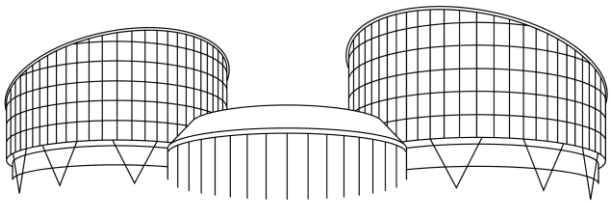

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

SECOND SECTION

CASE OF KVITSIANI v. GEORGIA

(Application no. 16277/07)

JUDGMENT

STRASBOURG

21 July 2009

FINAL

21/10/2009

This judgment may be subject to editorial revision.

In the case of Kvitsiani v. Georgia**,**

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

Françoise Tulkens, *President*,
Ireneu Cabral Barreto,
Vladimiro Zagrebelsky,
Danutė Jočienė,
Dragoljub Popović,
András Sajó,
Nona Tsotsoria, *judges*,
and Sally Dollé, *Section Registrar*,

Having deliberated in private on 30 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 16277/07) 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 Amiran Kvitsiani ("the applicant"), on 4 April 2007.

2. The applicant was represented by Mr Vakhtang Kekelidze, a lawyer practising in Tbilisi. The Georgian Government ("the Government") were successively represented by their Agents, Mr David Tomadze and Mr Levan Meskhoradze of the Ministry of Justice.

3. On 11 December 2007 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1946 and currently lives in Tbilisi.

5. In the course of a police operation conducted on 15 September 1997 in the village of Becho, Mestia District, the applicant's house, which happened to be close to the scene, was accidentally burned down together with the adjacent farm buildings. The house had been the applicant's place of residence prior to the incident.

6. On 15 July 1999 the applicant sued the Ministry of the Interior and the Ministry of Finance for the damage done and, in a judgment of 27 December 2000, the Krtsanisi-Mtatsminda District Court in Tbilisi ordered the respondent authorities to pay him 60,000 Georgian laris (GEL) (26,646 euros (EUR))[1] in compensation for the destruction of his property ("the judgment debt"). The operative part of the judgment indicated that the payment should be made from the State Budget for 2001.

7. The judgment of 27 December 2000 was upheld in full by the Tbilisi Regional Court and the Supreme Court of Georgia on 21 March and 2 October 2002, respectively, and became binding on the latter date.

8. On 19 November 2002 the Krtsanisi-Mtatsminda District Court issued the respondent authorities with a writ of execution which reiterated the obligation to discharge the judgment debt from the 2001 State Budget. The authorities remained inactive.

9. Subsequent to the applicant's complaint, on 8 January 2003 the Enforcement Department of the Ministry of Justice ("the Enforcement Department") invited the respondent authorities to discharge the judgment debt of their own accord within the following three months, on pain of forcible enforcement measures. The allotted time expired without the judgment debt having been paid, but no measures followed.

10. On 11 October 2005 the Enforcement Department issued the National Bank of Georgia with an order to pay the judgment debt. However, as that order indicated the wrong amount, the National Bank sent it back on 25 November 2005 unenforced.

11. On 1 December 2006 the applicant asked the Ministry of Finance for news of progress in the enforcement proceedings.

12. On 13 December 2006 the Ministry of Finance replied that it was unable to discharge the judgment debt, as the Ministry of the Interior had failed to do so of its own accord.

13. In a decision of 19 December 2006, at the applicant's request, the Tbilisi City Court removed from the judgment of 27 December 2000, as an objectively unenforceable condition, the indication that the debt should be paid from the 2001 State Budget. That decision became binding on 28 May 2007, and on 4 September 2007 the City Court issued a writ for its enforcement.

14. On 2 April 2008, on the basis of the previous enforcement writ of 19 November 2002, the Enforcement Department requested the National Bank of Georgia to disburse the judgment debt. The latter authority did so on 4 April 2008, and three days later the applicant retrieved the debt in full.

[1] The approximate conversions are given in accordance with the exchange rate on 20 May 2009.

II. RELEVANT DOMESTIC LAW

15. The relevant legal provisions concerning the conduct of enforcement proceedings against a public agency funded from the State Budget were cited in the case of *Amat-G Ltd and Mebaghishvili v. Georgia* (no. 2507/03, §§ 25-27, ECHR 2005-VIII).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

16. The applicant complained that the lengthy non-enforcement of the binding judgment of 27 December 2000 violated his rights under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which, in so far as relevant, read 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 ..."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions..."

17. The Government stated that, since the impugned judgment had been enforced, the applicant could no longer be considered as a victim of the claimed violations, within the meaning of Article 34 of the Convention.

18. The Government further contended that the applicant had failed to exhaust domestic remedies as he did not lodge a civil claim with the domestic courts, or initiate criminal and/or administrative proceedings, to challenge the inactivity of the bailiffs and seek compensation for the consequent damage.

19. On the merits, referring to the relevant circumstances of the case, the Government stated that the enforcement authority had conducted the enforcement proceedings with due diligence, and that the inability to discharge the judgment debt in a more timely manner had rather been caused by the lack of sufficient State Budget appropriations, as well as the deficient wording of the operative provision of the binding judgment of 27 December 2000. Referring to recent legislative measures and statistical data, the Government asserted that, in general, the respondent State had improved the situation with respect to timely payment of judgment debts.

