



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

THIRD SECTION

CASE OF FOMIN v. MOLDOVA

(Application no. 36755/06)

JUDGMENT

STRASBOURG

11 October 2011

FINAL

11/01/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Fomin v. Moldova,

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

Josep Casadevall, *President*,

Alvina Gyulumyan,

Egbert Myjer,

Ineta Ziemele,

Luis López Guerra,

Mihai Poalelungi,

Kristina Pardalos, *judges*,

and Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 13 September 2011,

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

PROCEDURE

1. The case originated in an application (no. 36755/06) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Moldovan national, Ms Ecaterina Fomin (“the applicant”), on 17 August 2006.

2. The applicant was represented by Mr V. Zeamă from “Lawyers for Human Rights”, a non-governmental organisation based in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicant alleged, in particular, that the courts had failed to give sufficient reasons for the judgments convicting her of an administrative offence and had imposed a penalty on her despite the expiry of the statutory time-limit for doing so.

4. On 9 December 2008 the Court decided to communicate the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (former Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1959 and lives in Soroca.

6. The applicant works as a technician for a State telephone company. On 9 June 2005 she called R. over the phone and they arranged for the

applicant to visit R. at her house situated on Viilor str. no. 15/36 in Soroca in order to verify the functioning of the phone line installed there. Some twenty minutes later when she came to R.'s home, she was met by R. who, according to the applicant, started shouting at her and calling her names.

7. The applicant called the police from her mobile phone, but was told that she needed to go to the police station in person in order to make a written complaint. She decided to go back to her workplace and told her superior about the incident, but was advised to forget about it. She was told that R. had already called her superior to complain about an alleged assault on her by the applicant.

8. R. complained to the police that the applicant had assaulted her on 9 June 2005. According to R.'s complaint, the applicant had entered her apartment situated on Viilor str. 15 apartment 36 without authorisation and started ripping the phone lines off the wall and insulting her with offensive language. The applicant had then gone to the cellar and destroyed the phone socket and phone lines. She had been extremely irritated and one could smell alcohol on her breath. Finally, she had hit R. in the face and left. R.'s husband wrote a similar complaint, also noting Viilor str. 15 as being the address of the apartment where the incident had taken place.

9. On 11 July 2005 the local police filed a report confirming that the applicant had committed an administrative offence by insulting R. The report attested that on 9 June 2005 the applicant had entered R.'s apartment without authorisation, insulted her with offensive language and then hit her in the face, causing her physical harm.

10. On 26 July 2005 the Soroca District Court found the applicant guilty of the administrative offence of hooliganism.

11. On an unknown date the Bălți Court of Appeal sent the case for a rehearing.

12. The applicant submitted statements from five companies she had visited on 9 June 2005, all confirming that she had been polite and not under the influence of alcohol that day, which contradicted R.'s statements concerning the applicant's aggressiveness and alcohol consumption. She also submitted a certificate confirming that no repair of the phone lines at R.'s home or office had been asked for on 9 June 2005 or thereafter, and evidence that after her alleged visit phone calls had been made from both phone lines. That proved, in the applicant's opinion, that the statements in R.'s complaint concerning the ripping out of the phone line and phone socket had been untrue. She submitted further evidence proving that her company had a contract to service the phone line installed at R.'s place, that she had been asked to verify a number of phone lines on 9 June 2005, including that at R.'s place, and evidence of the applicant's call to the police on 9 June 2005.

13. On 19 December 2005 the Soroca District Court found the applicant guilty of the administrative offence of insult (*injuria*). The decision was an

almost word-for-word copy of that adopted on 26 July 2005 and reads as follows in its entirety:

“Decision concerning the administrative offence under Article 47¹-1 of the Code of Administrative Offences, 19 December 2005

Judge [V. N.] of the Soroca District Court, having examined the case concerning the administrative offence regarding [the applicant, her address and workplace], has found:

On 9 June 2005 at 12.20 p.m. [the applicant] entered [R.’s] apartment situated on Mateevici str. 1, apartment 42 without authorisation and started shouting and calling her names, thus denigrating [R.’s] honour and dignity, therefore committing the administrative offence provided for in Article 47³ (1) of the Code of Administrative Offences.

The allegation that [the applicant] hit the victim has not been confirmed.

