EDJ 2006/311434

Tribunal Europeo de Derechos Humanos, sec. 2ª, S 28-11-2006, nº 40765/2002

Resumen

En el caso APOSTOL contra GEORGIA, el TEDH determina que el procedimiento no cumple los requisitos para ser declarado equitativo, por lo que estima la violación del art. 6,1 CEDH en este sentido.

NORMATIVA ESTUDIADA

Conv. de 4 noviembre 1950. Convenio Europeo para la Protección Derechos Humanos y Libertades Fundamentales art.6.1 , art.41

CLASIFICACIÓN POR CONCEPTOS JURÍDICOS

DERECHO A UN PROCESO JUSTO

PROCEDIMIENTO CONTRADICTORIO Y EQUITATIVO

FICHA TÉCNICA

Procedimiento:Procedimiento ante el TEDH

Legislación

Aplica art.6apa.1, art.41 de Conv. de 4 noviembre 1950. Convenio Europeo para la Protección Derechos Humanos y Libertades Fundamentales

Jurisprudencia

Citada en el mismo sentido por STC Pleno de 16 febrero 2012 (J2012/25985)
Citada en el mismo sentido por STC Pleno de 9 mayo 2012 (J2012/98372)

Bibliografía

Citada en "El marco constitucional de las tasas judiciales"

Sinópsis *Hechos*

El intresado interpone acciones legales contra un tercero solicitando el pago de una deuda.
En 2001 el tribunal emite un fallo favorable, determinando la cuantía de la indemnización procedente.
Un año después, ante la inactividad de la administración, solicita nuevamente la ejecución del fallo favorable.
En enero de 2004, el ministerio le concede el pago de la indemnización siempre y cuando proceda a abonar las costas del proceso.
Tras esto, el demandante solicita que se proceda además la pago de los correspondientes intereses de demora.
En febrero de 2002 se desestima su recurso, sin detallar las razones de tal denegación.
Según las informaciones aportadas, el fallo permanece pendiente de ejecución.
Sobre la vulneración del art. 6,1 CEDH
El demandante se queja de que no ha podido disponer de un procedimiento equitativo según lo establecido en esta disposición, debido a la dificultad de acceso a los tribunales.
El Tribunal recuerda que, si el art. 6,1 obliga a los tribunales a motivar sus decisiones, esta obligación no se puede entender como exigencia de una respuesta detallada a cada argumento.
En consecuencia, el TEDH observa que las autoridades competentes deberían haber actuado con más diligencia para no perjudicar al interesado en cuanto al desarrollo del procedimiento.
En este caso, el Tribunal recuerda que ya ha juzgado en decisiones previas que la excesiva rigidez a la hora de aplicar las normas en relación al acceso a los tribunales, no puede suponer una privación del derecho según las exigencias del art. 6,1 CEDH, no encontrando ninguna razón para apartarse de esta conclusión, por lo que, al encontrar que en este caso no se ha respetado esta previsión, estima la vulneración de esta disposición en cuanto a las posibilidades de acceso del interesado a los tribunales.

VERSION OFICIAL EN INGLÉS

SENTENCIA

CASE OF APOSTOL v. GEORGIA

(Application no. 40765/02)

JUDGMENT

STRASBOURG

28 November 2006

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 Apostol v. Georgia,

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

Mr J.P. Costa, President,

Mr A.B. Baka,

Mr M. Ugrekhelidze,

Mrs E. FuraSandström,

Ms D. Jo#ien#,

Mr D. Popovi#,

Mr I. Cabral Barreto, judges,

and Mr S. 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 Mr Leonid Tikhonovitch Apostol, a Georgian national ("the applicant"), on 25 October 2002.

2. The applicant was granted leave, in accordance with Rules 34 § 3 (a) and 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 Simon Papuashvili of the Ministry of Justice.

3. On 25 August 2005 the Court decided to give notice of the applicant's complaint under Article 6 § 1 of the Convention concerning the nonenforcement of the judgment of 21 November 2001 to the respondent Government. 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 (Rule 54A of the Rules of Court). The applicant did not produce any observations in reply. He however maintained on 4 January 2006 his intention to pursue the proceedings.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

1. 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 USD 2,000 (EUR 1,595[1]) as well as GEL 100 (EUR 43,751) 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 Article 26 of the Enforcement Proceedings Act, he was to bear "preliminary expenses associated with enforcement measures". The letter, however, did not specify which measures were foreseen and what their costs were.

