CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF NIKOGHOSYAN AND MELKONYAN v. ARMENIA

(Applications nos. 11724/04 and 13350/04)

JUDGMENT

STRASBOURG

6 December 2007

FINAL

06/03/2008

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

In the case of Nikoghosyan and Melkonyan v. Armenia,

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

Mr B.M. ZUPANČIČ, *President,*
Mr C. BÎRSAN,
Mrs E. FURA-SANDSTRÖM,
Mrs A. GYULUMYAN,
Mr E. MYJER,
Mrs I. ZIEMELE,
Mrs I. BERRO-LEFÈVRE, *judges,*
and Mr S. QUESADA, *Section Registrar,*

Having deliberated in private on 15 November 2007,

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

PROCEDURE

1. The case originated in two applications (nos. 11724/04 and 13350/04) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Armenian nationals, Ms Nelsida Nikoghosyan and Mr Gvidon Melkonyan ("the applicants"), on 10 March and 18 March 2004 respectively. They were self-represented.

2. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia at the European Court of Human Rights.

3. On 14 October 2005 the Court decided to give notice of the applications to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the applications at the same time as their admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1976 and 1933 respectively and live in the village of Hnaberd, Aragatsotn Region.

1. The initial proceedings

5. On an unspecified date, the applicant Melkonyan (hereafter, the second applicant) instituted proceedings against a third person, M., seeking pecuniary damages.

6. On 18 November 1999 the Aragatsotn Regional Court (*Արագածոտն մարզի առաջին ատյանի դատարան*) granted his claim and ordered M. to pay 925,000 Armenian drams (AMD) (approx. 1,710 euros (EUR)).

7. On 28 January 2000 the Department for the Enforcement of Judicial Acts (DEJA) (*Դատական ակտերի հարկադիր կատարումն ապահովող ծառայություն*) instituted enforcement proceedings. On the same date, the DEJA placed a seizure order on M.'s property, including land and cattle.

8. On 22 March 2000 the seized property was put on a public auction which took place on 22 August 2000. This property was bought by the second applicant.

9. On an unspecified date, seven members of M.'s family instituted proceedings against the DEJA. They claimed that the confiscated property had been jointly owned by them, but the DEJA had failed to sever M.'s share when confiscating the property in question. They sought to annul the relevant acts and measures taken in the course of the enforcement proceedings, including the public auction. They also instituted proceedings against the second applicant, seeking to lift the seizure order over the property in question.

10. On 23 July 2002 the Aragatsotn Regional Court dismissed their claim concerning the lifting of the seizure.

11. On 23 August 2002 the second applicant sold a part of the land in question jointly to the applicant Nikoghosyan (hereafter, the first applicant) and a third person, A.

12. On 12 September 2002 the first applicant and A. received a certificate of joint ownership in respect of the land.

13. On 4 October 2002 the Aragatsotn Regional Court granted the claim of M.'s family members against the DEJA, finding that their property rights had been violated by the enforcement proceedings since the DEJA should have severed and confiscated M.'s share in the property jointly owned by him and his family members instead of confiscating the entire property. The Regional Court annulled the acts and measures taken in the course of the enforcement proceedings. No appeal was lodged against this judgment.

14. On 11 October 2002 the Civil Court of Appeal (*ՀՀ քաղաքացիական գործերով վերաքննիչ դատարան*) quashed the judgment of 23 July 2002 and lifted the seizure.

15. On 29 November 2002 the Court of Cassation (*ՀՀ վճռաբեկ դատարան*) upheld this judgment.

2. The proceedings concerning the annulment of the sales contract of 23 August 2002 and the certificate of joint ownership of 12 September 2002

16. On an unspecified date, the members of M.'s family instituted proceedings against the applicants and A. seeking to annul the sales contract of 23 August 2002 and the certificate of joint ownership of 12 September 2002.

17. On 25 April 2003 the Aragatsotn Regional Court granted their claim and annulled these documents.

18. On an unspecified date, the applicants lodged an appeal.

19. On 30 May 2003 the Civil Court of Appeal, based in Yerevan, posted a summons addressed to both applicants, notifying them that the appeal hearing on the case would take place on 10 June 2003 at 11 a.m. in Yerevan

20. The envelope which contained the above summons had three postmarks: one dated 30 May 2003 and put in Yerevan, and two dated 12 and 17 June 2003, both put in Aragatsotn Region. On the front side of the envelope, in its lower left part, the second applicant wrote “Received on 17 June 2003 from the head of the post office”.

21. According to the applicants, this letter was received in Hnaberd post office on 17 June 2003 and was served on them on the same date.