In view of the above, relying on [relevant procedural provisions of the Code of Administrative Offences], the court decides:

To impose a fine on [the applicant] in the amount of ten conventional units amounting to 200 [Moldovan] lei.

This decision may be appealed against within 10 days to the Bălţi Court of Appeal”.

14. In her appeal in cassation the applicant submitted that there was no evidence whatsoever that she had ever been in R.’s apartment at Mateevici str. or shouted at her. The court had not given any ground for the decision such as a document, witness statement or anything other than the statements by R. and her husband. Moreover, she had visited R. at her address at Viilor str. no. 15 and not at Mateevici str. no. 1 as stated in the decision. Finally, the court had disregarded Article 37 of the Code of Administrative Offences (see below), according to which no administrative penalty could be imposed after three months from the date on which the offence had been committed.

15. On 8 February 2006 the Bălţi Court of Appeal upheld the lower court’s decision. The court’s decision started by stating that:

“By its decision [of 19 December 2005] the [lower court] imposed an administrative penalty on [the applicant] because on 9 June 2005 she insulted [R.] in her apartment situated on Mateevici str. in Soroca, thus denigrating [R.’s] honour and dignity.”

It then summarised the applicant’s appeal. The court further found that the lower court had properly applied the procedural law by summoning the parties and explaining their rights to them and by verifying all the circumstances of the case. It correctly dismissed the part of the complaint that the applicant had hit R., since during the court hearing R. herself had denied having been hit. The court reduced the fine to 136 Moldovan lei (8.80 euros (EUR)), using a slightly different manner of calculating the

amount of the fine. That decision was final. Its text was accessible at the Soroca District Court, where it arrived on 20 February 2006.

II. RELEVANT DOMESTIC LAW

16. The relevant provisions of the Code of Administrative Offences (“the CAO”) read as follows:

“Section 47/3. Insult

Insult, that is, the intentional denigration of honour and dignity of a person through an action, verbally or in writing, shall be punished by a fine of seven to fifteen conventional units or by administrative detention of up to fifteen days.

Section 266. Circumstances to be clarified during the examination of the case concerning an administrative offence.

The authority (official) shall clarify during the examination of the case concerning an administrative offence: whether an administrative offence has been committed; whether the person is guilty of having committed it; whether (s)he should be subjected to administrative responsibility; whether there are circumstances attenuating or aggravating responsibility; whether pecuniary damage was caused; whether there are grounds for forwarding the materials concerning the administrative offence for examination by a public association, the staff [of his/her employer]; as well as other circumstances which are important for the examination of the case.”

THE LAW

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

17. The applicant complained under Article 6 of the Convention that the courts had not given sufficient reasons for their decisions convicting her of an administrative offence. The relevant part of Article 6 reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. As to the admissibility

18. The Government did not dispute the applicability of Article 6 to the present case. For its part, the Court recalls that it has already established that “in principle, the general character of the Code of Administrative Offences (“the CAO”) and the purpose of the penalties, which are both deterrent and punitive, suffice to show that for the purposes of Article 6 of the

Convention the applicant was charged with a criminal offence” (*Ziliberberg v. Moldova*, no. 61821/00, § 33, 1 February 2005). It does not see any reason to depart from that finding in the present case. Accordingly, Article 6 was applicable to the applicant’s case under its criminal head.

19. The Court must further determine whether the applicant’s complaints are admissible under Article 35 of the Convention, as amended by Protocol No. 14 to the Convention which entered into force on 1 June 2010.

20. The Court notes in particular that in accordance with Article 35 § 3 b) *in fine* a case can be declared inadmissible only if it has been “duly considered by a domestic tribunal”. The Court finds that in the present case the answer to the question whether the case was duly considered by a domestic tribunal is closely related to the substance of the complaint under Article 6 of the Convention. It therefore joins the examination of this issue to the merits.

21. The Court notes moreover that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. As to the merits

22. The applicant considered that the courts had not given any details as to why they had accepted R.’s version of events and convicted the applicant, despite the evidence which she had adduced to challenge that version of events.

23. The Government considered that the courts had fully examined the case including all the evidence submitted by the applicant, as was clear from the minutes of the court hearings. The application was thus of a “fourth-instance” nature. They noted that the appellate court was not obliged by law to give reasons and could write a short version of its judgment.

