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

SECOND SECTION

CASE OF APOSTOL v. GEORGIA

(Application no. 40765/02)

JUDGMENT

STRASBOURG

28 November 2006

FINAL

28/02/2007

In the case of Apostol v. Georgia,

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

Jean-Paul Costa, *President,*
András Baka,
Mindia Ugrekhelidze,
Elisabet Fura-Sandström,
Danutė Jočienė,
Dragoljub Popović,
Ireneu Cabral Barreto, *judges,*
and Stanley Naismith, *Deputy Section Registrar,*

Having deliberated in private on 7 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 40765/02) 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 Georgian national, Mr Leonid Tikhonovich Apostol ("the applicant"), on 25 October 2002.

2. The applicant was granted leave, in accordance with Rule 34 § 3 (a) and Rule 36 § 2 *in fine* of the Rules of Court, to present his own case. The Georgian Government ("the Government") were represented by their Agent, Mr S. Papuashvili of the Ministry of Justice.

3. On 25 August 2005 the Court decided to give notice to the respondent Government of the applicant's complaint under Article 6 § 1 of the Convention concerning the non-enforcement of the judgment of 21 November 2001. On the same date, the Court decided to apply Article 29 § 3 of the Convention and to examine the merits of the application at the same time as its admissibility.

4. The Government filed their observations on the admissibility and merits of the application (Rule 54A). The applicant did not produce any observations in reply. On 4 January 2006, however, he reiterated his intention to pursue the proceedings.

5. On 31 January 2006 the Court decided to proceed with the examination of the application as the case file stood.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1939 and lives in Batumi, Georgia.

A. First set of proceedings

7. The applicant brought a civil action against a private person. On 21 November 2001 the Batumi City Court allowed his claim and ordered the debtor to pay him arrears in the amount of 2,000 United States dollars (1,595 euros (EUR)[1]) plus 100 Georgian laris ((GEL) – EUR 43.75[2]) for the costs and expenses associated with the court proceedings. The judgment was never appealed against and became binding.

8. Since the debtor refused to abide by the judgment, the applicant applied to the Ministry of Justice of the Ajarian Autonomous Republic ("the AAR"), requesting the initiation of enforcement proceedings.

9. In a letter of 27 November 2002, the Ministry informed the applicant that, pursuant to section 26 of the Enforcement Proceedings Act, he was to bear the "preliminary expenses associated with enforcement measures". The letter, however, did not specify which measures were envisaged and what their costs were.

10. Being in receipt of only a monthly pension of GEL 45 (EUR 19[3]) at the material time, the applicant was unable to pay for the initiation of enforcement proceedings. He appealed instead to the Ministry of Internal Affairs and the Prosecutor's Office of the AAR, requesting the initiation of criminal proceedings against the debtor (Article 381 of the Criminal Code) and the enforcement of the judgment, but to no avail. The authorities in question replied that it was beyond their competence to interfere with the judicial process.

11. Three years later, on 20 January 2004, the applicant applied to the Ajarian Council of Ministers (the executive of the AAR). Explaining that, owing to his lack of means, he could not bear the expenses in advance, the applicant expressed his willingness to pay an enforcement fee after receiving the judgment debt.

12. In its reply of 12 March 2004, the Ajarian Ministry of Justice noted that the debtor's whereabouts were unknown. The Ministry reiterated that the non-payment of the preliminary expenses constituted "an impediment to the enforcement of the judgment"; provided that the applicant had covered the necessary expenses in advance, the bailiff would identify the debtor's

1. Exchange rate on 29 June 2006.
2. Idem.
3. Idem.

assets, seize them and put them up for auction. As to the enforcement fee of 7% of the judgment debt, the Ministry stated that this could be paid by the applicant after enforcement (section 113 (1) of the Enforcement Proceedings Act).

13. As a result of the non-payment of the preliminary expenses, the judgment of 21 November 2001 still remains unenforced.

B. Second set of proceedings

14. The applicant was to inherit the apartment of his deceased brother, where relatives of his brother's wife were dwelling. Before establishing his rights as an heir, the court satisfied the applicant's request for interim measures by ordering the appropriate bailiff to attach the impugned apartment and make an inventory of the movable assets inside.

15. After being recognised as the heir, the applicant brought a civil action against the relatives, claiming that they had misappropriated household belongings. After a series of remittals, on 3 September 2002 the Batumi City Court partly satisfied the applicant's claim by ordering the respondents to return some of the belongings thus claimed.