10. Being in receipt of only GEL 45 (EUR 19[2]) as a pension 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 addressed authorities 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, due to his indigence, he could not bear the expenses in advance, the applicant expressed his willingness to pay an enforcement fee after having received 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 nonpayment 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 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 (Article 113 (1) of the Enforcement Proceedings Act).

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

2. 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 competent bailiff to seize the impugned apartment and make an inventory of the movable assets inside.

15. After having been 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 partially satisfied the applicant's claim by ordering the respondents to return some of the belongings so claimed.

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

17. On 28 October 2002 the applicant appealed against the judgment and, on 3 December 2002, paid GEL 50 (EUR 21,88[3]) in court fees. On 15 November 2002, taking into consideration the receipt of 24 September 2002, the appellate court dismissed the appeal as timebarred. On an undetermined 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 dated 24 September 2002, but to no avail.

3. Third set of proceedings

19. In the course of divorce proceedings, the Batumi City Court established on 8 June 2001 that the tworoom 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, of the examination of the case in his absence. On 16 August 2001 the appellate 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 had been entitled.

4. Fourth set of proceedings

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

II. RELEVANT DOMESTIC LAW

22. Constitution

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 the II Chapter of the Constitution."

The Second Chapter, consisting of Articles 1247, lists human rights and freedoms.

23. The Constitutional Court Act of 31 January 1996, in force at the material time

Article 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, the constitutional justice, and the protection of the constitutional rights and freedoms of individuals."

Article 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 constitutionality of normative acts with respect to the II Chapter of the Constitution."

Article 20

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

Article 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... is vested with:

a) the Georgian nationals, other physical persons residing in Georgia as well as with the Georgian legal persons, if they consider that their rights envisaged by the II Chapter 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 the II Chapter of the Constitution."

24. The Constitutional Proceedings Act of 21 March 1996, in force at the material time

Article 18 (e)

"The 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"), in force at the material time

Article 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."

Article 10 § 1 -"Expenses related to the enforcement..."

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

Article 11 -"Enforcement of urgent judgements by bailiffs"

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

Article 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 or legal person, irrespective of their hierarchical or juridicalorganisational status.

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

Article 26 (as amended on 5 December 2000) -"Initiation of the enforcement action"

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

Article 38 § 1 -"Debtor's liability to cover the expenses"

"Enforcement expenses shall be born by the debtor. They shall be recovered along with the debt."

Article 39 §§ 1 and 2 -"Expenses related to the enforcement proceedings"

"Funds may be claimed to cover:

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

b) costs associated with the storage of seized articles;

c) expenses related to the giving of public notices;

d) expenses resulting from the detention of a debtor;

e) expenses related to an auction.

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

26. Pursuant to the Order No. 100 § 1 of the Minister of Justice dated 25 November 1999, apart from the items listed in Article 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 shall be considered as enforcementrelated expenses.

Article 113 (1) (introduced on 5 December 2000) -"The enforcement fee"

"Prior to adoption of the Enforcement Fees Act, the fee for the payment of judgment debts is introduced and its amount set at 7% of the judgment debt. The creditor shall pay the fee after having received the debt..."

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

28. Criminal Code

Article 381

"The nonenforcement of a binding judgment or other judicial decision, or the obstruction of its execution by the State, government or localgovernment officials or by executives of a corporation or of other organisations (shall be punished)..."

29. Code of Civil Procedure

Article 268 § 1 (a)(d) -"Immediately enforceable judgments"

"Pursuant to a party's request, the court can render the following judgments to be immediately enforced in part or in full:

a) judgments concerning the entitlement to alimony;

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

c) judgments concerning the employee's entitlement to loss of salaries of no more than three months;

d) judgments concerning the restoration to office of an unlawfully dismissed person."

III. EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW ("Venice Commission")

30. An expert's Opinion of 19 April 1999 on proposals for amending the Georgian Constitutional Court Act and the Constitutional Proceedings Act:

"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, 1112 March 2005):

"22. The existing Article 89.1.f (of the Constitution) already provides for individual access to the Constitutional Court in the form of a socalled ‘nonreal' 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 the II Chapter 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 the II Chapter."

THE LAW

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

A. ADMISSIBILITY

I. First set of proceedings

32. With regard to the first set of proceedings, the applicant complains of the competent authorities' refusal to enforce the judgment of 21 November 2001. Article 6 § 1 of the Convention, in so far as relevant, provides:

Article 6 § 1

"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 guarantees to everyone the right to a fair trial. Consequently, if the obligation to pay expenses prior to the initiation of enforcement proceedings undermined the applicant's right under Article 42 § 1 of the

Constitution, the applicant should have applied, according to the Government, to the Constitutional Court (Article 89 of the Constitution) and requested abrogation of Article 26 of the Enforcement Proceedings Act ("the Enforcement Act").

