CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF FC MRETEBI v. GEORGIA

(Application no. 38736/04)

JUDGMENT

This version was rectified on 24 January 2008 under Rule 81 of the Rules of Court.

STRASBOURG

31 July 2007

FINAL

30/01/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of FC Mretebi v. Georgia,

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

Mrs F. TULKENS, *President,*
Mr I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr M. UGREKHELIDZE,
Mr V. ZAGREBELSKY,
Mrs A. MULARONI[1],
Mr D. POPOVIĆ, *judges*

and Mrs F. ELENS-PASSOS, *Deputy Section Registrar,*

Having deliberated in private on 10 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 38736/04) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by the football club Mretebi ("the applicant") on 25 October 2004. The applicant was represented by its Chairman, Mr V. Chkhaidze, and Mr G. Svanidze, Mr I. Baratashvili and Mr A. Baramidze, lawyers practising in Tbilisi.

2. The Georgian Government ("the Government") were represented by their Agent, Mr B. Bokhashvili of the Ministry of Justice.

3. On 4 September 2006 the Court decided to communicate the complaint concerning the inability to have access to the Supreme Court to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

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

[1] Rectified on 24 January 2008: Judge Baka's name, erroneously mentioned in the list of judges, was replaced by that of Judge Mularoni.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant club was founded on 3 February 1988 in Tbilisi. Subsequent to the last changes in its corporate structure, on 10 February 1999, the Vake District Court in Tbilisi incorporated the applicant as a branch of a German limited liability company, "BAUML GmbH".

1. Proceedings against Dinamo FC

6. Under contracts of 11 May and 5 December 1990, the applicant engaged Mr Giorgi Kinkladze ("the footballer") as a professional player until 30 June 1993.

7. On 11 July 1992 the applicant and the football club Dinamo FC, both members of the Georgian Football Federation ("the GFF"), entered into an agreement on the footballer's transfer to Dinamo FC. It was arranged that the footballer would play for the new club after the latter had paid the applicant 1,000,000 Soviet roubles (the equivalent of 6,000 euros (EUR), according to the applicant). In addition, if the footballer was later transferred abroad, the applicant was to receive 50% of the international transfer fee owed to Dinamo FC. If Dinamo failed to fulfil that obligation, the agreement between it and the footballer would become null and void.

8. On 13 August 1992 Dinamo FC paid the applicant the sum agreed in roubles and the domestic transfer took effect.

9. Under a contract of 11 July 1995, Dinamo FC transferred the footballer to Manchester City FC for a lump sum of USD 1,750,000 (EUR 1,380,000[1]). In the event of the footballer's further transfer by the English club for a fee in excess of USD 3,000,000 (EUR 2,370,000), Dinamo FC was entitled to receive 10% of the excess amount. Subsequently, Manchester City FC indeed transferred the footballer to AFC Ajax, and Dinamo FC thus received around GBP 1,250,000 (EUR 1,820,000) from the English club.

10. Having received the lump-sum transfer fee from Manchester City FC, Dinamo FC never remitted to the applicant the percentage agreed under the contract of 11 July 1992. Seeking to obtain the amount owed to it, the applicant complained to the GFF.

11. On 2 January 1997 the Disputes Committee of the GFF decided that Dinamo FC owed the applicant USD 875,000 (EUR 691,000),

[1] Here and elsewhere, approximate conversions are given in accordance with the exchange rate of the United States dollars (USD), pounds sterling (GBP), Swiss francs (CHF) and Georgian laris (GEL) to euros (EUR) on 5 June 2007.

corresponding to one half of the transfer fee paid by Manchester City FC. Dinamo FC was ordered to pay this sum in three instalments.

12. On 14 April 1997 the applicant referred the matter to the Fédération Internationale de Football Association (the "FIFA") requesting its intervention to secure enforcement by the GFF of its decision of 2 January 1997.

13. The FIFA reminded the GFF on 28 April, 12 June, 29 July and 28 August 1997 of its obligation to enforce decisions and thus to settle the dispute between the Georgian clubs, warning that non-compliance with FIFA directives might result in disciplinary proceedings against the GFF.