16. According to the case file, the judgment of 3 September 2002 was received by the applicant on 24 September 2002 (the receipt form being written in Georgian, a language not understood by the applicant). However, the applicant contends that he received the judgment on 3 October 2002, along with the relevant receipt form in Russian.

17. On 28 October 2002 the applicant appealed against the judgment, and on 3 December 2002 he paid GEL 50 (EUR 21.88[1]) in court fees. On 15 November 2002, taking into consideration the receipt form of 24 September 2002, the appellate court dismissed the appeal as time-barred. On an unspecified date the court fees were returned to the applicant.

18. The applicant applied to different judicial and administrative authorities, requesting an expert report on the authenticity of the receipt form dated 24 September 2002, but to no avail.

C. Third set of proceedings

19. In the course of divorce proceedings, the Batumi City Court established on 8 June 2001 that the two-room apartment where the applicant and his wife had been residing during their marriage was their common matrimonial property. Following the divorce, the court entitled the applicant's former wife to a room in the disputed apartment. The applicant appealed against this decision, complaining, among other issues, that the case had been examined in his absence. On 16 August 2001 the appellate

1. Exchange rate on 29 June 2006.

court, noting that the applicant's representative had attended the hearing before the City Court, dismissed his appeal. The Supreme Court of Georgia upheld the appellate court's judgment on 1 February 2002.

20. In the course of the enforcement of the decision of 8 June 2001, the applicant's aunt was evicted from the room to which the applicant's former spouse was entitled.

D. Fourth set of proceedings

21. In a decision of 28 October 1998, the Batumi City Court recognised the applicant as a victim of political repression and ordered his judicial rehabilitation. By virtue of a decree of the President of Georgia dated 1 January 1998, rehabilitated citizens of Georgia are entitled to certain welfare benefits. The applicant applied to different administrative authorities, claiming those benefits, but to no avail.

II. RELEVANT DOMESTIC LAW

22. The relevant provisions of the Georgian Constitution read:

Article 42 § 1

"Every person has the right to apply to a court for protection of his or her rights and freedoms."

Article 89 § 1 (f)

"The Constitutional Court of Georgia shall, ... on the basis of a citizen's complaint, examine the compatibility of normative acts with Chapter II of the Constitution."

The Second Chapter, consisting of Articles 12 to 47, lists human rights and freedoms.

23. The Constitutional Court Act of 31 January 1996, as in force at the material time, provides, in so far as relevant:

Section 1

"The Constitutional Court of Georgia (hereinafter the Constitutional Court) is the body of constitutional supervision, which shall guarantee the supremacy of the Constitution of Georgia, constitutional justice, and the protection of the constitutional rights and freedoms of individuals."

Section 19(1)(e)

"On the basis of a constitutional complaint or application, the Constitutional Court shall be competent to examine and decide ... upon the issue of the constitutionality of normative acts with respect to Chapter II of the Constitution."

Section 20

"The declaration of a statute or another normative act as unconstitutional shall not result in the quashing of judicial decisions and judgments already given on the basis of the impugned act. It shall only suspend enforcement proceedings in accordance with procedural legislation."

Section 39(1) (as amended on 12 February 2002)

"The right to lodge a constitutional complaint with the Constitutional Court in order to challenge the constitutionality of a normative act or the provisions thereof ... shall be vested in:

(a) Georgian nationals, other physical persons residing in Georgia and Georgian legal entities, if they consider that their rights as envisaged by Chapter II of the Constitution have been or might be directly breached;

(b) the Public Defender, if the latter considers that there has been a violation of the human rights and freedoms set forth in Chapter II of the Constitution."

24. The Constitutional Proceedings Act of 21 March 1996, as in force at the material time, provides, in so far as relevant:

Section 18(e)

"A constitutional complaint or application shall be deemed inadmissible if:

...

(e) the disputed issue is not governed by the Constitution."

25. The Enforcement Proceedings Act of 16 April 1999 ("the Enforcement Act"), as in force at the material time, reads, in so far as relevant:

Section 5(1): The Enforcement Office

"Bailiffs at enforcement offices [of the Ministry of Justice] shall be responsible for the enforcement of the decisions provided for hereunder."