22. The Government contested this submission and claimed that the summons was timely delivered to the applicants.

23. On 10 June 2003 the Civil Court of Appeal held the hearing as scheduled and decided to uphold the judgment of 25 April 2003. The plaintiff's representative was present and made oral submissions and explanations. As regards the absence of the applicants, the Court of Appeal stated that:

> “[The applicants and A.] received in person the summons notifying them about the place and time of the hearing, but they failed to appear.”

24. It appears that a copy of this judgment was sent to and received by the first applicant on 31 June and 4 July 2003 respectively. It further appears that the second applicant received a copy of this judgment in person at the Court of Appeal on 15 August 2003.

25. On the same date, the applicants lodged a cassation appeal in which they submitted, *inter alia*, that they had not been timely notified of the hearing of 10 June 2003 and therefore had been unable to attend and make submissions. They argued that the summons had been served on them only on 17 June 2003 which was confirmed by, *inter alia*, the relevant envelope.

26. It appears that, since this cassation appeal was lodged out of time, attached to their appeal the applicants submitted a request to restore the missed time-limit for appeal. They allege that the Court of Cassation granted this request on the ground that the summons in question had been served on them only on 17 June 2003. The applicants did not, however, submit a copy of such a decision.

27. On 26 September 2003 the Court of Cassation examined and dismissed the applicants' cassation appeal in the absence of the parties and

upheld the judgment of the Court of Appeal. The Court of Cassation in its decision did not touch upon the issue of the applicants' absence from the hearing of 10 June 2003.

II. RELEVANT DOMESTIC LAW

28. The relevant provisions of the Code of Civil Procedure (CCP) (*ՀՀ քաղաքացիական դատավարության օրենսգիրք*) read as follows:

Article 6: Adversarial proceedings and equality of arms

"Civil proceedings shall be conducted in an adversarial procedure and with respect for equality of arms."

Article 28: Rights and obligations of the parties

"1. The parties have the right: ... (3) to submit evidence and participate in its examination...; (4) to ask questions, file motions and make explanations in court; (5) to submit their arguments concerning all issues raised during the court examination; (6) to object against the motions and arguments made by other parties..."

Article 29: The parties

"1. The parties to civil proceedings ... are the plaintiff and the respondent.

...

4. The parties enjoy equal procedural rights and bear equal procedural obligations."

Article 78: Court summons

"1. The parties to the proceedings shall be informed about the time and place of the court hearing ... by a court summons...

2. The summons shall be sent by registered post with acknowledgement of receipt or by other means of communication ensuring the registration of notification or is served against a receipt (hereafter, duly notified)."

Article 117: Verifying the presence of the parties and other participants of the proceedings

"1. The clerk of the court hearing reports to the court about the presence of the parties and other participants of the proceedings and whether those who are absent have been duly notified, and also provides information about the reasons for their absence."

Article 118: Examination of the case in the absence of the plaintiff or the defendant

"2. The non-appearance of the defendant who has been duly notified about the time and place of the court hearing shall not preclude the examination of the case."

Article 119: Adjournment of the case

"1. The court is entitled to adjourn the examination of the case if ... it cannot be examined at the hearing in question because of the absence of one of the parties..."

Article 213: Decision to admit an appeal (as in force at the material time)

"1. The court of appeal shall adopt a decision to admit an appeal.

2. The decision should indicate the time and place of the court examination.

3. The decision shall be duly sent to the parties."

Article 225: Grounds for lodging a cassation appeal

"A cassation appeal can be lodged on ... points of law or a procedural violation of the parties' rights..."

Article 227: Violation or wrong application of procedural rules

"2. A court judgment shall be ... quashed, if ... the case was examined in the absence of one of the parties who had not been duly notified about the time and place of the hearing..."

Article 238: A decision of the Court of Cassation (as in force at the material time)

"3. The Court of Cassation is not entitled to establish or consider as proven circumstances which have not been established by the judgment [of the Civil Court of Appeal] or have been rejected by it, to determine whether or not this or that piece of evidence is trustworthy, to resolve the issue as to which piece of evidence has more weight or the issue as to which norm of substantive law must be applied and what kind of judgment must be adopted upon the new examination of the case."

Article 241.1: Grounds for reviewing judgments and decisions on the basis of new circumstances

"1. Judgments and decisions can be reviewed on the basis of new circumstances [if] ... a violation of a right (rights) guaranteed by an international convention to which Armenia is a party has been found by a final judgment or decision of an international court..."

