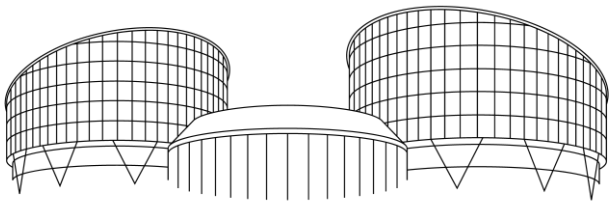

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF DADIANI AND MACHABELI v. GEORGIA

(Application no. 8252/08)

JUDGMENT

STRASBOURG

12 June 2012

FINAL

12/09/2012

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

In the case of Dadiani and Machabeli v. Georgia**,**

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

Josep Casadevall, *President,*
Corneliu Bîrsan,
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Nona Tsotsoria,
Kristina Pardalos, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 22 May 2012,

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

PROCEDURE

1. The case originated in an application (no. 8252/08) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Georgian nationals, Mrs Elene Dadiani and Mr David Machabeli ("the applicants"), on 4 January 2008.

2. The applicants were represented by Mr Alexander Baramidze, Mr Irakli Kandashvili and Mr Hans von Sachsen-Altenburg, lawyers practising in Tbilisi. The Georgian Government ("the Government") were represented by their Agent, Mr Levan Meskhoradze of the Ministry of Justice.

3. The applicants complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about the authorities' failure to enforce a judgment delivered by a domestic court in their favour. They also alleged a violation of Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 on account of the inexplicable delay in the second set of proceedings and a violation of Article 1 of Protocol No. 1 on account of the expropriation of the ancestral lands by the Soviet authorities.

4. On 28 April 2008 the Court decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants, Mrs Elene Dadiani and Mr David Machabeli, were born in 1923 and 1964 respectively and live in Tbilisi. The second applicant is the first applicant's nephew. The first applicant's mother was deprived of her land and other assets by the Soviet authorities in the 1920s.

A. First set of proceedings

6. In 2004 the applicants brought an action against the relevant local authority, seeking restitution of their ancestral lands. In support of their claim, the applicants submitted archives confirming their ancestor's title to the claimed land and, as a legal basis, referred to general rules on the protection of property and inheritance contained in the Civil Code, the Constitution and the international human-rights treaties ratified by Georgia.

7. In a judgment of 31 January 2005, the Gurjaani District Court established the applicants' joint ownership of land situated in the village of Bakurtsikhe. The land was officially identified as "plot no. 604". The defendant local authorities did not lodge an appeal and the judgment became binding.

8. On 15 February 2005 the applicants' lawyer obtained from the Gurjaani District Court the necessary enforcement writ, the relevant part of which read as follows:

> "Elene Dadiani and David Machabeli are hereby recognised as ... the co-owners of plot no. 604 in the village of Bakurtsikhe." ...

9. On 26 October 2005 the applicants, acting through their lawyer, submitted a copy of the enforcement writ together with the final judgment of 31 January 2005 to the Gurjaani Public Registry for enforcement. In a letter of 2 November 2005, the registrar replied that it was not possible to register the land in the applicants' name, as their documentation was incomplete. The lawyer was found to be at fault for the fact that the final judgment neither indicated the size of plot no. 604 nor specified its category: agricultural or non-agricultural. The lawyer was further invited to submit a copy of his identity document, the authority form proving his right to represent the applicants, the original enforcement writ and the cadastral plan of the land in question.

10. The applicants maintained, relying on the billing information from the lawyers for the relevant period of time, that after receipt of the letter of 2 November 2005 the lawyers, acting on their behalf, had visited the Gurjaani Public Registry on several occasions and voiced their concerns

regarding the failure to enforce the judgment. They claimed, *inter alia*, that they were not in a position to produce an amended final court decision. In reply, the Gurjaani Public Registry refused to register plot no. 604 for various reasons.

11. The judgment of 31 January 2005 still remains unenforced.

B. Second set of proceedings

12. On 25 May 2005 the applicants lodged another action claiming, on the same legal basis, ownership of plot no. 646, adjacent to plot no. 604. The action was registered by the Gurjaani District Court on the same day.

13. According to the applicants, the examination of their second action has not started yet.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. The relevant domestic law and practice as regards the restitution of property has been described in the case of *Teimuraz Andronikashvili v. Georgia* (no. 9297/08, 22 June 2010) and *Klaus and Yuri Kiladze v. Georgia* (no. 7975/06, §§ 23 and 25-26, 2 February 2010).