Section 10(1): Expenses relating to enforcement

"The amount of the expenses relating to enforcement shall be calculated by the bailiff, and may be reviewed during the enforcement process."

Section 11: Enforcement of urgent judgments by bailiffs

"Bailiffs are entitled to use funds allocated from the State budget ... in order to enforce urgent judgments as listed in Article 268 § 1 (a) to (d) of the Code of Civil Procedure ..."

Section 17(1) and (5): The bailiff's rights and obligations

"Requests by bailiffs in the course of their duties shall be equally binding on any natural person or legal entity, irrespective of their hierarchical or legal and administrative status.

Bailiffs shall resort to any 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 26 (as amended on 5 December 2000): Initiation of enforcement proceedings

"Bailiffs shall initiate enforcement proceedings upon receipt of the writ of enforcement and a written application from the creditor. Bailiffs are entitled to refuse to enforce a judgment in the event of non-payment by the creditor of the preliminary expenses provided for by this Act."

Section 38(1): Debtor's liability to cover the expenses

"Expenses relating to enforcement shall be borne by the debtor. They shall be recovered along with the debt."

Section 39(1) and (2): Expenses related to the enforcement proceedings

"Funds may be claimed to cover:

(a) payment ... for services necessarily required for unlocking doors or for unlocking storage facilities;

(b) costs associated with the storage of seized items;

(c) expenses associated with the service of public notices;

(d) expenses resulting from the detention of a debtor;

(e) expenses associated with an auction.

The Minister of Justice of Georgia may provide for other expenses to be paid as well."

26. Pursuant to Order no. 100 § 1 of the Minister of Justice dated 25 November 1999, apart from the items listed in section 39(1) of the Enforcement Act, the costs resulting from (a) bank services, (b) searching the debtor's property, (c) auditing, (d) transportation of movable assets and (e) telephone and postal services are treated as enforcement-related expenses.

Section 113(1) (introduced on 5 December 2000): The enforcement fee

"Prior to the enactment of the Enforcement Fees Act, a fee for the payment of judgment debts shall be introduced and its amount set at 7% of the judgment debt. The creditor shall pay the fee after receiving the debt ..."

27. The Enforcement Fees Act has not been enacted to date.

28. The Georgian Criminal Code provides, in so far as relevant:

Article 381

"The non-enforcement 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 of other organisations [shall be punished] ..."

29. The Georgian Code of Civil Procedure provides:

Article 268 § 1 (a) to (d): Immediately enforceable judgments

"Pursuant to a request by a party, the court may deliver the following types of judgment to be immediately enforced in part or in full:

(a) judgments concerning entitlement to alimony;

(b) judgments concerning entitlement to compensation for damage caused by mutilation or other bodily injury or by the death of a carer;

(c) judgments concerning an employee's entitlement to loss of earnings for no more than three months;

(d) judgments concerning the reinstatement of an unlawfully dismissed person."

III. RELEVANT DOCUMENTS OF THE EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW ("VENICE COMMISSION")

30. A Venice Commission expert's opinion of 19 April 1999 on proposals for amending the Georgian Constitutional Court Act and the Constitutional Proceedings Act contains the following passage:

"It is to be conceded that decisions by the Constitutional Court may contain some vagueness as regards their execution. The Georgian Legislature, in order to cope with this problem, might take into consideration the solution in the German Law on the Federal Constitutional Court which provides in Article 35: 'In its decision the Federal Constitutional Court may state by whom it is to be executed; in individual instances it may also specify the method of execution.'"

31. The Opinion of the Venice Commission on Draft Constitutional Amendments concerning the Reform of the Judiciary in Georgia (62nd Plenary Session, Venice, 11-12 March 2005) includes the following passage:

"22. The existing Article 89 § 1 (f) [of the Constitution] already provides for individual access to the Constitutional Court in the form of a so-called 'non-real' constitutional complaint (term used in German doctrine) against normative acts. It is welcomed that the draft Article 89 § 1 (f) would give this right not only to citizens but to persons in general.

23. In addition to this, draft Article 89 § 1 (f) would allow the Constitutional Court to consider the 'constitutionality of decisions of courts with regards to fundamental human rights and freedoms set forth in Chapter II of the Constitution on the basis of a claim of an individual or the application by the Public Defender of Georgia'. The draft thus adds a 'real' constitutional complaint also against individual acts – final court decisions.

