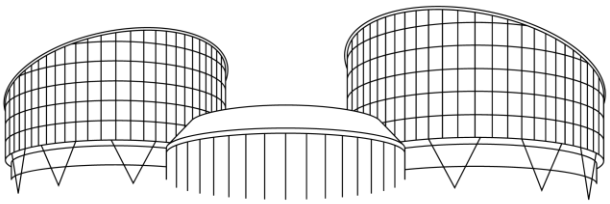

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIRST SECTION

**CASE OF NOVIKOV v. RUSSIA**

*(Application no. 35989/02)*

JUDGMENT

STRASBOURG

18 June 2009

**FINAL**

*06/11/2009*

*This judgment may be subject to editorial revision.*

**In the case of** Novikov v. Russia**,**

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

Christos Rozakis, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 28 May 2009,

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

# PROCEDURE

1. The case originated in an application (no. 35989/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Andrey Georgiyevich Novikov ("the applicant"), on 2 July 2002.

2. The applicant, who had been granted legal aid, was represented by Ms V. Bokareva and Mr M. Rachkovskiy, lawyers practising in Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 7 March 2006 the President of the First 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 1963 and lives in the town of Blagoveshchensk, Amur Region.

## A. Seizure and storage of the fuel

5. On 30 November 1998 the Amur regional police stopped a car. During an inspection of the car, the police discovered a large quantity of aviation fuel. As the driver was unable to produce a certificate for the fuel he was transporting, the police (officer S) seized 22,622 litres of fuel. The police entrusted it for safe keeping to a Belogorsk technical college and later to military unit no. 62266.

6. As the fuel allegedly belonged to a private company OPIUMIK (the "company"), officer S required the company director, Mr P, to produce a document confirming that the fuel had been acquired lawfully. Mr P submitted an invoice dated 1 August 1998. Criminal proceedings were, however, instituted against Mr P on suspicion of forgery of this invoice. The Belogorsk town prosecutor subsequently discontinued the proceedings on the ground that only the forgery of official documents was punishable under the Criminal Code. No decision was taken regarding the fate of the fuel.

7. As can be seen from the domestic courts' findings (see paragraph 15 below), in the meantime, officer S decided not to institute any criminal proceedings in relation to the seized fuel. However, on 2 February 1999 the Belogorsk deputy prosecutor set aside this decision and ordered an additional inquiry. There is no indication that this inquiry led to any prosecution or that any decision was taken in relation to the seized fuel.

8. The company thus attempted to regain possession of its fuel. By a letter of 17 May 1999 the Belogorsk deputy prosecutor informed the company that the fuel had not been attached to the criminal case file against Mr P as evidence and thus no decision had to be taken. He invited Mr P to collect the fuel through the police department. On an unspecified date, however, the company learnt from the Amur police department that the fuel had been stolen when it had been stored in the military unit.

9. Meanwhile, the national authorities endeavoured to identify the officials responsible for the loss of the fuel. Criminal proceedings were instituted against officer S for abuse of power, as well as against the commander of the military unit and officer St, who had allegedly misappropriated the fuel in the military unit. On 18 December 1999 the Belogorsk town military prosecutor discontinued the proceedings against officer St and the head of the military unit because there was no indication of a criminal offence. On 8 April 2000 the proceedings against officer S were discontinued because his participation in the disappearance of the fuel had not been proven.

10. It does not appear that any criminal or other investigation continued thereafter in relation to the seized but missing fuel. No further claim was lodged in respect of it by the company or any other person or legal entity. Nor does it appear that the company made any attempts to obtain

compensation after 17 May 1999 (cf. paragraph 8 above). Instead, the company chose to assign the related claims to the applicant (see below).

### B. Assignment agreement

11. On 26 October 2001 the company transferred title to the seized fuel to the applicant. On 25 November 2001 the parties amended the assignment agreement, indicating that the assignment included a claim in respect of any damage or loss caused by the authorities on account of the seizure of the fuel, as well as a claim for compensation in respect of unjustified enrichment on the same account and a claim for return of the fuel. The amended agreement also stated that the signing of that agreement "annulled the company's debt of 50,000 Russian roubles under a contract dated 20 October 2000".