A. The Regulations of the National Public Registry Agency of 19 July 2004 (adopted pursuant to Order no. 835 of the Minister of Justice of Georgia)

15. The National Public Registry Agency is a legal entity governed by public law established under the Ministry of Justice. One of its main functions is to register ownership title and other related rights over real property for the purpose of their recognition and verification. The Public Registry Agency is responsible, among other things, for the creation and maintenance of cadastral data on real property.

B. The Land Registration Act of 14 November 1996 ("the Land Act" was repealed on 28 February 2006)

16. Under section 5 (b) of the Land Act, the registrar was entitled to request the submission of any document necessary for land registration purposes. The interested party had to comply with the registrar's request immediately.

C. The Civil Code of Georgia, as worded at the material time

17. Article 1005 § 1 of the Civil Code provides that damage done to an individual by either negligence or deliberate misconduct of a public servant must be compensated by the State.

D. The Criminal Code of Georgia, as worded at the material time

18. Under Article 381 of the Criminal Code, the non-execution of a judicial decision constitutes an offence:

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

E. The General Administrative Code of Georgia

19. Pursuant to Article 3 § 4 (g) of the General Administrative Code of Georgia, the Code does not apply to those activities of the executive that are related to the enforcement of final court judgments.

20. In accordance with Article 177 § 3 of the General Administrative Code, a complaint may be filed against any action of an administrative agency pursuant to the procedure prescribed for filing a complaint in respect of an administrative legal act.

THE LAW

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

21. The applicants complained about the non-enforcement of the binding judgment of 31 January 2005 and the inexplicable delay in the second set of proceedings. They relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

Article 6 § 1

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

A. Admissibility

22. The Government raised several objections to the admissibility of the application.

1. As regards the second set of proceedings

(a) The parties' submissions

23. The Government submitted that Article 6 § 1 of the Convention was inapplicable *ratione materiae* to the second set of proceedings because Georgian law did not contain a right to restitution of property expropriated by the Soviet authorities. In their submissions, they noted that the Act of 11 December 1997 concerning victims of political persecution by the Soviet State explicitly stated that the issue of restitution was to be addressed by separate legislation. However, no such act had been passed by the Georgian legislature to date.

24. The applicants disagreed.

(b) The Court's assessment

25. The Court notes that, in its recent case of *Klaus and Yuri Kiladze v. Georgia* (cited above, §§ 55-61), it has already established, after having examined the relevant Georgian law, that there is no right to restitution of property expropriated from Georgian nationals or their ancestors by the Soviet authorities (see also *Teimuraz Andronikashvili v. Georgia*, cited above).

26. It follows that the applicants' complaint about the length of the second set of proceedings is incompatible *ratione materiae* with Article 6 § 1 of the Convention and must be rejected in accordance with Article 35 §§ 3 and 4.

2. As regards the first set of proceedings

(a) The objection of inapplicability *ratione materiae*

27. The Government reiterated their argument concerning inadmissibility *ratione materiae* with respect to the first set of proceedings. The applicants contested that argument.

28. The Court observes that by the judgment of 31 January 2005, the Gurjaani District Court established the applicants' joint ownership over plot no. 604. The defendant local authorities did not lodge an appeal and the judgment became binding. According to the Court's constant case-law, the enforcement of a judgment given by any court must be regarded as an integral part of the "trial" for the purposes of Article 6 of the Convention (see, for example, *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II; *Burdov v. Russia (no. 2)*, no. 33509/04, § 65, ECHR 2009; *Apostol v. Georgia*, no. 40765/02, § 37, ECHR 2006-XIV; and *Jafarli and Others v. Azerbaijan*, no. 36079/06, § 52, 29 July 2010). Consequently, Article 6 § 1 of the Convention applies to this part of the proceedings and the Government's objection should thus be dismissed.

(b) The objection of failure to exhaust domestic remedies

29. The Government argued that there were several effective domestic remedies against non-enforcement that had not been used by the applicants in the present case. In the first place, they alleged that the applicants had not brought an action for damages under Article 1005 § 1 of the Civil Code of Georgia. Secondly, according to the Government, the applicants had not brought criminal proceedings under Article 381 of the Criminal Code of Georgia against the State official allegedly responsible for the delay in enforcing the judgment. In that connection they submitted statistical data supplied by the Supreme Court of Georgia on the number of criminal cases dealt with by the domestic courts under Article 381 of the Criminal Code. Lastly, the applicants had not sought administrative review of the letter of 2 November 2005 under Article 177 § 3 of the General Administrative Code of Georgia.