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

35. The Court recalls 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 (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 nonexhaustion 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, inter alia, Sejdovic v. Italy [GC], no. 56581/00, § 46, ECHR 2006...; Vernillo v. France, judgment of 20 February 1991, Series A no. 198, pp. 1112, § 27). 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 (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, judgment of 6 November 1980, Series A no. 40, p. 18, § 35). 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, judgment of 16 September 1996, Reports of Judgments and Decisions 1996IV, pp. 12101211, §§ 6569).

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, was read into Article 6 § 1 by the Convention organs as an integral part of the "trial" (see Hornsby v. Greece, judgment of 19 March 1997, Reports 1997II, p. 510, § 40).

38. The Court observes that neither Article 42 § 1 of the Constitution invoked by the Government in this regard, nor any other constitutional provision, sets forth guarantees against the nonenforcement of binding decisions which are at least remotely comparable to those developed in the Court's caselaw. While a literal reading of the constitutional provision invoked 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 caselaw, have inferred the right against nonenforcement from Article 42 § 1 of the Constitution.

39. The Court notes that, pursuant to Article 89 § 1 (f) of the Constitution and Article 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 Article 18 (e) of the Constitutional Proceedings Act, inadmissible for examination on the merits. Consequently, insofar 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 socalled "nonreal" 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 public authorities directly affecting their particular situations.

41. This model of individual constitutional complaint resembles that of the Hungarian Constitutional Court which was found, in the case of Vén v. Hungary, 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 control the constitutionality of laws in their generality and could not quash or modify specific measures taken against an individual by the State (see Vén v. Hungary (dec.), no. 21495/93, 30 June 1993).

42. At the same time, the Georgian constitutional proceedings are different from those, for example, of Germany, Spain or the Czech Republic. The "real" 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 forbid the authority concerned from continuing to infringe the right and to order it to reestablish the status quo if that is possible (see Hartman v. Czech Republic, no. 53341/99, § 49, ECHR 2003VIII (extracts); Sürmeli v. Germany [GC], no. 75529/01, § 62, 8 June 2006). Such a constitutional complaint also makes it possible to remedy violations the immediate and direct origin of which lay in 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 courts or public authorities on the basis of that law (see Riera Blume and Others v. Spain (dec.), no. 37680/97, 9 March 1999; Voggenreiter v. Germany, no. 47169/99, § 23, ECHR 2004I (extracts)).

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

44. The Court reiterates that for a remedy to be effective, it should answer the complaint by providing direct and speedy redress for a specific harm, and not merely indirect protection of the rights guaranteed in Article 6 of the Convention (see Merit, cited above, § 59; Deweer v. Belgium, judgment of 27 February 1980, Series A no. 35, p. 16, § 29). In the case at hand, it is not clear how the satisfaction of the applicant's possible constitutional complaint - abrogation of Article 26 of the Enforcement Act - would have offered direct and speedy redress for the problem of nonenforcement, insofar as the Constitutional Court lacked the power to order the competent authorities to proceed with the enforcement of the judgment.

45. The Court recalls in this regard that the German and Czech organs of constitutional review, which, as a rule, satisfy the requirements of Article 35 1 of the Convention, were found to be ineffective in the "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 and 106; Hartman, cited above, §§ 6783).

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

47. The Government's objection with respect to 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.

II. Second and third sets of proceedings

48. As to the second set of proceedings, the applicant complains of the impossibility to obtain an expert report on the receipt dated 24 September 2002. Referring to the fact that the appellate court delivered its judgment on 15 November 2002, i.e. before the corresponding court fees had been paid on 3 December 2002, the applicant alleges that the judgment was fabricated. He further challenges the fairness of the third set of proceedings, since the hearing, attended by his advocate, was 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 set of proceedings, each of them taken as a whole (Miailhe v. France (no. 2), judgment of 26 September 1996, Reports 1996IV, p. 1338, § 43), and considers that the applicant's complaints are manifestly illfounded. This part of the application must therefore be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

MERITS

1. The parties' submissions

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

51. Notably, the Government submitted that, pursuant to Articles 38 and 39 of the Enforcement Act and to the Minister of Justice 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 along with the enforcement of the judgment, the applicant should have provisionally paid, under Article 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, preliminarily born by the applicant, would have been fully reimbursed to him after the enforcement of the judgment. Finally, they submitted that the impugned judgment could not have been enforced at the State's cost, as it did not fall into the category of judicial decisions envisaged by Article 11 of the Enforcement Act.