14. On 1 September 1997 the GFF Emergency Committee decided that Dinamo FC was liable to pay the total amount of USD 875,000 (EUR 691,000) to the applicant immediately and that, in case of failure to comply with this decision, Dinamo FC would be relegated to the Second Division of the Georgian Championship. That sanction would not, however, release the debtor from its obligation to fulfil its financial commitments *vis-à-vis* the applicant. In addition, the GFF warned both clubs that they were barred, under the GFF and FIFA Statutes, from referring the dispute to a court of law.

15. Following the applicant's complaints, on 16 April and 6 June 1998, that the dispute had still not been settled, the FIFA again notified the GFF, requesting the enforcement of the latter's decisions at the latest by 31 August 1998, on pain of international sanctions.

16. In the meantime Dinamo FC had taken the matter to a civil court. In a judgment of 13 July 1998, the Vake-Saburtalo District Court in Tbilisi declared the transfer agreement signed by both parties on 11 July 1992 to be null and void. Subsequently, the decision of the Disputes Committee of the GFF of 2 January 1997 was also annulled. During the hearing, the applicant pointed out that the District Court had no right to examine the issue, since the clubs, as GFF members, enjoyed immunity from the jurisdiction of the ordinary courts. That argument was left unanswered. The judgment, not having been appealed, became binding.

17. On 17 September 1998, in view of that judgment, the GFF decided to annul its decision of 1 September 1997 and thus to terminate the dispute.

18. On 24 August 1999 the applicant appealed to the Bureau of the FIFA Players' Status Committee ("the Bureau"), a disputes resolution organ. In a decision of 6 September 1999, the Bureau considered that the FIFA should intervene since it was clear that one of the parties "was not behaving properly and that the GFF was not able to settle the matter by itself".

19. Without challenging the findings of the Vake-Saburtalo District Court in Tbilisi on 13 July 1998 about the nullity of the contract of 11 July 1992, the Bureau stated on 6 September 1999 that the footballer's transfer from the applicant to Dinamo FC had nevertheless taken place and that no compensation had been paid in return. It therefore concluded that:

> "There had been a transfer of possession of the federative rights to the player between two clubs, without any contract binding them (since the transfer contract had been declared null and void by the court) and, since one of the parties had indeed performed its obligation, it was logical for that party to be properly indemnified for having done so in good faith."

20. In the light of its findings, the Bureau decided that compensation for the training and development of the footballer had to be paid to the applicant; both clubs were instructed to negotiate the amount. In the event of further disagreement, the FIFA Special Committee would resolve the issue for them. Furthermore, noting that Dinamo FC had severely breached Article 59 § 1 of the FIFA Statutes by submitting the dispute to a court of law, the Bureau fined that club CHF 20,000 (EUR 12,824).

21. The applicant lodged an appeal against this decision with the FIFA Executive Committee ("the Executive Committee"), which delivered its final decision on 24 March 2000. The appeal having been lodged out of time, the Executive Committee rejected it. However, in view of the fact that the clubs had failed to negotiate an amount of compensation, it determined that Dinamo FC had to pay the applicant USD 300,000 (EUR 236,000).

22. Dinamo FC complied with this decision and fully paid the debt in January 2001.

2. Proceedings against the GFF

23. Considering that the amount fixed by the FIFA was insufficient to compensate for the loss sustained, the applicant brought an action for damages in the amounts of USD 9,600,000 and GBP 2,812,500 (totalling EUR 11,750,000) against the GFF before a court of law. It argued that the respondent, contrary to its Statutes, had failed to abide by its positive obligation to protect the rights of its member clubs. As a result of this negligence, the unjust enrichment of Dinamo FC had occurred at the expense of the applicant's property rights.

24. The applicant also requested leave to defer payment of the court fees (known as State fees) until after examination of the case. On 11 April 2003 the Tbilisi Regional Court refused to defer payment on the ground that the applicant's request was not substantiated by evidence of insolvency. The value of its claim being high, the applicant eventually paid the court fees, in the maximum amount of GEL 5,000 (EUR 2,200) under Article 39 §§ 1 and 2 of the Code of Civil Procedure ("the CCP"), on 5 May 2003.

25. The Tbilisi Regional Court, as the court of first instance, examined the action on 13 November 2003 and dismissed it as manifestly ill-founded.