30. The applicants disagreed with the Government. They maintained that, by failing to provide relevant examples of domestic case-law, the Government had not showed that any of the above-mentioned domestic remedies were indeed effective. They referred, further, to the case of "*IZA" LTD and Makrakhidze v. Georgia* (no. 28537/02, § 35, judgment of 27 September 2005), in which the Court had stated that the facts of that case and of similar cases brought against Georgia suggested the existence of a persistent problem of non-enforcement of final judgments delivered against the State budget institutions. Lastly, relying on the case of *Hornsby v. Greece* (cited above, § 37), the applicants maintained that none of the impugned remedies could be deemed sufficient to remedy their complaint.

31. The Court reiterates that under Article 35 § 1 of the Convention the only remedies required to be exhausted are those that are effective and capable of redressing the alleged violation (see *Sejdovic v. Italy* [GC], no. 56581/00, § 45, ECHR 2006-II).

32. Turning to the first limb of this objection, the Court considers that in this case a claim for damages against the State cannot be deemed sufficient to remedy the applicants' complaints. Even assuming that the outcome of such actions had been favourable to the applicants, compensation for damages stemming from an alleged misconduct of a public servant would not have been a proper alternative to the measures that the Georgian legal system should have afforded the applicants in order to overcome the fact that they were unable to register the plot in their name despite a final court decision granting them the ownership title (see *Hornsby*, cited above, § 37; *Iatridis v. Greece* [GC], no. 31107/96, § 83, ECHR 1999-II; and *Mileva and Others v. Bulgaria*, nos. 43449/02 and 21475/04, § 83, 25 November 2010).

33. The same holds true as regards the criminal remedy referred to by the Government. Indeed, it is not clear how the success of a criminal complaint lodged by the applicant would have afforded direct and speedy redress for the problem of non-enforcement, in so far as the criminal courts

clearly lacked the power to order the competent authorities to proceed with enforcement of the judgment (see, *mutatis mutandis*, *Apostol*, cited above, §§ 44-46, and *Stoycheva v. Bulgaria*, no. 43590/04, § 40, 19 July 2011).

34. As regards the administrative-law remedy, the Court concurs with the Government's submission that in cases of inaction or other misconduct on the part of public officials, the alleged victims may be expected to bring administrative proceedings against the relevant public official or officials (see, for example, *Romashov v. Ukraine*, no. 67534/01, § 31, 27 July 2004). However, the particular circumstances of the present case lead the Court to the conclusion that no administrative-law remedy was available to the applicants at the material time. Notably, as can be seen from Article 3 § 4 of the General Administrative Code of Georgia, the activities of the executive branch related to the enforcement of the final court decisions were explicitly excluded from the scope of application of that provision (see paragraph 19 above). The formulation of Article 3 § 4 (c) of the Code is absolutely clear and leaves no room for a different interpretation. This conclusion, in the Court's opinion, is further supported by the fact that the Government failed to submit any examples of domestic court decisions concerning the use of this remedy in situations related to the enforcement of judgments (see *Popov v. Moldova*, no. 74153/01, §§ 34-35, 18 January 2005; *Prodan v. Moldova*, no. 49806/99, §§ 42, ECHR 2004-III (extracts); and *Marini v. Albania*, no. 3738/02, § 156, 18 December 2007).

35. In view of the foregoing factors, the Court cannot but conclude that the remedies referred to by the Government were inadequate to secure redress for the alleged breach and the Government's objection must be dismissed.

(c) The objection of non-compliance with the six-month time-limit

36. The Government argued that the application had been submitted outside the six-month time-limit prescribed by the Convention. They maintained that, in so far as the applicants' main argument was that, by the letter of 2 November 2005, the Gurjaani Public Registry prevented enforcement of the Gurjaani District Court's decision of 31 January 2005, that letter was the last decision for the purposes of Article 35 of the Convention.

37. The applicants disputed the Government's argument, arguing that the six-month time-limit was not applicable to alleged continuous violations, such as non-enforcement of a final court decision. They maintained in that connection that the letter of 2 November 2005 was not a formal decision resulting in termination of the enforcement proceedings; thus its date could not been taken as the starting point for the purposes of the six-month time-limit. They had had several follow-up meetings with the registrar concerning enforcement of the judgment in issue and the enforcement proceedings were still pending.