12. The company informed the regional police department of the transfer of title. Since 27 October 2001 the applicant has unsuccessfully requested the police department to return the fuel.

### C. Proceedings in the commercial courts

13. In November 2001 the applicant sued the Amur Regional Treasury, claiming compensation for the damage incurred as a result of the seizure and loss of the fuel. The Commercial Court of the Amur Region designated the Ministry of the Interior as the proper respondent, with the applicant's consent. The court also gave the regional police department, the military unit and the company leave to intervene as third parties in the proceedings.

14. By judgment of 14 March 2002 the Commercial Court of the Amur Region dismissed the applicant's action. The court held as follows:

> "Under an assignment agreement of 26 October 2001 the OPIUMIK company transferred all its rights to the fuel to [the applicant]...The assignment did not contravene Articles 158, 388 and 389 of the Civil Code... The fuel had been seized in relation to the accusation of forgery against Mr P...
>
> [T]he criminal prosecution against officer S was discontinued ...The fuel was misappropriated by officer St, against whom proceedings were discontinued on 18 December 1999...
>
> [T]he responsibility of an officer of the Ministry of the Interior for unlawful seizure of the company's fuel must be established by a final judgment in a criminal case. The commercial court, under Article 22 of the Code of Arbitration Procedure, does not have the right to assess the lawfulness or unlawfulness of the actions (failure to act) of the investigating authorities and the prosecutor's office.
>
> The plaintiff did not submit any evidence showing that the seizure of the fuel by the officer of the Amur regional police department had been declared unlawful by a court and that [the officer] was responsible for the loss of the fuel.

> The action must be dismissed because there was no fault on the part of the person who allegedly caused the damage."

15. The applicant appealed contending that the absence of a criminal conviction in respect of the officer had been irrelevant and that the respondent and the military unit had entered into a contract for storage of the fuel seized from the company. On 15 April 2002 the Appellate Division of the Commercial Court of the Amur Region upheld the judgment of 14 March 2002. The court stated *inter alia* as follows:

> "Officer S acted lawfully when he inspected and seized the fuel...Having verified whether the fuel had been lawfully acquired, officer S decided not to bring criminal proceedings; on 2 February 1999 the Belogorsk deputy prosecutor set aside this decision and ordered an additional inquiry...
>
> Officer S's failure to observe the procedure for inspection and transfer of the fuel for safe-keeping purposes has no direct causal link with the loss of the fuel..."

Lastly, the appeal court made the following observations in relation to the military unit:

> "Military unit no. 62266 received the seized fuel for storage ... in accordance with Article 84 § 2 of the RSFSR Code of Criminal Procedure. Under Article 906 of the Civil Code of the Russian Federation the military unit became civilly liable *vis-à-vis* the plaintiff for the safe keeping of the fuel. Under Article 902 § 1 of the Civil Code of the Russian Federation, in the event of the loss of the fuel [the military unit] had to compensate the plaintiff for the resulting damage, unless otherwise provided by the law."

The appeal judgment became final on the same date.

16. On 11 June 2002 the Commercial Court of the Far Eastern Circuit, sitting as a cassation-instance court, upheld the judgments of 14 March and 15 April 2002. The court noted that the seizure of the fuel had been due to the absence, at the time, of any document confirming the company's title to it. The court held that the plaintiff had not proved that the investigator had been responsible for the damage caused.

### D. Proceedings in the courts of general jurisdiction (the civil courts)

17. In the meantime, on 29 April 2002 the applicant brought proceedings in the Blagoveshchensk Town Court of the Amur Region against, *inter alia*, the military unit. He claimed that the authorities' failure to return the fuel or to pay compensation be declared unlawful.