29. The relevant provisions of the Law on the Court System (*«Դատարանակազմության մասին» ՀՀ օրենք*) read as follows:

Article 18: The notion, composition and location of courts of appeal

"A court of appeal is the court which, on the basis of an appeal, carries out a fresh examination of the merits of the case which has been examined by the court of first instance.

The court of appeal is not constrained by the arguments raised in the appeal and can examine the case in its entirety..."

THE LAW

30. The Court considers that, given their common factual and legal background, the applications should be joined.

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

31. The applicants complained under Article 6 § 1 of the Convention that they were not duly notified about the hearing of 10 June 2003 and therefore were not able to participate in it. The relevant part of Article 6 § 1 reads as follows:

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

A. Admissibility

32. The Court notes 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

33. The Government argued that the applicants were duly notified about the date and time of the hearing of 10 June 2003, but deliberately did not appear and forged the relevant evidence. According to the established procedure, the receipt of a letter is acknowledged by signing in the register and there is no such procedure whereby the recipient signs on the envelope, as the applicants did. As regards the postmark of 17 June 2003, its origin was unclear. A receiving post office accepts letters by a consignment note and not by putting a postmark on the envelope. In the applicants' case, the package which contained the summons in question was handed over to the postal service by the Civil Court of Appeal on 30 May 2003. From there it was sent to a distribution centre and on 31 May 2003 sent to the village of Alagyaz. On 2 June 2003 the package was received in the Alagyaz post office and on the same date it was delivered to the Tsaghkahovit post office, from where on the same date it was sent to the Hnaberd post office. Thus, if the package reached Tsaghkahovit from Yerevan (about 100 km) in three days, then it was not possible for it to take 14 days to reach Hnaberd from Tsaghkahovit (about 30 km). Furthermore, according to the established procedure, letters from Tsaghkahovit are dispatched on a daily basis. It follows that the summons was timely delivered to the applicants. The Government claimed that this fact was recorded in the form no. 8 register but they were unable to submit a copy of this register since it was destroyed following the expiry of the one-year time-limit.

34. The Government further argued that, even though the applicants were not present at the hearing of 10 June 2003 before the Civil Court of Appeal, there was no violation of the principle of equality of arms, since the applicants were able to state their position before the Court of Cassation by lodging a cassation appeal.

35. The applicants first submitted that the Civil Court of Appeal violated Article 213 of the CCP by not adopting and sending to them a decision to

admit their appeal, which should have contained information about the time and place of the hearing. They further insisted that the summons was served on them on 17 June 2003 which was demonstrated by the official postmark put on the envelope by the Hnaberd post office. The Government's allegations of forgery were unsubstantiated and fictitious. As to the second applicant's writing on the envelope, the applicants submitted that this was made to serve in the future as an additional proof that the summons had been served with delay. It is true that, when receiving the package, they signed in the form no. 8 register but this was done on 17 June 2003 and not earlier, as the Government claimed. Finally, their position was supported by the fact that the Court of Cassation granted their request and admitted their out-of-time cassation appeal lodged on 15 August 2003 on the ground that the summons had been served on 17 June 2003.

36. The applicants further submitted that the Civil Court of Appeal had no evidence in its possession confirming the fact that they had been duly notified of the hearing and failed to diligently verify this fact, deciding to hold a hearing on 10 June 2003 in their absence and thereby violating the principle of equality of arms.

37. The Court reiterates that where litigation involves opposing private interests, the requirement of equality of arms, one of the features of the wider concept of a fair trial, implies that each party must be afforded a reasonable opportunity to present their case – including evidence – under conditions that do not place them at a substantial disadvantage *vis-à-vis* their opponent (see, e.g., *Dombo Beheer B.V. v. the Netherlands*, judgment of 27 October 1993, Series A no. 274, § 33; and *Steck-Risch and Others v. Liechtenstein*, no. 63151/00, § 54, 19 May 2005). Furthermore, the failure of the authorities to apprise a party of a hearing in such a way so as for it to have an opportunity to exercise his or her right to attend may, in certain circumstances, raise issues under Article 6 § 1 (see, *mutatis mutandis*, *Yakovlev v. Russia*, no. 72701/01, § 21, 15 March 2005; and *Groshev v. Russia*, no. 69889/01, § 29, 20 October 2005). In the present case, the applicants were absent from the hearing before the Civil Court of Appeal of 10 June 2003, while their opponent was present.

38. The Court notes that the parties disagree as to the date when the applicants were notified about this hearing, the Government claiming that the applicants had been duly notified but deliberately did not appear, while the applicants claiming that the summons had been served on them after this hearing had already taken place. They submitted various arguments and evidence in support of their positions.