38. The Court observes that the authorities' failure to comply with the final judgment leads to a continuing situation, so that the six-month rule does not apply (see, among other authorities, *Iatridis*, cited above, § 50). It further considers, as did the applicants, that the letter of 2 November 2005 did not have the effect of terminating the enforcement proceedings (see *S.C. Prodcomexim SRL v. Romania*, no. 35877/05, § 30, 27 October 2009; and, *a contrario*, *Kravchenko v. Russia*, no. 34615/02, § 34, 2 April 2009). The enforcement proceedings are still pending, as the judgment of 31 January 2005 has not ceased to be binding and enforceable (see *Hornsby*, cited above, § 35, and *Iatridis*, cited above, § 50); no proceedings have been instituted under the Georgian law for its modification or annulment before the domestic courts.

39. The objection must therefore be dismissed. The Court notes that the applicant's complaint under Article 6 § 1 of the Convention concerning the first set of proceedings is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

40. The Government claimed that the judgment of 31 January 2005 had not been enforced because of the applicants' failure to submit the required documents to the Gurjaani Public Registry. Accordingly, the delay in the enforcement proceedings was wholly attributable to the applicants. The Government further maintained that the Gurjaani Public Registry had never prevented the enforcement of the Gurjaani District Court decision of 31 January 2005. The sole purpose of the letter of 2 November 2005, according to the Government, had been to invite the applicants to produce a complete file necessary for registering the land. Hence, the applicants' own behaviour had been the principal cause of the delay in execution.

41. The applicants disagreed. They maintained that the arbitrary requests on the part of the Public Registry had hindered the enforcement of the judgment in their favour and that they themselves had created no obstacle in that respect. They argued in that connection that the registrar had dealt with their case in a bureaucratic manner, imposing on them additional obligations, including an implicit obligation to initiate additional proceedings for rectification of the final judgment. They considered that the registrar's reproach concerning the content of the 31 January 2005 ruling did not serve any legitimate purpose whatsoever, since the information requested had already been established and had been at the disposal of the Public Registry. In support, they submitted a map of the village with identifiable boundaries and numbered plots of land and a detailed list

indicating the identity of the owners of the plots of land in the village and the precise location and size of those plots.

42. The Government did not comment on that map. Neither did it clarify whether the Public Registry was indeed in possession of the requested information.

2. The Court's assessment

43. The Court reiterates that the right to a court protected by Article 6 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 (see *Hornsby*, cited above, § 40). Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6. A delay in the execution of a judgment may be justified in particular circumstances, but it may not be such as to impair the essence of the right protected under Article 6 § 1 (see, among other authorities, *Hornsby*, cited above, § 40; *Jasiūnienė v. Lithuania*, no. 41510/98, § 27, 6 March 2003; *Qufaj Co. Sh.p.k. v. Albania*, no. 54268/00, § 38, 18 November 2004; and *Beshiri and Others v. Albania*, no. 7352/03, § 60, 22 August 2006).

44. The effective protection of litigants and the restoration of legality presuppose an obligation on the administrative authorities' part to comply with a final judgment delivered by the domestic court (see *Hornsby*, cited above, § 41; and *Mutishev and Others v. Bulgaria*, no. 18967/03, § 129, 3 December 2009). Where administrative authorities refuse or fail to comply, or even delay doing so, the guarantees enjoyed under Article 6 by a litigant during the judicial phase of the proceedings are rendered devoid of purpose (see *Antonetto v. Italy*, no. 15918/89, § 28, 20 July 2000).

45. The Court further reiterates that the State is responsible for the enforcement of final decisions if the factors impeding or blocking their full and timely enforcement are within the control of the authorities (see *Sokur v. Ukraine*, no. 29439/02, 26 April 2005, and *Kryshchuk v. Ukraine*, no. 1811/06, 19 February 2009). At the same time, a successful litigant may be required to undertake certain procedural steps in order to have the judgment enforced, provided that the required formalities do not gravely restrict or reduce his or her access to the enforcement proceedings (see *Kosmidis and Kosmidou v. Greece*, no. 32141/04, § 24, 8 November 2007; *Rompoti and Rompotis v. Greece*, no. 14263/04, § 26, 25 January 2007; *Apostol*, cited above, § 64; and *Burdov (no. 2)*, cited above, § 69). In any event, those requirements should not relieve the authorities of their obligation under the Convention to take timely action of their own motion, on the basis of the information available to them, with a view to honouring judgments against the State (see *Akashev v. Russia*, no. 30616/05, § 22, 12 June 2008). The burden of ensuring compliance with a judgment against the State lies primarily with the State authorities, starting from the date on

which the judgment becomes binding and enforceable (see *Stoycheva v. Bulgaria*, cited above, § 58).