18. By a judgment of 12 November 2003 the Town Court rejected the applicant's claim. The court held that the fuel seizure had been carried out by officer S before any criminal proceedings had been initiated because of the need to conduct urgent investigative measures, namely a crime-scene inspection, in compliance with the RSFSR Code of Criminal Procedure (see paragraph 26 below). The Town Court also held as follows:

> "As established in the judgment of the commercial court, during the seizure of the fuel the OPIUMIK company had not supplied any document to confirm the lawfulness of its acquisition. Later Mr P submitted a forged invoice, which gave rise to criminal proceedings against him. An agreement dated 2 November 1998 between the OPIUMIK company and a Mr G for the purchase of 22,622 litres of fuel was produced before this court. It cannot be accepted as a proof of the lawfulness of the fuel acquisition because the content of that agreement does not correspond to the materials in the criminal case which had been discontinued. Nor does it correspond to Mr P's deposition in the criminal proceedings, to the invoice or the expert report no. 141-k of 17 February 1999 which stated that the handwritten inscriptions in invoice no. 983 of 1 August 1998 had been done by Mr P. The Court rejects as unfounded Mr P's allegation that the documents in the criminal file and his deposition had been obtained under duress. Besides, the Court considers that Mr P's and [the applicant's] arguments are intended to challenge the circumstances already determined by the final judgment of the commercial court, in particular as regards the lawfulness of the fuel acquisition by the company...The Court concludes that no evidence has been adduced to confirm [it]. The Court does not accept [the applicant's] argument that the commercial court had confirmed the lawfulness of the fuel acquisition; such matter had not been contested before the commercial court...
>
> The grounds for compensation in respect of damage caused by the investigating authorities, including a claim for restitution of the fuel, are regulated by Articles 1069 and 1070 of the Civil Code. Those grounds were also examined by the commercial courts and cannot be subject to a re-examination in the present case. No legal relationship (*обязательственные отношения*) was established between [the applicant] on the one hand and the military unit, the Ministry of Defence or the Ministry of the Interior on the other. Hence, his claims ... should be rejected."

Lastly, the court found that the applicant had missed the statutory time-limit under Article 256 of the Code of Civil Procedure for bringing the matter before the courts of general jurisdiction.

19. On 9 January 2004 the Amur Regional Court upheld the judgment. The court considered that the commercial court's judgment of 14 March 2002 had dismissed the applicant's claims, *inter alia*, due to his failure to produce evidence confirming the lawfulness of the fuel acquisition. Neither was the civil court provided with any proof that the company had had title to the fuel.

### E. Other unrelated proceedings

20. A commercial court issued a private company with an enforcement order for a sum of money against a State-owned enterprise. The company did not submit the writ within the statutory time-limit and bailiffs refused to enforce the judgment. The company assigned the claim to the applicant, who then requested the commercial court to designate him as creditor in respect of the above judicial award and to restore the time-limit for lodging the enforcement order. In 2002 the commercial court rejected both requests. The applicant did not appeal.

21. The applicant also requested a court of general jurisdiction to designate him as creditor in respect of the assigned award and to award him compensation for the damage sustained. On 26 February 2003 the Primorye Regional Court, at final instance, disallowed the first claim because it had already been determined on 24 October 2002 by the final decision of the commercial court. On 12 March 2003 the Regional Court, at final instance, dismissed the claim for damages on the ground that the applicant's title had never been confirmed by a court.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Civil Code

22. The Civil Code of the Russian Federation, in force from 1 January 1995, provided as follows:

**Article 1069 Responsibility for damage caused by State agencies, agencies of local self-government and their officials**

> "Damage caused to an individual or a legal entity as a result of the unlawful actions (failure to act) of State agencies, agencies of local self-government or officials of these agencies, including as a result of the issuance of an act of a State agency or agency of local self-government which is contrary to a law or any other legal act, shall be subject to compensation. The damage shall be compensated for at the expense, respectively, of the Treasury of the Russian Federation, the treasury of the region of the Russian Federation, or the treasury of the municipal authority."