26. On 5 January 2004 the applicant lodged a cassation appeal with the Supreme Court of Georgia. Referring to the fact that it had suspended its activities because of financial problems (near bankruptcy) caused by the respondent's wrongful acts, the applicant requested exemption from the court fees for cassation proceedings. In case this motion for total exemption

was rejected, the applicant also requested leave to pay the court fees either in a reduced amount or with deferment. It referred to the right of access to a court guaranteed by the Constitution.

27. On 30 January 2004 the Supreme Court refused to grant the applicant's request for partial or full exemption from the court fees. Without referring to any specific circumstances, it bluntly stated that no ground for exemption, under Articles 46 to 49 of the CCP, existed in the case at hand. The court invited the applicant to pay the GEL 5,000 fee within fourteen days. When it failed to do so, the Supreme Court, in a final decision of 15 March 2004, declared the cassation claim inadmissible. This decision, adopted under the written procedure, was communicated to the applicant on 26 April 2004.

28. According to the applicant, its inability to receive from Dinamo FC proper indemnification in return for the footballer's transfer, as well as the high costs which it had incurred in the domestic and international proceedings against Dinamo FC and the GFF, constituted the main reasons for its financial collapse. The auditor's report of 15 March 2005 confirmed the applicant's insolvency and the resulting cessation of its activities in the sphere of football. The report stated that, due to the inability to pay the participation fee, the applicant had been excluded from the national football championship since 2002. Among other outstanding debts, the report noted arrears of interest on a loan which the applicant had obtained in order to pay the court fee of GEL 5,000 for the proceedings before the Regional Court (paragraph 24 above).

II. RELEVANT DOMESTIC LAW AND PRACTICE

29. *Code of Civil Procedure (the "CCP"), as it stood at the material time*

Article 14: "...the Regional Court adjudicating at first instance"

"...the Regional Court shall hear a case at first instance if the value of the claim exceeds GEL 500,000 [EUR 224,000] ..."

Article 37 § 2: "Definition of notions"

"Court fees (*sasamarTlo xarjebi*) shall be composed of the State fee (*saxelmwifo baJi*) and the costs incurred for purposes of the proceedings."

Article 38: "State fees"

"The State fee shall be payable in accordance with the State Fees Act when:

a) Lodging a claim...; ...

f) Lodging an appeal;

g) Lodging a cassation appeal...”

Article 39 §§ 1 and 2: “The amount of State fees”

“The amount of the State fee shall depend on the value of the claim and is calculated as follows:

a) [For lodging a claim, the State fee] ... shall represent 2.5% of the value of the claim;

b) For lodging an appeal – 3% of the value of the claim;

c) For lodging a cassation appeal – 4% of the value of the claim...;

The amount of the State fee shall not however exceed 5,000 Georgian laris.”

Article 40 § 1: “The value of the claim”

“The value of the claim shall be indicated by the claimant. If the amount specified by the claimant is manifestly incompatible with the actual value of the disputed property, it shall be re-assessed by the judge.”

Article 41: “Determination of the value of a pecuniary claim”

“The value of a pecuniary claim shall be calculated as follows:

a) For claims of monetary arrears, it shall be represented by the amount claimed...”

Article 47 § 1: “Exemption from court fees”

“With due regard to the financial situation of the party concerned, the court can exempt that party in whole or in part from the court fees to be paid in favour of the State budget.”

Article 48: “Granting leave to pay court fees by instalments, or to defer payment, or to pay a reduced amount”

“With due regard to the financial situation of the parties, the court may grant both or one of the parties the right to pay court fees either by instalment, or to defer payment, or to pay a reduced amount.”

Article 49 § 1: “Reduction of court fees”

“Court fees shall be reduced by one half: ...

c) if the judgment is delivered by default."

Pursuant to Article 102 § 1, the claimant and respondent are each expected to prove the circumstances on which they base their arguments in the adversarial proceedings.

Pursuant to Articles 185 and 396 § 3, if the State fee is not paid when the cassation appeal is lodged, the court would order the party concerned to pay it within a fixed time limit. If the party does not comply with the deadline, the claim would not be examined and the proceedings would be discontinued.