24. This provision represents a substantial increase in the jurisdiction and powers of the Constitutional Court. The Constitutional Court is given a power of review over the ordinary courts' decisions where human rights questions are concerned. The fact that the jurisdiction to review can be exercised on the complaint of a citizen creates a powerful new tool for the enforcement of the human rights and fundamental freedoms guaranteed by Chapter II."

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION

A. Admissibility

1. First set of proceedings

32. With regard to the first set of proceedings, the applicant complained of the competent authorities' refusal to enforce the judgment of 21 November 2001. The relevant part of Article 6 § 1 of the Convention provides:

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

33. The Government submitted that the applicant had not exhausted domestic remedies, as required by Article 35 § 1 of the Convention. They stated that Article 42 § 1 of the Constitution guaranteed to everyone the right to a fair trial. Consequently, they argued, if the obligation to pay expenses prior to the initiation of enforcement proceedings had undermined the applicant's right under Article 42 § 1 of the Constitution, he should have applied to the Constitutional Court (Article 89 of the Constitution) and requested abrogation of section 26 of the Enforcement Act.

34. The applicant did not reply to this objection (see paragraphs 4 and 5 above).

35. The Court reiterates that, under Article 35 of the Convention, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see *Barszcz v. Poland*, no. 71152/01, § 41, 30 May 2006). However, in the area of exhaustion of domestic remedies, the Convention provides for a distribution of the burden of proof. It is initially incumbent on the Government claiming non-exhaustion to convince the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see, among other authorities, *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II, and *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198). Only after this burden of proof has been discharged does it fall to the applicant to prove that there existed special circumstances absolving him or her from the requirement (see *Merit v. Ukraine*, no. 66561/01, § 57, 30 March 2004).

36. The rule of exhaustion of domestic remedies is neither absolute nor capable of being applied automatically; in reviewing whether it has been

observed it is essential to have regard to the particular circumstances of each individual case (see *Van Oosterwijck v. Belgium*, 6 November 1980, § 35, Series A no. 40). This means, among other things, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as the personal circumstances of the applicant (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-69, *Reports of Judgments and Decisions* 1996-IV).

37. In the present case, the applicant's complaint concerns the right to have a binding judicial decision enforced. This right, which is not explicitly contained in any provision of the Convention, has been read into Article 6 § 1 by the Convention institutions as an integral part of the "trial" (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports* 1997-II).

38. The Court observes that neither Article 42 § 1 of the Constitution, relied on by the Government in this regard, nor any other constitutional provision sets forth guarantees against the non-enforcement of binding decisions which are at least remotely comparable to those developed in the Court's case-law. While a literal reading of the relevant constitutional provision suggests that it actually provides for the right of access to a court, the Government have not referred to any decisions or judgments of the Constitutional Court which, like the Court's case-law, have inferred a guarantee against non-enforcement from Article 42 § 1 of the Constitution.

39. The Court notes that, pursuant to Article 89 § 1 (f) of the Constitution and section 19(1)(e) of the Constitutional Court Act, the absence of a constitutional right renders a complaint incompatible *ratione materiae* with the provisions of the Constitution and, in accordance with section 18(e) of the Constitutional Proceedings Act, inadmissible for examination on the merits. Consequently, in so far as it is not the Court's task to take the place of the Constitutional Court and interpret the Constitution, the Government's failure to discharge the burden of proof by referring to the national judicial practice revealing the existence of a constitutional right to have binding judgments enforced prevents the Court from concluding that the applicant was able to claim such a right successfully before the Constitutional Court.

40. Moreover, the Court observes that Article 89 § 1 (f) of the Constitution provides for individual access to the Constitutional Court in the form of a so-called "abstract" constitutional complaint (see paragraphs 22, 23 and 31 above). This means in practice that individuals can question the constitutionality of the legislation in force, without necessarily being affected by its implementation. They cannot, however, challenge decisions made by the courts or the public authorities that directly affect their particular circumstances.

41. This model of individual constitutional complaint resembles that of the Hungarian Constitutional Court, which was found in *Vén v. Hungary*

(no. 21495/93, Commission decision of 30 June 1993, unreported) to be an ineffective remedy for the purposes of Article 35 of the Convention. The reason for that finding was that the Hungarian Constitutional Court was only entitled to review the constitutionality of laws in general terms and could not quash or modify specific measures taken against an individual by the State.