**Article 1070 Responsibility for damage caused by the unlawful actions of agencies of inquiry and preliminary investigation, prosecutor's offices and the courts**

> "1. Damage caused to an individual as a result of his or her wrongful conviction or unlawful criminal prosecution, or the unlawful application, as a preventive measure, of remand in custody or of a written undertaking not to leave a specified place, or the unlawful imposition of an administrative penalty in the form of arrest or corrective labour, shall be compensated for in full at the expense of the Treasury of the Russian Federation and in certain cases, stipulated by law, at the expense of the treasury of the subject of the Russian Federation or of the municipal authority, irrespective of any fault by the officials of the agencies of inquiry or preliminary investigation, prosecutor's offices or courts, in accordance with the procedure established by law.
>
> 2. Damage caused to an individual or a legal entity as a result of the unlawful activity of agencies of inquiry or preliminary investigation or prosecutor's offices, which has not entailed the consequences specified in paragraph 1 of this Article, shall be compensated for on the grounds and according to the procedure provided for by Article 1069 of this Code..."

23. Article 385 of the Code required the person or entity making an assignment to supply the new creditor with the documents certifying the

assignor's claims. On 30 October 2007 the Supreme Commercial Court of Russia issued an information note summarising the existing case-law on various aspects of the interpretation and application of the provisions of the Civil Code on the assignment of claims and liabilities. In particular, it noted that the invalidity or invalidation of the claim assigned did not imply the invalidity of the assignment agreement. At the same time, it noted that the former gave the assignee the right to sue the assignor under Article 390 of the Civil Code. Nor did the Civil Code prevent the assignment of a future claim or one that was still non-existent when an assignment agreement was signed. The Supreme Court also noted that the assignor's failure to provide the assignee with documents certifying the former's entitlement or claim did not mean that the entitlement or claim had not been conferred on the assignee.

24. Under the Civil Code, an obligation to keep or store items arises under a contract (Article 886) or if provided for by law (Article 906).

## B. RSFSR Code of Criminal Procedure

25. The RSFSR Code of Criminal Procedure of 1961, in force at the material time, provided as follows:

**Article 84 Safe keeping of material exhibits**

"... Material exhibits must be stored in a criminal case. If items of evidence, owing to their size or for any other reason, cannot be stored in the criminal case file, their picture must be taken; if possible, [they] must be sealed and stored in a place specified by the investigator, prosecutor, court..."

**Article 85 Period for storing material exhibits**

"Material exhibits shall be stored until the trial judgment becomes final or until expiry of the time-limit for lodging an appeal against a decision by which proceedings are discontinued...

Material exhibits which can be damaged easily and whose return to their owner is impossible should be given to appropriate entities for use in accordance with [the exhibits'] purpose. If necessary, items of the same type and quality shall be returned to the owner as compensation, or the owner shall be paid a sum equivalent to their value."

26. Article 178 of the Code provides that an investigator may inspect the crime scene or other locations, premises or items for the purpose of detecting physical evidence of the crime or clarifying the circumstances. In urgent situations, the inspection may be carried out before criminal proceedings are instituted. In such situations, the proceedings should be instituted immediately after the inspection.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

27. Referring to Articles 6 and 17 of the Convention and Article 1 of Protocol No. 1, the applicant complained about the seizure of the fuel by the authorities, their failure to return it and the courts' refusal to award him compensation. The Court will examine this complaint under Article 1 of Protocol No. 1, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

### A. Admissibility

#### *1. Exhaustion of domestic remedies*

28. The Government claimed that the applicant should have lodged a claim against the military unit in the commercial courts.

29. The applicant admitted that his 2002 claim before the commercial court had been directed against the Treasury and the regional police department as a third party to the proceedings. The court had decided to examine the applicant's claim as being directed against the Ministry of the Interior, and had reclassified the police department, the Treasury and the military unit as third parties (see paragraph 14 above). The merits of the applicant's claim had been examined by the commercial courts. Thus, he should be considered as having exhausted the domestic remedies.