THE LAW

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

30. The applicant complained that the Supreme Court had refused, without giving any reasons, to exempt it from the excessively high court fees, thus denying it access to justice in violation of Article 6 § 1 of the Convention. Alleging further that Dinamo FC was under the protection of certain high governmental officials and that corruption in the judicial system was rife, the applicant complained of a lack of impartiality on the part of the domestic courts. Finally, it challenged the outcome of the proceedings, alleging that the domestic courts had misinterpreted the provisions of substantive and procedural law. Article 6 § 1, in so far as relevant, reads as follows:

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

A. Admissibility

1. As regards the outcome of the proceedings and the impartiality of the judicial authorities

31. The Court recalls that it is not its task to act as an appeal court of "fourth instance" by calling into question the outcome of the domestic proceedings. The domestic courts are best placed for assessing the relevance of evidence to the issues in the case and for interpreting and applying rules of substantive and procedural law (see, amongst many authorities, *Vidal v. Belgium,* judgment of 22 April 1992, Series A no. 235-B, pp. 32-33, § 32; *Gurepka v. Ukraine*, no. 61406/00, § 45, 6 September 2005). In the present case, the relevant domestic decisions do not disclose any manifestly

arbitrary reasoning (cf., *a contrario*, *Donadze v. Georgia*, no. 74644/01, § 32, 7 March 2006) and the Court sees no appearance of a violation of Article 6 § 1 as regards the outcome of the proceedings.

32. As to the applicant's complaint that the domestic courts were not impartial as they were corrupt, the Court notes this is a mere assertion, unsupported by any specific facts or evidence.

33. In such circumstances, the Court considers that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

2. As regards access to the Supreme Court

34. The Court notes that the applicant's complaint of an unjustified denial of access to the Supreme Court is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

35. The Government submitted that, under Article 47 of the CCP, only physical persons could obtain complete exemption from court fees. In so far as the applicant was a legal entity, it was excluded, according to the Government, from the scope of the above provision and could only request leave to pay such fees either by instalments or with deferral, or in a reduced amount, as provided for in Article 48 of the CCP. However, as the applicant, contrary to the requirements of Article 102 § 1 of the CCP, had failed to substantiate with evidence its allegation of financial difficulties, the Supreme Court had correctly denied the financial relief sought under Article 48 of the CCP. The Government further claimed that, prior to dismissing the applicant's cassation claim for non-payment of the court fees, the Supreme Court had invited the latter to submit the missing evidence of insolvency.

36. The Government contended that

- the amount of the fees - GEL 5,000 (EUR 2,200) - was insignificant;
- any football club in Georgia, even the poorest one, could afford it; and
- in any case, the fees could not be considered disproportionate, given the overall value of the damages sought.

The Government compared a recent change in legislation which increased the maximum court fees to GEL 50,000 (EUR 22,000). The applicant should have known that judicial proceedings were contingent upon the payment of such fees. Having received EUR 236,000 from Dinamo FC, the applicant should have put aside the funds necessary for

financing the proceedings. In so far as the imposition of the court fees served the legitimate aim of ensuring the fair and effective administration of justice, the sum of GEL 5,000 could not be said, in the Government's view, to have constituted an unreasonable or disproportionate restriction. In any event, the Government recalled that the Tbilisi Regional Court had already examined the applicant's claim against the GFF on the merits and dismissed it as manifestly ill-founded.

37. The applicant maintained, in reply, that it could not afford the court fees because it had been financially ruined by the time of the litigation against the GFF as a result of its previous dispute with Dinamo FC. It stressed in this regard that it had informed the Supreme Court of its insolvency. This could anyway have easily been deduced from the documents concerning its dispute with Dinamo FC, which materials were in the case file. The arrears received from Dinamo FC had been spent on settling an insignificant part of its debts and could not be taken as an indication of its financial capacity. If the Supreme Court had been dissatisfied with the evidence of the applicant's insolvency, it should have noted so in its warning decision of 30 January 2004, and invited the applicant to submit the missing documents. In this connection, the applicant denied the Government's allegation that the Supreme Court, prior to dismissing its cassation claim, had given it an additional chance to prove its insolvency (see paragraph 27 above).

2. The Court's assessment

38. In the present case, the Court notes that the applicant had in effect to abandon its cassation appeal as it had been unable to pay the Supreme Court fees.