39. In this respect, the Court notes that, notwithstanding the provisions of Article 78 § 2 of the CCP (see paragraph 28 above), the Government failed to submit any documentary evidence from which it would be clear exactly on which date the applicants received the package dispatched on 30 May 2003 containing the relevant summons. The only evidence which

the Government were able to produce are copies of registers of various intermediate post offices – from which it appears that the package in question was dealt with by these post offices on 2 June 2003 – followed by assumptions that this package should have been delivered on time. On the other hand, there are two official postmarks on the relevant envelope dated 12 and 17 June 2003 which suggest that the package was still dealt with by the postal services of Aragatsotn Region on these dates, both of which happen to be after the hearing in question. The Government did not provide any plausible explanation regarding these postmarks, simply claiming that their origin was unclear and that, according to the established procedure, they should not have been put. Furthermore, it is not clear on the basis of what evidence the Civil Court of Appeal stated in its judgment of 10 June 2003 that "the applicants received in person the summons notifying them about the place and time of the hearing, but they failed to appear", and, if such evidence existed in the case file, why the Government were not able to submit it. Nor is it clear why the Court of Cassation, in its decision of 26 September 2003, did not touch upon and dismiss the applicants' complaint about the failure of timely notification explicitly raised in their cassation appeal, had there been evidence to the contrary. In such circumstances, the Court is not convinced by the Government's arguments and concludes that the applicants were not duly notified about the hearing of 10 June 2003.

40. Having come to this conclusion, the Court considers that the Civil Court of Appeal failed to properly verify as to whether the applicants had been duly notified about the hearing, holding it in their absence. The plaintiff's representative was present at this hearing, and made oral submissions and explanations which the applicants were not able to comment on. Nor were they able to make their own oral submissions in support of their claims. This deficiency was not remedied by the fact that the applicants could lodge an appeal with the Court of Cassation, as the latter, as opposed to the Civil Court of Appeal, does not carry out a full review of the case (see, *mutatis mutandis*, *Steck-Risch and Others*, cited above, § 56). This is even more so considering that the Court of Cassation had competence to remit the case for a new examination on the ground of a procedural violation of the applicants' rights, as requested in their cassation appeal (see paragraph 25 above), but it failed to do so (see, *mutatis mutandis*, *Miholapa v. Latvia*, no. 61655/00, § 30, 31 May 2007). It follows that, in the circumstances of the case, the principle of equality of arms was not respected.

41. There has accordingly been a violation of the applicants' right to a fair hearing enshrined in Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

42. The applicants complained under Article 6 § 1 of the Convention that (1) the domestic courts, in determining the dispute concerning the annulment of the sales contract and of the certificate of joint ownership, incorrectly evaluated the facts and evidence, and made unlawful conclusions; (2) they did not have a fair hearing in the proceedings of 4 October 2002 and (3) they did not have a fair hearing in the proceedings which terminated with the decision of 29 November 2002. They also invoked Article 13 of the Convention and Article 1 of Protocol No. 1 in connection with all three sets of proceedings, which, in so far as relevant, provide:

Article 13 of the Convention

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Article 1 of Protocol No. 1

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

Admissibility

1. The proceedings concerning the annulment of the sales contract and of the certificate of joint ownership

(a) Article 6 § 1 of the Convention

43. The Court reiterates that it is not for the Court to act as a court of appeal in respect of the decisions taken by domestic courts. It is the role of the domestic courts to interpret and apply the relevant rules of procedural or substantive law (see, e.g., *Fehr v. Austria*, no. 19247/02, § 32, 3 February 2005). The Court considers that this complaint under Article 6 § 1 discloses no appearance of a violation of the guarantees of this Article.

44. It follows that this part of the applications is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

(b) Article 1 of Protocol No. 1

45. The Court recalls that the function of the domestic courts in a dispute between private parties is to determine the nature and extent of the parties' mutual duties and obligations. The decisions taken by the domestic courts in such disputes do not generally give rise to an interference with property rights under Article 1 of Protocol No. 1 to the Convention (see, e.g., *The Governor and Company of the Bank of Scotland v. the United Kingdom*

(dec.), no. 37857/97, 21 October 1998). The Court notes that, in the present case, the court decisions provided a solution to a civil-law dispute between private parties. Those decisions cannot by themselves engage the responsibility of the respondent State under Article 1 of Protocol No. 1, the more so since there is no appearance of arbitrariness in the decisions reached.