30. The Court observes that in 2003 the applicant sued the Russian authorities, including the military unit, before the courts of general jurisdiction (civil courts). Both the Town and Regional Courts took cognisance of the merits of the applicant's claims and rejected them as unfounded. Their reasoning was not confined to the compatibility of the applicant's complaint with the formal requirements (see paragraph 18 above). The Court finds that since the domestic courts examined the substance of the applicant's complaint he cannot be said to have failed to exhaust domestic remedies on account of his failure to raise the same claims against the military unit before the commercial courts (see *Dzhavadov v.*

*Russia*, no. 30160/04, § 27, 27 September 2007, with further references). Nothing in the Government's submissions suggests that the same claim in the commercial courts would have a better prospect of success. It follows that the complaint cannot be declared inadmissible for non-exhaustion of domestic remedies.

*2. The applicant's status as a "victim" of the alleged violation and the existence of interference and of "possessions" within the meaning of Article 1 of Protocol No. 1*

31. The Government also contended that the applicant had not been a victim of the alleged violation on account of the findings made in the judgments of 12 November 2003 and 9 January 2004 (see paragraph 18 above). In substance, they claimed in this connection that the applicant had not acquired any title to the fuel and thus could have no valid claim against the authorities.

32. The applicant submitted that the company's or the applicant's title to the fuel had not been contested in the commercial court proceedings. The civil court judgment of 12 November 2003 should not have challenged the relevant findings made by the commercial court. The civil court indicated that the applicant had adduced evidence confirming the ownership title to the fuel; however, that evidence had been rejected as contradicting the findings of the criminal investigation.

33. The Court reiterates that the term "victim" in Article 34 of the Convention denotes the person directly affected by the act or omission which is at issue (see, among other authorities, *Mişcarea Producătorilor Agricoli pentru Drepturile Omului v. Romania*, no. 34461/02, § 34, 22 July 2008). It also reiterates that Article 1 of Protocol No. 1 applies only to a person's existing possessions and does not guarantee the right to acquire possessions (see *Marckx v. Belgium*, 13 June 1979, § 50, Series A no. 31). Consequently, a person who complains of a violation of his or her right under Article 1 of the Protocol must first show that such a right existed; a "claim" can only fall within the scope of that Article if it is sufficiently established to be enforceable (see *OAO Plodovaya Kompaniya v. Russia*, no. 1641/02, § 27, 7 June 2007; *Zhigalev v. Russia*, no. 54891/00, § 146, 6 July 2006; *Uskova v. Russia* (dec.), no. 20116/02, 24 October 2006; and *Grishchenko v. Russia* (dec.), no. 75907/01, 8 July 2004). The assignment of a debt is capable in principle of amounting to such a "possession" (see *Nosov v. Russia* (dec.), no. 30877/02, 20 October 2005; *Gerasimova v. Russia*, no. 24669/02, §§ 18-22, 13 October 2005; and *Regent Company v. Ukraine*, no. 773/03, § 61, 3 April 2008; see also *OOO Rusatommet v. Russia* (dec.), no. 12064/04, 27 November 2008). Thus, the Court has to ascertain whether the assignment in the present case resulted in the acquisition by the applicant of a "possession" or a "claim" within the meaning of Article 1 of the Protocol.

34. The Court observes at the outset that the 2002 commercial court judgments acknowledged that the assignment agreement was compliant with the requirements of the Civil Code. They contain no further argument or analysis on the issue of ownership of the fuel. The Court considers that had the matter been raised in the commercial court proceedings, the commercial courts would have certainly addressed this specific argument in their judgments. Since no party to the proceedings apparently contested it, the courts at three levels of jurisdiction proceeded on the assumption that the company had been the lawful owner of the fuel when they established and subsequently confirmed the relevant factual findings.