20. The applicant disagreed, stating that the belated enforcement of the judgment of 27 December 2000 could not, in itself, remedy the

unreasonable length of the enforcement proceedings. The lengthy non-enforcement was particularly detrimental in his situation, given that timely compensation for the loss of his home was of vital importance. He claimed that the real reason behind the eventual enforcement was not the authorities' good will, as suggested by the Government, but the Court's involvement in his case.

21. Referring to the Court's relevant case-law, the applicant further contested the relevance and effectiveness of the domestic remedies referred to by the Government.

A. Admissibility

1. As regards the applicant's victim status

22. The Court agrees with the Government that the enforcement of the judgment given in the applicant's favour redressed the issue of non-enforcement as such. However, such belated enforcement does not address the allegation concerning the excessive length of the procedure. Consequently, the applicant may still claim to be a victim of an alleged violation of the rights guaranteed by Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 with respect to the period during which the judgment of 27 December 2000 remained unenforced (see, amongst other authorities, *Voytenko v. Ukraine*, no. 18966/02, § 32-35, 29 June 2004; *Romashov v. Ukraine*, no. 67534/01, §§ 23-27, 27 July 2004; *Skubenko v. Ukraine* (dec.), no. 41152/98, 6 April 2004).

23. Accordingly, the Court dismisses the Government's preliminary objection as regards the applicant's victim status.

2. As regards the exhaustion of domestic remedies

24. Recalling its well-established case-law on the matter, the Court reiterates that none of the remedies suggested by the Government (see paragraph 18 above) can be deemed effective for the applicant's complaint against the authorities about the lengthy non-enforcement of the judgment. Failure to pay judgment debts from the State Budget in due time is contingent upon appropriate legislative-budgetary measures, as was acknowledged by the Government in the present case (see paragraph 19 above), rather than on the enforcement authority's conduct (see, amongst many other authorities, *Magomedov v. Russia,* no. 20111/03, § 21, 4 December 2008; *Amat-G Ltd and Mebaghishvili*, cited above, §§ 37-40; *IZA Ltd and Makrakhidze v. Georgia*, no. 28537/02, §§ 31-37, 27 September 2005; *Voytenko,* cited above, §§ 28-32; *Romashov,* cited above, §§ 28-33).

25. The Government's second preliminary objection must, therefore, be dismissed.

3. Conclusion

26. The Court concludes that the complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

27. The Court reiterates that a person who has obtained a judgment against the State should not be obliged to bring separate enforcement proceedings (see, *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). This principle, as it applies to the circumstances of the present case, means that the respondent State became responsible for the enforcement of the judgment of 27 December 2000 the moment it became binding, that is on 2 October 2002 (see paragraph 7 above; see also *Magomedov*, cited above, § 21, and *Semochkin v. Russia*, no. 3885/04, § 17, 4 December 2008). That judgment remained unenforced for more than 5 years and 6 months (see paragraph 14 above).

28. The Court considers this period to be unreasonably long, especially when assessed against the simplicity of the enforcement proceedings at stake, the parties' conduct and the significance of the timely receipt of the judgment debt for the applicant (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007). The Government did not point to any circumstances that could justify such a delay. The lack of funds in the State Budget is not an excuse (see, for example, *Amat-G and Mebaghishvili*, cited above, § 48). Nor could the alleged procedural difficulty be held against the applicant (see paragraph 19 above).

29. The foregoing considerations are sufficient to enable the Court to conclude that, by failing for five and a half years to comply with the enforceable judgment in the applicant's favour, the domestic authorities impaired the essence of his right to a court and interfered with his right to the peaceful enjoyment of his possessions (see, *Voytenko*, cited above, §§ 43 and 55; *Vodopyanovy v. Ukraine*, no. 22214/02, §§ 31-36, 17 January 2006).

There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

30. Article 13 of the Convention was similarly invoked to denounce the applicant's non-receipt of the judgment debt in due time.

31. However, having regard to its findings under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 (see paragraph 29 above), the Court considers that it is not necessary to examine, in the circumstances, the same complaint under Article 13 of the Convention (see, *Paslen v. Ukraine*, no. 44327/05, § 14, 11 December 2008, and *Derkach and Palek v. Ukraine*, nos. 34297/02 and 39574/02, § 42, 21 December 2004).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant claimed a sum in respect of pecuniary damage which would compensate for the loss of income from his small-scale farming activity and incorporate the compound interest payable on the judgment debt at the default interest rate of the Georgian National Bank for the whole period of non-enforcement. The relevant calculations were left to the discretion of the Court.

34. The applicant also claimed GEL 200,000 (EUR 88,818) in respect of non-pecuniary damage.

35. The Government contested these claims as unsubstantiated and excessive.

36. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. However, the Court accepts that the applicant must have been distressed by the belated enforcement. Making its assessment on an equitable basis, the Court awards EUR 3,000 under this head.

B. Costs and expenses

37. The applicant also claimed EUR 5,000 for the costs and expenses incurred before the Court. No evidence was submitted in support.

38. The Government noted that this claim was unsubstantiated.

39. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the lack of documentation and the above criteria, the Court rejects this claim.

C. Default interest

40. 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 admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1;

3. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;

4. *Holds*

   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé Registrar	Françoise Tulkens President