39. However, the Court recalls 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 *Teltronic-CATV v. Poland*, no. 48140/99, §§ 45 and 64, 10 January 2006; *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, pp. 13-18, §§ 28-36). Where appeal procedures are available, Contracting States are required to ensure that physical and legal persons within their jurisdictions continue to enjoy the same fundamental guarantees of Article 6 before the appellate courts as they do before the courts of first instance (see *Brualla Gómez de la Torre v. Spain*, judgment of 19 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2955, § 33; *Tinnelly & Sons Ltd and Others and McElduff and Others v. the United Kingdom*, judgment of 10 July 1998, *Reports* 1998-IV, p. 1660, § 72).

Consequently, there can be no doubt that the applicant had the right under Article 6 § 1 of the Convention to have its case heard by the Supreme Court, but the latter's decisions of 30 January and 15 March 2004 limited that right.

40. The Court must determine whether that limitation restricted or reduced the applicant's right to a court in such a way or to such an extent that the very essence of that right was impaired. In so doing, the Court will review the aforementioned decisions of the Supreme Court, which the latter took in the exercise of its powers of appreciation, in order to ascertain whether the consequences thereof were compatible with the Convention (see *Kreuz v. Poland*, no. 28249/95, §§ 55 and 56, ECHR 2001-VI).

41. The Court recalls that the requirement to pay civil court fees in order to initiate proceedings cannot be regarded as a restriction on the right of access to a court which is incompatible *per se* with Article 6 § 1 of the Convention (*Weissman and Others v. Romania*, no. 63945/00, §§ 34 and 35, ECHR 2006-... (extracts)). However, the reasonableness of such fees must 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 such a restriction is imposed (see *Kreuz*, cited above, §§ 58 and 60). Moreover, a restriction on access to court is only compatible with Article 6 § 1 if it pursues a legitimate aim and if there is a reasonable relationship of proportionality between the means used and the aim pursued (*Weissman and Others*, cited above, § 36).

42. In the instant case, the Court notes that the applicant, in view of the value of its claim and pursuant to Articles 39 and 41 of the CCP, was required to pay the maximum fee - GEL 5,000 (EUR 2,200) - at each level of jurisdiction. In so far as its claim lent itself to an examination at two instances, the real financial burden was doubled. Thus, the applicant discharged the fee of GEL 5,000 at first instance, in view of the Regional Court's refusal to defer payment (see paragraph 24 above), but was unable to pay the same amount again in cassation.

43. The Court finds that the Government's argument that even the “poorest football club” in Georgia could have afforded such fees, is hypothetical and unsupported by any facts or evidence (see *Jedamski and Jedamska v. Poland*, no. 73547/01, § 63, 26 July 2005).

44. The Government's further argument that the applicant, having received a sum in arrears from Dinamo FC, should have put aside the necessary funds in order to institute the judicial proceedings, is also unconvincing. The fact is that the applicant was insolvent and its activities had been wound up by the time the case reached the Supreme Court, the latter being duly informed thereof. The applicant even desisted from playing in the national football championship on account of its inability to pay the participation fee (see paragraphs 26 and 28 above). In such circumstances, if the Supreme Court, as asserted by the Government, in fact only looked into the applicant's earnings, its omission to inquire into the club's expenditures and outstanding debts appears to have been arbitrary. Assuming that the Supreme Court considered that the applicant's allegation of insolvency was not sufficiently substantiated by the material in the case file, it should have

stated so in its warning decision of 30 January 2004 and invited the latter to submit the missing documents. However, contrary to the Government's assertion, the Court observes that the Supreme Court did not do so. It was only in the Government's response in the present proceedings that an explanation was forthcoming for the Supreme Court's otherwise unmotivated decision of 30 January 2004 (paragraphs 27, 35 and 36 above).

45. The Court further observes that the Government's referral to Article 102 § 1 of the CCP, imposing an equal burden of proof on both the claimant and respondent in adversarial civil proceedings, is irrelevant. In the present case, the problem lay not in the relations between the parties to a dispute but between a party and the judiciary. The Court considers that, in situations like the present, where the judicial authorities consider a party's declaration of insolvency to be dubious or insufficient, they should request from that party more information by listing the missing documents and/or ordering the verification of the information provided (see, *mutatis mutandis*, *Jedamski and Jedamska*, cited above, § 64; *Kreuz*, cited above, § 64).