35. The Court further observes that in 2003 the court of general jurisdiction rejected the applicant's claims, concluding that he had not proved that the company had had any title to the fuel before signing the assignment agreement in respect of it. The first-instance court held that the fuel purchase contract concluded in 1998 between the company and Mr G could not confirm that the company had acquired the fuel lawfully because the contract "did not correspond to the materials in the criminal case which had been discontinued" or to other materials, including the company director's deposition made in the criminal proceedings. The Town Court refused to accept Mr P's and the applicant's arguments concerning the lawfulness of the fuel purchase, expressly stating that to do so would challenge the factual findings previously made in that respect by the commercial courts. However, in the same judgment, the civil court indicated that the company's title had not been contested before the commercial court. As the Court has already noted above, the commercial court decisions indeed contained no findings as to the title to the fuel in question.

36. Furthermore, the Court notes that there was no other judicial decision refuting the company's title to the fuel. No court invalidated the purchase or assignment agreements in the present case. Neither does it appear that Russian law prevented the assignment of claims arising under tort law, including those engaging State liability. Although the Court notes that the 1998 purchase contract was adduced apparently for the first time only in the 2003 proceedings, it cannot but note as well that the civil court furnished no explanation as to why this contract contradicted the conclusions made during the criminal investigation, which resulted in the discontinuation of the criminal proceedings for forgery against the company director. There is no indication that the criminal inquiry resulted in any finding that the title to the fuel had been conferred on an entity other than the company in question.

37. Lastly, it is noted that Article 385 of the Civil Code required the person or entity making an assignment to supply the new creditor with the documents certifying the assignor's claims (see paragraph 23 above). The applicant was provided with a copy of the purchase contract dated 2 November 1998. It is also noted that under the assignment agreement

dated 26 October 2001, as amended on 25 November 2001, the company transferred title to the seized fuel to the applicant, including a claim in respect of any damage or loss caused by the authorities on account of the seizure of the fuel, as well as a claim for compensation in respect of unjustified enrichment on the same account and a claim for restitution of the fuel. In the Court's opinion, the applicant could not have been required in the circumstances of the case to furnish any further documents certifying the validity of the claim assigned to him.

38. Being sensitive to the subsidiary nature of its role, the Court nevertheless is not bound by the findings of domestic courts and may depart from them where this is rendered unavoidable by the circumstances of a particular case (see, for instance, *Matyar v. Turkey*, no. 23423/94, § 108, 21 February 2002, and *Khamidov v. Russia*, no. 72118/01, § 135 et seq., ECHR 2007-... (extracts)). In the circumstances of the case, the Court is satisfied that the applicant could be considered as having an enforceable claim against the authorities on the basis of the assignment agreement.

39. Thus, Article 1 of Protocol No. 1 is applicable in the present case and the applicant may in this respect claim to be a victim within the meaning of Article 34 of the Convention.

*3. Conclusion*

40. The Court concludes that this complaint 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. Submissions by the parties*

41. The applicant argued that the seizure of the fuel had been unlawful because there had been no decision issued by an investigator or prosecutor under Article 84 of the RSFSR Code of Criminal Procedure (CCrP) (see paragraph 25 above). Furthermore, the decision to discontinue the proceedings against Mr P had not included a ruling on what was to happen to the fuel, in breach of Article 85 of the CCrP. Article 84 of the CCrP governed relations between the authorities, the safe keeper of movable property and its owner, where the property in question was attached as physical evidence in criminal proceedings. The fuel in question had not constituted such evidence. The retention of the fuel thereafter amounted to a deprivation of property. Nor had the seizure of the fuel or its retention pursued any legitimate aim.