42. At the same time, the Georgian constitutional proceedings are different from those, for example, of Germany, Spain or the Czech Republic. The "specific" constitutional complaint existing in those countries makes it possible to remedy violations of rights and freedoms committed by authorities or officials or, where the infringement of a right guaranteed by the Constitution is the result of an interference other than a decision, to prohibit the authority concerned from continuing to infringe the right and to order it to re-establish the status quo if that is possible (see *Hartman v. the Czech Republic*, no. 53341/99, § 49, ECHR 2003-VIII, and *Sürmeli v. Germany* [GC], no. 75529/01, § 62, ECHR 2006-VII). Such a constitutional complaint also makes it possible to remedy violations resulting immediately and directly from an act or omission of a judicial body, regardless of the facts that had given rise to the proceedings; the abrogation of an unconstitutional law results in the annulment of all the final decisions made by the courts or public authorities on the basis of that law (see *Riera Blume and Others v. Spain* (dec.), no. 37680/97, ECHR 1999-II, and *Voggenreiter v. Germany*, no. 47169/99, § 23, ECHR 2004-I).

43. By contrast, the Georgian Constitutional Court is not empowered to set aside individual decisions of public authorities or courts which directly affect the complainant's rights (see the documents of the Venice Commission cited in paragraphs 30 and 31 above). The declaration of a statute or other normative act as unconstitutional cannot result in the quashing of the judicial decisions already taken on the basis of the impugned act (section 20 of the Constitutional Court Act). It cannot even terminate the associated enforcement proceedings but can merely suspend them.

44. The Court reiterates that for a remedy to be effective, it should answer the complaint by providing direct and speedy redress for specific harm, and not merely indirect protection of the rights guaranteed in Article 6 of the Convention (see *Merit*, cited above, § 59, and *Deweer v. Belgium*, 27 February 1980, § 29, Series A no. 35). In the case at hand, it is not clear how the success of a constitutional complaint lodged by the applicant – entailing the abrogation of section 26 of the Enforcement Act – would have offered direct and speedy redress for the problem of non-enforcement, in so far as the Constitutional Court lacked the power to order the competent authorities to proceed with the enforcement of the judgment.

45. The Court reiterates in this connection that the German and Czech authorities for constitutional review, which, as a rule, satisfy the

requirements of Article 35 § 1 of the Convention, have been found to be ineffective in "length-of-proceedings" cases, given that, apart from acknowledging violations of the constitutional provisions protecting the right to a fair trial, they were unable to give clear instructions as to how to expedite delayed proceedings or to provide compensation for any damage resulting from their excessive length (see *Sürmeli*, cited above, §§ 105-06, and *Hartman*, cited above, §§ 67-83).

46. In the light of the above considerations, the Court concludes that, since the current system of individual constitutional complaints in Georgia lacks effective mechanisms for offering direct and specific redress for particular instances of human rights violations, it cannot be regarded with a sufficient degree of certainty as an appropriate remedy for the complaint about non-enforcement (contrast *Sürmeli*, cited above, § 103; see also, *mutatis mutandis*, *Horvat v. Croatia*, no. 51585/99, § 44, ECHR 2001-VIII, and *Vodeničarov v. Slovakia*, no. 24530/94, §§ 43-44, 21 December 2000).

47. The Government's objection in respect of the first set of proceedings must therefore be dismissed. No other grounds for declaring this part of the application inadmissible have been established. The Court therefore declares it admissible.

2. Second and third sets of proceedings

48. As to the second set of proceedings, the applicant complained of the impossibility of obtaining an expert opinion on the receipt form dated 24 September 2002. Referring to the fact that the appellate court had delivered its judgment on 15 November 2002 – that is, before the corresponding court fees had been paid on 3 December 2002 – the applicant alleged that the judgment had been fabricated. He further contested the fairness of the third set of proceedings, submitting that the hearing, attended by his lawyer, had been held in his absence.

49. The Court notes that the case file does not disclose any appearance of a violation of Article 6 § 1 of the Convention during the second and third sets of proceedings, each of them taken as a whole (see *Miailhe v. France (no. 2)*, 26 September 1996, § 43, *Reports* 1996-IV), and considers that the applicant's complaints are manifestly ill-founded. This part of the application must therefore be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Merits

1. The parties' submissions

50. The Government maintained that there had been no violation of the applicant's rights under Article 6 § 1 of the Convention.