46. Whatever the Government's arguments and justifications may be, the Court attaches special significance to the fact that the Supreme Court itself never indicated that the information provided was insufficient. Nor did it try to obtain, either from the applicant or the competent authorities, any supplementary proof of insolvency. Its decisions bluntly stated that no grounds for granting exemption from the court fees existed. In such circumstances, the Supreme Court's refusal, without any relevant justification, to exempt the applicant from those fees appears to be a wanton restriction of the latter's right of access to a court.

47. The Court notes that the applicant not only sought total or partial exemption from the court fees but was also willing to pay them either in instalments or after the case was heard. In other words, its concern, when requesting exemptions, was truly aimed at securing access to the cassation proceedings. However, when rejecting, without giving any valid reasons, the applicant's requests for financial relief, the Supreme Court appears to have been guided, in the Court's view, by the sole interest of generating income for the State budget (see *Podbielski and PPU Polpure*, no. 39199/98, § 66, 26 July 2005). In the light of the Government's arguments, the Court is led to conclude that the restriction in the present case was of a purely financial nature, unrelated to the merits of the claim or its prospects of success. Such a restriction calls for particularly rigorous scrutiny from the point of view of the interests of justice (see *Podbielski and PPU Polpure v. Poland*, cited above, § 65).

48. In this regard, the Court attaches significance to the fact that, apart from an abstract reference to the notion of "the fair and effective administration of justice" (paragraph 36 above), the Government did not put forward any specific, legitimate aim for the financial restriction on the applicant's right to a court. Having regard to the material in its possession,

the Court notes that the fees imposed in the present case could not be said to have served either to protect the legitimate interests of the other party against irrecoverable legal costs or to protect the legal system against an unmeritorious appeal, considerations which might, according to its case-law, justify restrictions on the right of access to a court (cf. *Tolstoy Miloslavsky v. the United Kingdom*, judgment of 13 July 1995, Series A no. 316-B, pp. 80-81, §§ 61 et seq.). It therefore finds that no prevailing general interest at issue in the present case.

49. In the light of the above considerations, and assessing the facts of the case as a whole, the Court concludes that the Supreme Court failed to secure a proper balance between, on the one hand, the interests of the State in securing reasonable court fees and, on the other hand, the interests of the applicant in vindicating its claim through the courts.

50. There has accordingly been an unjustified denial of access to court and a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

51. The applicant complained under Article 1 of Protocol No. 1 that the domestic courts violated its property rights by annulling the transfer agreement of 11 July 1992 and refusing to entertain its civil action against the GFF.

52. Assuming that Article 1 of Protocol No. 1 is applicable to the "transfer of possession of the federative rights to the player" between the applicant and Dinamo FC, as the Bureau of the FIFA Players' Status Committee put it in its decision of 6 September 1999 (see paragraph 19 above), the Court observes that the respondent State's role in that connection was limited to the annulment by the Vake-Saburtalo District Court of the transfer agreement by a final decision of 13 July 1998.

53. Recalling that Protocol No. 1 to the Convention only entered into force with respect to Georgia on 7 June 2002, the Court finds that this part of the application is incompatible *ratione temporis* with the provisions of the Convention, and must therefore be rejected pursuant to Article 35 §§ 3 and 4.

54. As to the complaint that the domestic courts did not entertain its civil action against the GFF, the Court notes that the applicant had never been entitled, either by statute or a binding court decision, to be paid compensation by the GFF. As Article 1 of Protocol No. 1 does not guarantee the right to acquire property (see, among others, *Van der Mussele v. Belgium*, judgment of 23 November 1983, Series A no. 70, p. 23, § 48 ; *mutatis mutandis*, *Polacek and Polackova v. Czech Republic* (dec.), [GC], no. 38645/97, 10 July 2002), this limb of the complaint under Article 1 of Protocol No. 1 is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicant claimed in respect of pecuniary damage the same amounts which it had requested in the course of the second set of domestic proceedings - USD 9,600,000 and GBP 2,812,500 (totalling EUR 11,750,000). According to the applicant's calculations, these were the arrears which it should have received from Dinamo FC under the transfer agreement of 11 July 1992.

57. The applicant submitted that it had no claim for non-pecuniary damage.

58. The Government submitted that the claim for pecuniary damage was unsubstantiated and excessive.

59. The Court does not discern any causal link between the violation found and the pecuniary damage requested. It cannot speculate about the outcome of the domestic proceedings had they been in conformity with Article 6 § 1 (see *Teltronic-CATV*, cited above, § 69). The Court therefore rejects the applicant's claim.