42. The Government submitted that the fuel had been seized for inspection under Article 178 of the CCrP (see paragraph 26 above). The above measure amounted to lawful control of use rather than a deprivation of property. The Government contended that the commercial court had rejected the applicant's claim for lack of jurisdiction because claims against officers of the Ministry of the Interior, including claims arising out of the alleged unlawful seizure of property in the framework of criminal proceedings, were to be examined by the courts of general jurisdiction. The commercial court had indicated that the applicant should have directed his claims against the military unit rather than the Ministry of the Interior. The storage contract was regulated by Article 84 of the CCrP and Article 906 of the Civil Code (see paragraphs 24 and 25 above). It was incumbent on the military unit under Article 902 of the Civil Code to pay damages for any loss caused to the applicant's property.

*2. The Court's assessment*

43. Having established that the applicant had "possessions" under Article 1 of Protocol No. 1, the Court has to determine whether the interference complained of was in compliance with the requirements of that provision.

44. The Court does not have to determine whether the circumstances of the case should be classified as a deprivation of possessions or control of use. Neither does it have to take a stance as to whether the inspection and seizure of the fuel was in compliance with Russian law. Even assuming that the above acts were lawful and pursued a legitimate aim, the Court considers that the authorities' failure to return the fuel or pay compensation is disproportionate.

45. The Court reiterates that there must be a reasonable relation of proportionality between the means employed and the aim sought to be realised by any measures applied by the State. That requirement is expressed by the notion of a "fair balance" that must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see *Edwards v. Malta*, no. 17647/04, § 69, 24 October 2006, with further references).

46. The Court has previously held that it does not follow from Article 1 of Protocol No. 1 that an applicant's acquittal of the criminal charges must of itself give rise to an entitlement to compensation for any loss alleged to have been suffered as a result of the impounding of his chattels during the period of the investigation (see *Adamczyk v. Poland* (dec.), no. 28551/04, 7 November 2006, and *Andrews v. the United Kingdom* (dec.), no. 49584/99, 26 September 2002; see also, *mutatis mutandis*, *Simonjan-Heikinheino v. Finland* (dec.), no. 6321/03, 2 September 2008). However, in *Karamitrov and Others v. Bulgaria* (no. 53321/99, § 77, 10 January 2008) the Court considered with reference to Article 13 of the Convention that

"when the authorities seize and hold chattels as physical evidence the possibility should exist in domestic legislation to initiate proceedings against the State and to seek compensation for any damage resulting from the authorities' failure to keep safe the said chattels in reasonably good condition" (compare *Islamic Republic of Iran Shipping Lines v. Turkey*, no. 40998/98, §§ 87, 96-103, ECHR 2007-...; *Immobiliare Saffi v. Italy* [GC], no. 22774/93, §§ 46 and 57, ECHR 1999-V; *Urbárska Obec Trenčianske Biskupice v. Slovakia*, no. 74258/01, § 126, ECHR 2007-... (extracts), and *Housing Association of War Disabled and Victims of War of Attica and Others v. Greece*, no. 35859/02, § 39, 13 July 2006).

47. It is uncontested that the fuel was not attached as evidence to the criminal case against Mr P or any other criminal proceedings, for instance on account of its misappropriation or theft (see paragraphs 6 - 10 and 26 above). The Court observes and it is not in dispute between the parties that the fuel had either been consumed or been lost through the fault of a public authority, a fact also acknowledged by the national courts. Despite the above findings, the Russian courts refused to award any compensation to the applicant.

48. Although it is within the province of the national courts to interpret and apply national law, the Court cannot but note the contradictory findings made by the commercial and civil courts in relation to the applicant's claim under the general provisions of the Civil Code concerning tort liability and its specific provisions concerning State liability (see paragraph 22 above).

49. The commercial court examined and rejected the claim for lack of evidence that the seizure of the fuel "had been declared unlawful" and that officer S was responsible for its loss. The appeal court upheld the first-instance judgment and held that the breaches of the law committed by officer S during the inspection and seizure of the fuel had had no direct causal link to the loss of the fuel or to any damage caused to the applicant. It found that the applicant had adduced no evidence that any unlawful actions on the part of the respondent, the Ministry of the Interior, had caused him damage. Lastly, the appeal court held that the applicant and the military unit had entered into a legal relationship under Article 906 of the Civil Code for storage of the fuel (see paragraph 15 above). Thus, it concluded that any damage caused to the fuel during the storage period should have been imputable to the keeper. Subsequently, the cassation-instance court upheld the judgments given by the courts below. In that connection, the Court cannot but note that it was the commercial court's own decision to designate, though with the applicant's consent, the Ministry of the Interior as a proper respondent in relation to the applicant's claims.