51. Notably, the Government submitted that, pursuant to sections 38 and 39 of the Enforcement Act and the Minister of Justice's Order no. 100 § 1, it was the debtor's responsibility to bear the expenses associated with particular enforcement measures. However, given the fact that those expenses could only be recovered at the time of the enforcement of the judgment, the applicant should have provisionally paid, under section 26 of the Enforcement Act, "some of the expenses which were necessary for the technical organisation" of the enforcement proceedings. The Government further asserted that the costs initially borne by the applicant would have been fully reimbursed to him after the enforcement of the judgment. Lastly, they submitted that the impugned judgment could not have been enforced at the State's expense, as it did not fall into the category of judicial decisions contemplated by section 11 of the Enforcement Act.

52. The Government also stated that, pursuant to section 113(1) of the Enforcement Act, in the event of enforcement of the impugned judgment, the applicant would have been required to pay 7% of the judgment debt as an enforcement fee.

53. The applicant did not reply to the Government's arguments (see paragraphs 4 and 5 above).

2. The Court's assessment

54. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his or her civil rights and obligations brought before a court (see *Golder v. the United Kingdom*, 21 February 1975, §§ 28-36, Series A no. 18). The right to a court is not merely a theoretical right to secure recognition of an entitlement by means of a final decision but also includes the legitimate expectation that the decision will be executed. The effective protection of litigants and the restoration of legality presuppose an obligation on the administrative authorities' part to comply with a binding judgment (see *Hornsby*, cited above, §§ 40 et seq.).

55. With regard to the present case, the Court considers that the question whether the applicant would have had the preliminary expenses reimbursed after the enforcement of the impugned judgment or not is irrelevant to the situation he complains of under Article 6 § 1 of the Convention. The issue at stake here is the fact that the obligation to pay the enforcement-related expenses in advance prevented the applicant from having the binding judgment enforced in his favour.

56. In so far as enforcement proceedings constitute an integral part of the trial (see *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III), the Court considers that the right to a court, along with access to first-instance and appeal courts for the determination of "civil rights and obligations" (see *Kreuz v. Poland (no. 1)*, no. 28249/95, §§ 53-54, ECHR 2001-VI), likewise protects the right of access to enforcement proceedings (see, *mutatis mutandis*, *Manoilescu and Dobrescu v. Romania and Russia* (dec.),

no. 60861/00, ECHR 2005-VI), that is, the right to have enforcement proceedings initiated.

57. It must be emphasised in this regard that the right of access to a court is not absolute but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State. However, the Court must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is no reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 59, ECHR 1999-I).

58. The Court notes that, relying on section 26 of the Enforcement Act, the competent authorities imposed a financial restriction on the applicant in the form of an obligation to bear "preliminary expenses". Those "preliminary expenses", limiting access to enforcement proceedings, resemble the rule whereby access to civil courts depends on the payment of a court fee.

59. The Court reiterates in this connection that, in order to determine whether or not a person enjoyed the right of access, the amount of the fees requested is to be assessed in the light of the particular circumstances of a given case, including the applicant's ability to pay them, and the phase of the proceedings at which that restriction has been imposed (see *Kreuz*, cited above, § 60).

60. In the present case, the impugned financial restriction was not imposed on the applicant either at first instance or at the appellate stage of the trial, and could not therefore be regarded as being related to the merits of his claim or its prospects of success, considerations which might justify restrictions on the right of access to a court (contrast *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, §§ 61 et seq., Series A no. 316-B). The existence of a final and enforceable judgment in the applicant's favour stands, on the contrary, as an indication of the fact that his litigation had been meritorious. Consequently, the imposition of the obligation to pay expenses in order to have that judgment enforced constitutes a restriction of a purely financial nature and therefore calls for particularly rigorous scrutiny from the point of view of the interests of justice (see *Podbielski and PPU Polpure v. Poland*, no. 39199/98, § 65, 26 July 2005).

61. The Court observes that the Government did not specify what the aim of obliging the applicant to pay for the enforcement was. They simply stated that the impugned judgment did not fall into the category of judgments enforceable at the State's expense. If the applicant wanted to obtain the judgment debt, he himself had to secure financially the necessary enforcement measures (see paragraph 51 above).

