simply be disregarded as being unreasonable or "unlawful" just because it would constitute an unacceptable attempt to interfere with an individual's property rights. I accept that in such circumstances the introduction of priorities in the payment of judgment debts could be said to fall within the margin of appreciation of the respondent State, which is, in principle, better placed than an international court to assess which sections

of the population would suffer more as a consequence of belated payments. I have no problem in saying that such an interference may pursue a legitimate aim. The issue to be determined would be whether a fair balance has been struck between the demands of the general interest of the community and the protection of the individual's property rights.

I also have difficulty in sharing the majority's additional reason for finding a violation of Article 1 of Protocol No. 1 on the ground of the "unlawfulness" of the impugned ordinance, namely that it did not enable the applicant company to foresee exactly when it would be entitled to receive the payment due. I observe that several national bankruptcy laws (which, incidentally, do not only apply to private companies in certain countries) could hardly be said to satisfy the requirements of precision and foreseeability regarding the exact time at which creditors should be paid.

Having said that, and although I am aware that when the Court considers that an interference is not "lawful", it does not usually pursue the examination of the case further in order to determine whether a fair balance has been struck between the public interest and the protection of the individual's right to property, I nevertheless wish to add something on that point.

The Court's case-law is very clear in reiterating that it is not open to a State authority to cite a lack of funds as an excuse for not honouring a judgment debt. Admittedly, a delay in the execution of a judgment may be justified in particular circumstances. However, the delay may not be such as to impair the essence of the right protected under Article 6 § 1 of the Convention (see, among many other authorities, *Burdov v. Russia*, no. 59498/00, § 35, ECHR 2002-III, and paragraph 48 of the present judgment). The same principle applies to Article 1 of Protocol No. 1: the delay may not be such as to impair the essence of the right protected by this provision.

Consequently, my conclusion is that, from 2 July 2004 onwards, the interference with the applicant company's right to the peaceful enjoyment of its possessions in the specific circumstances of the case was unlawful. However, I would add that, by failing for over five and a half years to ensure the execution of the binding judgment of 6 December 1999, a fair balance was not struck between the demands of the general interest of the community and the protection of the applicant company's property rights.