60. In the absence of any request for non-pecuniary damage, the Court is not called on to make any award of that kind (see *Amat-G Ltd and Mebaghishvili v. Georgia*, no. 2507/03, § 72, ECHR 2005-...).

61. 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 (see *Apostol v. Georgia*, no. 40765/02, § 71, ECHR 2006-; *Assanidze v. Georgia* [GC], no. 71503/01, § 198, ECHR 2004-II; *Maestri v. Italy* [GC], no. 39748/98, § 47, ECHR 2004-I). Consequently, having regard to its finding in the instant case, and without prejudice to other possible measures remedying the unjustified denial of the applicant's right of access to the cassation court (see, *mutatis mutandis*, *Papamichalopoulos and Others v. Greece* (Article 50), judgment of 31 October 1995, Series A

no. 330-B, pp. 58-59, § 34), the Court considers that the most appropriate form of redress would be to have the applicant's cassation appeal of 5 January 2004 (see paragraph 26 above) examined by the Supreme Court, in accordance with the requirements of Article 6 § 1 of the Convention, should the applicant so request (see, *Mehmet and Suna Yiğit v. Turkey*, no. 52658/99, § 47, 17 July 2007; *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003).

B. Costs and expenses

62. The applicant also claimed reimbursement of the court fee of GEL 5,000 (EUR 2,200) paid to the Tbilisi Regional Court in the proceedings against the GFF at first instance (see paragraph 24 above). No claim was made with respect to the Strasbourg proceedings.

63. The Government did not comment in reply.

64. The Court recalls that, where a violation of the Convention has been found, it may award the applicant the costs and the expenses incurred before the national courts for the prevention or redress of the violation. However, as the only violation found in the instant case relates to the lack of access to the cassation court, the Court does not consider it necessary to order the reimbursement of the costs and expenses incurred at the first level of jurisdiction (see, among other authorities, *Papon v. France*, no. 54210/00, § 115, ECHR 2002-VII). This claim must accordingly be dismissed.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaint of an unjustified denial of access to the Supreme Court admissible and the remainder of the application inadmissible;

2. *Holds* by 4 votes to 3 that there has been a violation of Article 6 § 1 of the Convention;

3. *Dismisses* unanimously the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

F. ELENS-PASSOS	F. TULKENS
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following joint partly dissenting opinion of Mr Türmen, Mrs Mularoni and Mr Popović is annexed to this judgment.

F.T.
F.E-P.

JOINT PARTLY DISSENTING OPINION OF JUDGES TÜRMEN, MULARONI AND POPOVIĆ

We regret we are unable to agree with the majority, which found a violation of Article 6 §1 of the Convention in this case.

We observe that:

a) the amount of the contested fee was the equivalent of 2,200 EUR, a sum that cannot be considered disproportionate as such and given the value of the damages sought and the applicant's capacity (a football club of primary level);

b) it clearly appears from the file that the applicant did not prove before national jurisdictions its insolvency. On April 2003, the Tbilisi Regional Court refused to defer payment on the ground that "the applicant's request was not substantiated by evidence of insolvency". In its cassation appeal of 5 January 2004, the applicant limited itself to state that "it had suspended its activities because of financial problems (near bankruptcy)";

c) in January 2001, the applicant company had been paid by DINAMO FC a debt of USD 300,000= (EUR 236,000=).

Under these circumstances, we consider that the refusal by national jurisdictions to award the applicant's request for partial or full exemption from court fees is justified and does not amount to a denial of access to court.

We'd like to make two additional remarks as to the arguments used by the majority to find a violation of Article 6 §1.

1) The main piece of evidence supporting the majority's arguments about the applicant's insolvency is the auditor's report of 15 March 2005, a paper prepared long after January 2004, when the final decision was adopted by the Supreme Court;

2) it is not for our Court to impose on national jurisdictions "to request parties more information" or "to try to obtain, either from the applicant or the competent authorities, any supplementary proof" in the examination of a civil case (see in this respect §§ 44, 45 and 46 of the judgment), the rule being that it is for the parties to adduce evidence and not for the courts to invite parties to do so. If parties do not substantiate their claims with appropriate evidence, they only have to blame themselves for the negative outcome of a case.