52. The Government also stated that, pursuant to Article 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 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 Golder v. the United Kingdom, judgment of 21 February 1975, Series A no. 18, pp. 1318, §§ 2836). 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 and 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 for 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 enforcementrelated 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 (Burdov v. Russia, no. 59498/00, § 34, ECHR 2002III), 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" (Kreuz v. Poland, no. 28249/95, §§ 53 and 54, ECHR 2001VI), equally protects the right of access to enforcement

proceedings (see, mutatis mutandis, Manoilescu and Dobrescu v. Romania (dec.), no. 60861/00, ECHR 2005....), that is the right to have enforcement proceedings initiated.

57. It must be recalled in this regard that the right to have 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 1999I).

58. The Court notes that, invoking Article 26 of the Enforcement Act, the competent authorities imposed on the applicant a financial limitation 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 recalls in this regard 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 (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 considered 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 (see, a contrario, Tolstoy Miloslavsky v. the United Kingdom, judgment of 13 July 1995, Series A no. 316B, pp. 8081, §§ 61 et seq.). The existence of the final and enforceable judgment in the applicant's favour stands, on the contrary, for the fact that the applicant's 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 only stated that the impugned judgment did not fall into the category of judgments enforceable at the State's expense. If the applicant was interested in obtaining the judgment debt, he himself had to financially secure the necessary enforcement measures (see paragraph 51 above).

62. The Court notes that, contrary to the Government's assertions, neither Article 26 in fine nor any other provision of the Enforcement Act defines which part of the enforcementrelated expenses, and for which measures, is incumbent upon the creditor. Nor does it follow from the Enforcement Act that the expenses preliminarily born 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 better. They did not specify how much the applicant had to pay and for which enforcement measures. The authorities bluntly stated that after the applicant had covered the preliminary expenses, the bailiff would identify the assets of the debtor, seize them and put them up for auction (see paragraphs 9 and 12 above). As to the applicant's declaration of his indigence, it was left unanswered.

63. Even assuming that there exists a justification for obliging the creditors to bear part of the costs associated with the enforcement proceedings, the Court notes that Article 113 (1) of the Enforcement Act already provides for the creditor's responsibility to pay the fee which represents 7% of the judgment debt retrieved. It has to be stressed that the applicant, being unable to cover the preliminary expenses due to his indigence, was ready to pay the fee after enforcement (see paragraph 11 above).

64. The Court recalls 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 taking various forms of positive action on the part of the State (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 (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 degree of impairing the very essence of that right.

66. There has accordingly been a violation of Article 6 § 1 of the Convention EDL 1979/3822 .

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

67. Under Articles 1, 13, 14 and 17 of the Convention, the applicant complains that, during the second set of proceedings, the bailiff drew up the inventory of the household belongings in his absence and that he was obliged to pay the State fee despite his indigence. Relying on the same provisions, the applicant challenges the forceful eviction of his aunt in the third set of proceedings and complains of not having received social benefits in the course of the fourth set.

68. The Court recalls that the applicant's complaints under Article 6 § 1 of the Convention, related to the second and third set of proceedings, were found 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 of the Convention as far as those proceedings and the fourth set of

proceedings are concerned. This part of the application is therefore manifestly illfounded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION EDL 1979/3822

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 (Fad#l Y#lmaz v. Turkey, no. 28171/02, § 26, 21 July 2005).

71. However, it must be recalled 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 consequences of the violation in such 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 2004II, and Maestri v. Italy [GC], no. 39748/98, § 47, ECHR 2004I).

72. Having regard to its finding in the instant case, and without prejudice to other possible measures of improvement of the existing system of enforcement of judgments (see, mutatis mutandis, Papamichalopoulos and Others v. Greece (Article 50), 34), the Court considers that the most appropriate form of redress would consist of putting an end to the situation of nonenforcement (see, among other authorities, Plotnikovy v. Russia, no. 43883/02, § 33, 24 February 2005).

73. The respondent State shall 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 related to the nonenforcement 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 according to 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.

S. Naismith J.P. Costa

Deputy Registrar President

1. Exchange rate on 29 June 2006.

2. Idem.

1. Exchange rate on 29 June 2006.