62. The Court notes that, contrary to the Government's assertions, neither section 26 *in fine* nor any other provision of the Enforcement Act defines what proportion of the enforcement-related expenses is to be borne by the creditor, and for what measures. Nor does it follow from the Enforcement Act that the expenses initially borne by the creditor are to be fully reimbursed after the enforcement. In their letters to the applicant, the enforcement authorities did not clarify those issues any further. They did not specify how much the applicant had to pay or in respect of what enforcement measures. The authorities bluntly stated that after the applicant had covered the preliminary expenses, the bailiff would identify the debtor's assets, seize them and put them up for auction (see paragraphs 9 and 12 above). As to the applicant's declaration of his lack of means, it was left unanswered.

63. Even assuming that there exists a justification for obliging the creditor to bear part of the costs associated with enforcement proceedings, the Court notes that section 113(1) of the Enforcement Act already provides for the creditor's responsibility to pay a fee representing 7% of the judgment debt received. It has to be stressed that the applicant, being unable to cover the preliminary expenses owing to his lack of means, was prepared to pay the fee after enforcement (see paragraph 11 above).

64. The Court reiterates that fulfilment of the obligation to secure effective rights under Article 6 § 1 of the Convention does not mean merely the absence of an interference but may require the State to take various forms of positive action (see *Kreuz*, cited above, § 59). It considers that, by shifting onto the applicant the responsibility of financially securing the organisation of the enforcement proceedings, the State tried to escape its positive obligation to organise a system for enforcement of judgments that is effective both in law and in practice (see *Fuklev v. Ukraine*, no. 71186/01, § 84, 7 June 2005).

65. In the light of the above considerations, the authorities' stance of holding the applicant responsible for the initiation of enforcement proceedings by requesting him to bear the preliminary expenses, coupled with the disregard for his financial situation, constituted an excessive burden and restricted his right of access to a court to the extent of impairing the very essence of that right.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

67. Relying on Articles 1, 13, 14 and 17 of the Convention, the applicant complained that, during the second set of proceedings, the bailiff had drawn up the inventory of the household belongings in his absence and that he had been obliged to pay the State a fee despite his lack of means. Relying on the

same provisions, the applicant challenged the forcible eviction of his aunt in the third set of proceedings and complained that he had not received welfare benefits in the course of the fourth set of proceedings.

68. The Court notes that the applicant's complaints under Article 6 § 1, relating to the second and third set of proceedings, have been found to be inadmissible (see paragraph 49 above). With due regard to the relevant circumstances of the case, it considers that no separate questions arise under Articles 1, 13, 14 and 17 as far as those proceedings and the fourth set of proceedings are concerned. This part of the application is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. Article 41 of the Convention provides:

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

70. The applicant did not submit any claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account (see *Fadıl Yılmaz v. Turkey*, no. 28171/02, § 26, 21 July 2005).

71. However, it must be noted that a judgment in which the Court finds a violation of the Convention or its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court. The respondent State is expected to make all feasible reparation for the consequences of the violation in such a manner as to restore as far as possible the situation existing before the breach. Furthermore, it follows from the Convention, and from Article 1 in particular, that in ratifying the Convention the Contracting States undertake to ensure that their domestic legislation is compatible with it. Consequently, it is for the respondent State to remove any obstacles in its domestic legal system that might prevent the applicant's situation from being adequately redressed (see *Assanidze v. Georgia* [GC], no. 71503/01, § 198, ECHR 2004-II, and *Maestri v. Italy* [GC], no. 39748/98, § 47, ECHR 2004-I).

72. Having regard to its finding in the instant case, and without prejudice to other possible measures of improving the existing system for the enforcement of judgments (see, *mutatis mutandis*, *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 34, Series A no. 330-B), the Court considers that the most appropriate form of redress would consist

in putting an end to the situation of non-enforcement (see, among other authorities, *Plotnikovy v. Russia*, no. 43883/02, § 33, 24 February 2005).

73. The respondent State must consequently secure, by appropriate means, the enforcement of the judgment of 21 November 2001.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the applicant's complaint relating to the non-enforcement of the judgment of 21 November 2001 admissible and the remainder of the application inadmissible;

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

3. *Holds* that the respondent State shall, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, secure, by appropriate means, the enforcement of the judgment of 21 November 2001.

Done in English, and notified in writing on 28 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Jean-Paul Costa
Deputy Registrar	President