46. In the instant case the applicants complained of the failure to enforce the judgment of 31 January 2005. That decision amounted to a document conferring title to the plot since the applicants could use it as a basis for applying to be entered as the owners in the Public Registry without having to institute any further administrative or judicial proceedings. The applicants may accordingly have had a legitimate expectation that it would be duly enforced.

47. The Government submitted that the reason for the non-enforcement of the judgment had been the failure of the applicants to submit additional legal documents as requested. The Court agrees with the Government's argument that the request of the registrar to produce certain additional documents, such as a copy of the lawyer's personal identity document, an authority form and an original enforcement writ, was not arbitrary in nature (see *Kosmidis and Kosmidou*, cited above, § 24). However, the Court is of the opinion that the main obstacle to the enforcement was the criticism in the registrar's letter of the impugned court decision on grounds that it was deficient in terms of its substance as it neither indicated the size of plot no. 604 nor specified its category: agricultural or non-agricultural. The Court shares the applicants' opinion that the registrar thus *de facto* imposed on them an obligation to initiate new proceedings for rectification of the impugned judgment. Hence, the issue here is whether the obligation to produce a rectified judgment unduly prevented the applicants from having the final binding judgment in their favour enforced.

48. Firstly, as regards the obligation to initiate new proceedings, the Court reiterates that a person who has obtained an enforceable judgment against the State as a result of successful litigation cannot be requested to resort to enforcement or other similar proceedings in order to have it executed (see *Burdov (no. 2)*, cited above, § 72).

49. Secondly, as regards the information which, according to the registrar, ought to have been included in the rectified court decision, the applicants submitted that the size and purpose of plot no. 604 had been established and available before the impugned court decision was taken (see paragraph 41 above). Further, by its very nature this information was at the disposal of the Public Registry, which is responsible for, *inter alia*, creating and maintaining a database of cadastral data on immovable property (see paragraph 15 above). The Government did not challenge the applicants' assertion in that regard (see paragraph 42 above).

50. The Court, therefore considers that the registrar's request for information which was or at least should have been at the disposal of the Public Registry pursued no legal aim and was made for the purpose of delaying enforcement proceedings (see *Rompoti and Rompotis*, cited above, §§ 27-28).

51. The Court observes that according to the information provided by the parties, the judgment in favour of the applicants has not been enforced to date; in other words, there has been a delay of over seven years in enforcing the judgment. It should be observed in that connection that even though it may be expected that an applicant undertake certain procedural steps in connection with the execution of a final judgment in his or her favour (*Stoycheva*, cited above, § 58), the inertia of the enforcement authorities in the process of enforcement engages the responsibility of the State (see *Cravcenco v. Moldova*, no. 13012/02, § 45, 15 January 2008; *Mirzayev v. Azerbaijan*, no. 50187/06, §§ 35-36, 3 December 2009, and *Kirilova and Others v. Bulgaria*, nos. 42908/98, 44038/98, 44816/98 and 7319/02, § 121, 9 June 2005). Accordingly, the Court considers that, even if the applicants' omission to submit some of the missing documents might have contributed to the non-enforcement (see paragraph 47 above), this cannot absolve the authorities of their obligation to execute a final and binding court decision (see *Gjonbocari and Others v. Albania*, no. 10508/02, §§ 52-53, 23 October 2007, and *Stoycheva*, cited above, § 58).

52. Having regard to the foregoing, the Court considers that the facts of the case do not demonstrate any justification for the failure to enforce the final court decision of 31 January 2005. There has therefore been a violation of Article 6 § 1 of the Convention in that respect.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

53. Relying on Article 13 of the Convention and Article 1 of Protocol No. 1 respectively, the applicants complained that they had had no effective remedies in respect of the length of the second set of proceedings and that those pending proceedings had infringed their property rights. Article 1 of Protocol No. 1 was further invoked to challenge the non-enforcement of the binding judgment of 31 January 2005 and the expropriation of the applicants' ancestral lands by the Soviet authorities during the 1920s.

54. Article 13 of the Convention and Article 1 of Protocol No. 1 respectively read as follows:

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 or to secure the payment of taxes or other contributions or penalties."