46. It follows that this part of the applications is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

(c) Article 13 of the Convention

47. According to the Court's case-law, Article 13 only applies where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52). The Court notes that it has found the applicants' complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to be manifestly ill-founded. For similar reasons, the applicants did not have an "arguable claim" that their enjoyment of those rights was breached in the circumstances of the case. Article 13 is therefore inapplicable to their case.

48. It follows that this part of the applications is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

2. The proceedings of 4 October 2002

49. The Court recalls that it may only examine complaints in respect of which domestic remedies have been exhausted and which have been submitted within six months from the date of the "final" domestic decision (see, e.g., *Valašinas v. Lithuania* (dec.), no. 44558/98, 14 March 2000). In the present case, the applicants did not lodge an appeal against the judgment of 4 October 2002 with the Civil Court of Appeal.

50. It follows that the applicants have failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention, and that this part of the applications must be rejected pursuant to Article 35 § 4 of the Convention.

3. The proceedings that terminated with the decision of 29 November 2002

51. The Court notes that the proceedings in question terminated on 29 November 2002, while the applications were lodged with the Court only on 10 and 18 March 2004.

52. It follows that this part of the applications was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicants claimed a total of AMD 7,439,000 (approx. EUR 13,642) in respect of pecuniary damage which represented the losses that the second applicant had allegedly incurred in the course of the enforcement proceedings and the income which they would not have allegedly lost, had the domestic courts granted their claims. They also requested to restore the situation by returning the land and cattle which allegedly belonged to them. The applicants did not claim any non-pecuniary damage.

55. The Government submitted that there was no causal link between the alleged violation of Article 6 § 1 of the Convention and the applicants' claims for pecuniary damage. Nor did the applicants substantiate their claims with any documentary proof.

56. As regards the losses allegedly incurred by the second applicant in the course of the enforcement proceedings, the Court does not discern a causal link between the damage claimed and the violation found. The Court further notes that in the present case an award of just satisfaction can only be based on the fact that the applicants did not have the benefit of the guarantees of Article 6 § 1 of the Convention. It cannot speculate, however, as to what the outcome of proceedings compatible with Article 6 § 1 might have been, had the requirements of this provision not been violated. It therefore rejects the applicants' claims for pecuniary damage (see, *mutatis mutandis*, *Coëme and Others v. Belgium*, nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96, § 155, ECHR 2000-VII). Furthermore, the Court considers that in the absence of any claims for non-pecuniary damage there is no reason to award the applicants any sum under that head either.

57. On the other hand, the Court considers it necessary to point out that a judgment in which it 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, if any, 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 and make all feasible reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; *Ilaşcu*

and Others v. Moldova and Russia [GC], no. 48787/99, § 487, ECHR 2004-VII; and *Lungoci v. Romania*, no. 62710/00, § 55, 26 January 2006). In the case of a violation of Article 6 of the Convention, the applicant should as far as possible be put in the position he would have been in had the requirements of this provision not been disregarded (see, *mutatis mutandis*, *Sejdovic v. Italy* [GC], no. 56581/00, § 127, ECHR 2006-...; and *Yanakiev v. Bulgaria*, no. 40476/98, § 89, 10 August 2006).

58. The Court notes in this connection that Article 241.1 of the CCP allows the reopening of the domestic proceedings if the Court has found a violation of the Convention or its Protocols (see paragraph 28 above). The Court is in any event of the view that the most appropriate form of redress in cases where it finds that a trial was held in the applicant's absence in breach of Article 6 § 1 of the Convention would, as a rule, be to reopen the proceedings in due course and re-examine the case in keeping with all the requirements of a fair trial (see, *mutatis mutandis*, *Lungoci*, cited above, § 56).

B. Costs and expenses

59. The applicants also claimed AMD 138,000 (approx. EUR 253) for the costs and expenses incurred before the domestic courts, such as those connected with the payment of court fees, preparation and copying of documents, postal expenses and legal assistance.

60. The Government submitted that the applicants had failed to substantiate their claims concerning costs and expenses with any documents. They did not submit any proof that these costs had been actually incurred or that an agreement existed between them and their legal representative to make any payments in the future.

61. According to the Court's case-law, an applicant is entitled to reimbursement of his 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. The Court notes that the applicants failed to submit any documentary proof of the alleged costs and expenses and it therefore rejects these claims.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join the applications;

2. *Declares* the complaint concerning the applicants' absence from the hearing of 10 June 2003 admissible and the remainder of the applications inadmissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in that the principle of equality of arms was not respected;

4. *Dismisses* the applicants' claim for just satisfaction.

Done in English, and notified in writing on 6 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President