50. Following the commercial court's instructions, the applicant sued the military unit in a civil court. However, unlike the commercial courts, the Town Court concluded in its judgment of 12 November 2003 that there had

been no legal relationship between the applicant and the authorities, including the military unit (see paragraph 18 above).

51. It follows from the above that although the applicant had an opportunity to bring proceedings against the State, the national courts made contradictory findings in relation to the factual and legal grounds for the applicant's claim for compensation while acknowledging the fact that the impossibility to return the fuel was imputable to a public authority. In the light of the above considerations, the Court considers that the Russian courts' refusals to award the applicant compensation for the loss sustained as a result of the authorities' failure to safe-keep his property amounted in the circumstances of the case to a disproportionate interference with his "possessions" under Article 1 of Protocol No. 1.

52. There has therefore been a violation of that provision.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

53. The applicant also complained in substance under Article 6 of the Convention that in the 2002 commercial court proceedings he had been ordered to prove the fault of the State officials for the damage sustained and that the domestic courts had designated the Ministry of the Interior as the respondent and then dismissed his action because it should have been lodged against a different authority.

54. Lastly, referring to unrelated proceedings (see paragraphs 20 and 21 above) the applicant complained that the authorities had failed to enforce a judicial award and that he had been denied access to a court.

55. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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

57. The applicant claimed 452,440 Russian roubles (RUB) for the value of the fuel seized by the authorities and RUB 109,490 in inflation losses for the period from 1998 to 2006. He also claimed RUB 1,809,790 in respect of non-pecuniary damage.

58. The Government considered that no just satisfaction should be awarded to the applicant. They submitted that his pecuniary claim for the value of the fuel should be rejected in view of the findings made by the civil courts. The non-pecuniary award should not in any event exceed the award made by the Court in *Baklanov v. Russia*, no. 68443/01, § 51, 9 June 2005.

59. First, the Court reiterates its above finding that since October 2001 the applicant had a valid claim in respect of the fuel, which had been seized by the national authorities in 1998, and that their failure to return it or pay compensation amounted to a disproportionate interference in breach of Article 1 of Protocol No. 1. Having regard to the information provided by the applicant and uncontested by the Government, the Court awards the applicant 13,300 euros (EUR) in respect of pecuniary damage on account of the value of the fuel, plus any tax that may be chargeable on that amount. At the same time, the Court rejects as unfounded the applicant's claim for inflation losses.

60. Lastly, the Court considers that the finding of a violation constitutes just satisfaction in so far as the applicant's non-pecuniary claim is concerned.

### B. Costs and expenses

61. The applicant claimed EUR 2,640 for the legal services of his two representatives before the Court.

62. The Government considered that the applicant had made no claims under this head.

63. The Court observes that each representative claimed EUR 1,320 for twenty-six hours' work. It is noted that an amount of EUR 850 was already paid to the lawyers by way of legal aid under Rule 91 § 1 of the Rules of Court. The applicant did not submit a copy of any agreement showing that he had already incurred the above expenses or was under a legally

enforceable obligation to pay any fee to his lawyers (see *Salmanov v. Russia*, no. 3522/04, § 98, 31 July 2008). The Court therefore rejects the applicant's claim under this head.

### C. Default interest

64. 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 complaint concerning the authorities' failure to return the fuel or to pay compensation admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

3. *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 13,300 (thirteen thousand three hundred euros) in respect of pecuniary damage, plus any tax that may be chargeable, to be converted into Russian roubles 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Søren Nielsen<br>Registrar | Christos Rozakis<br>President |