55. In connection with the second set of proceedings the Court, having due regard to its findings under Article 6 § 1 of the Convention, concludes that the complaints under Article 13 of the Convention and Article 1 of Protocol No. 1 are also to be rejected as being incompatible *ratione materiae* pursuant to Article 35 §§ 3 and 4 of the Convention. Moreover, the complaint directly related to the Soviet expropriation in the 1920s arose prior to the Court's temporal jurisdiction with respect to the respondent State and is therefore inadmissible *ratione temporis* by virtue of Article 35 §§ 3 and 4 of the Convention (see *Teimuraz Andronikashvili*, cited above).

56. As regards the first set of proceedings, the complaint under Article 1 of Protocol No. 1 is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. However, in the light of the finding of a violation of Article 6 § 1 of the Convention (see paragraph 52 above), the Court considers that it is not necessary to examine separately whether, in the particular circumstances of the present case, there has also been a violation of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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

58. The applicants, as their principal submission, sought the enforcement of the final judgment given in their favour, that is, the registration of their ownership title with the Public Registry. They further claimed EUR 20,000 each for the non-pecuniary damage suffered as a result of the failure of the authorities to enforce the judgment of 31 January 2005 and in respect of pecuniary damage, EUR 100 per every month of delay in the execution. They claimed that this amount would cover the loss of profit incurred as a result of their inability to use the impugned plot of land.

59. The Government submitted that the applicants' claims were unreasonable and ill-founded, since there had been no violation of any provisions of the Convention in the present case. According to the

Government, the delay in the enforcement of the judgment of 31 January 2005 was wholly attributable to the applicants.

60. The Court notes that the State's outstanding obligation to enforce the judgment of 31 January 2005 is not in dispute. The most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicants as far as possible are put in the position they would have been had the requirements of Article 6 not been disregarded (see *Gjonbocari and Others*, cited above, § 100). It therefore considers that the Government must secure, by appropriate means, the enforcement of the domestic court's final judgment (see among other authorities *Apostol*, cited above, §§ 72-73, and *Teteriny v. Russia*, no. 11931/03, § 56, 30 June 2005).

61. The Court does not discern any causal link between the violations found and the remainder of the pecuniary damage alleged; it therefore rejects this claim. However, the Court has no doubt that the applicants must have been caused a certain amount of stress and frustration as a result of the non-enforcement of the judgment. The resulting non-pecuniary damage would not be adequately compensated by the mere finding of a violation. The Court thus awards each applicant EUR 2,000 for non-pecuniary damage.

B. Costs and expenses

62. The applicants claimed reimbursement of EUR 20,337.30 in respect of their representation in the proceedings before both the domestic courts and the Court. In support of this claim, they submitted an invoice dated 25 February 2009 showing that the payment of the above sum included 18 % VAT in accordance with Georgian tax law. They also provided billing information from the lawyers broken down into the number of hours spent and their hourly rates.

63. The applicants further claimed a total of GEL 998.30 for various administrative expenses. Except for a record itemising the relevant expenses, the applicants did not submit any relevant bills or receipts which would show that these expenses were actually incurred.

64. The Government claimed that the costs of legal representation were extremely exaggerated; as to the administrative expenses, they were insufficiently substantiated.

65. The Court reiterates that to be entitled to an award for costs and expenses under Article 41 of the Convention, the injured party must have actually and necessarily incurred them. In particular, Rule 60 § 2 of the Rules of Court states that itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part. Furthermore, costs and expenses are only recoverable in so far as they relate to the violation found (see, among many

other authorities, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI; *Beyeler v. Italy* (just satisfaction) [GC], no. 33202/96, § 27, 28 May 2002; and *Svipsta v. Latvia*, no. 66820/01, § 170, ECHR 2006-III).

66. The Court notes that certain portion of the submissions made by the applicants' lawyers concerned complaints that were declared inadmissible. Therefore the claim cannot be allowed in full and a reduction must be applied. The Court further considers, in view of the insufficiency of the relevant financial documents, that no award shall be made in respect of reimbursement of various administrative costs. As regards legal fees, making its own estimate on the information available, the Court awards the applicants jointly EUR 1,500.

C. Default interest

67. 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 complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the failure to enforce the judgment of 31 January 2005 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the non-enforcement of the judgment of 31 January 2005;

3. *Holds* that there is no need to examine the complaint under Article 1 of Protocol No. 1;

4. *Holds*
   (a) that the respondent State is to pay each applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, plus any tax that many be chargeable, and jointly EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicants, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 12 June 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President