24. The Court reiterates that the effect of Article 6 § 1 is, *inter alia*, to place a “tribunal” under a duty to conduct a proper examination of the submissions, arguments and evidence, without prejudice to its assessment or to whether they are relevant for its decision, given that the Court is not called upon to examine whether arguments are adequately met (see *Perez v. France* [GC], no. 47287/99, § 80, ECHR 2004-I, and *Buzescu v. Romania*, no. 61302/00, § 63, 24 May 2005). Nevertheless, although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument (see *Van de Hurk v. the Netherlands*, 19 April 1994, §§ 59 and 61, Series A no. 288, and *Burg v. France* (dec.), no. 34763/02, ECHR 2003-II). The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *Ruiz Torija v. Spain* and *Hiro Balani v. Spain*, 9 December 1994,

Series A nos. 303-A and 303-B, § 29 and § 27 respectively; and *Helle v. Finland*, 19 December 1997, § 55, *Reports of Judgments and Decisions* 1997-VIII).

25. In *Ruiz Torija v. Spain* (cited above, §§ 29-30) the Court found that the failure of the domestic court to deal with the applicant's contention that the court action against her had been time-barred amounted to a violation of Article 6 of the Convention. Similar failures to give sufficient reasons resulted in findings of violations of Article 6 of the Convention in *Hiro Balani* (cited above, §§ 27-28); *Suominen v. Finland*, no. 37801/97, §§ 34-38, 1 July 2003; *Salov v. Ukraine*, no. 65518/01, § 92, ECHR 2005-VIII (extracts); *Popov v. Moldova (no. 2)*, no. 19960/04, §§ 49-54, 6 December 2005; and *Melnic v. Moldova*, no. 6923/03, §§ 39-44, 14 November 2006.

26. In the present case, the Court observes that the applicant was convicted of insulting R. in her apartment on 9 June 2005. It also notes that the judgment of the first-instance court started by stating, from the very beginning, that the applicant had committed the offence (see paragraph 13 above). No other reason was given either for finding the applicant guilty or for dismissing her arguments aimed at challenging R.'s version of events.

27. Similarly, while the Court of Appeal's judgment was longer, it too started from the established fact of the applicant's guilt and moved on to whether the lower court had observed procedure before dealing with the issue of the penalty imposed on the applicant (see paragraph 15 above).

28. Moreover, the Court finds it strange that the domestic courts did not comment in any manner on the fact that the complaint made by R. and her husband referred to one address (Viilor str.), while the applicant was convicted of insulting R. at another address (Mateevici str., see paragraphs 8, 13 and 15 above). This could not be seen as a simple typographical mistake, because the applicant had made an express argument in this regard to the Court of Appeal (see paragraph 14 above), which did not comment.

29. Finally, the applicant submitted a number of additional arguments, supported by evidence, aimed at undermining the veracity of the statements made by R. and her husband (see paragraph 12 above), including their admission to the courts that R. had not been hit by the applicant, contrary to their initial statements made to the police (see paragraphs 8 and 13 above). The domestic courts did not react in any manner to these arguments.

30. The Court recalls that it is primarily for the domestic courts to decide on the admissibility of evidence and on its relevance and weight to be given in reaching a judgment. However, in the present case the domestic courts have failed to even mention, let alone address, any of the applicant's arguments challenging the veracity of the plaintiff's statements, or to explain why they accepted the plaintiff's version of events.

31. The Court reiterates its findings in the case of *Suominen v. Finland*, (cited above, § 37) as follows:

“... a further function of a reasoned decision is to demonstrate to the parties that they have been heard. Moreover, a reasoned decision affords a party the possibility to appeal against it, as well as the possibility of having the decision reviewed by an appellate body. It is only by giving a reasoned decision that there can be public scrutiny of the administration of justice (c.f. *Hirvisaari v. Finland*, no. 49684/99, § 30, 27 September 2001, unreported).”

The right to be heard therefore includes not only the possibility to make submissions to the court, but also a corresponding duty of the court to show, in its reasoning, the reasons for which the relevant submissions were accepted or rejected. This duty is always subject to the proviso that a court may consider it unnecessary to respond to arguments which are clearly irrelevant, unsubstantiated, abusive or otherwise inadmissible owing to clear legal provisions or well-established judicial practice in respect of similar types of arguments.

32. The Court finds that the applicant’s arguments in the present case, such as those undermining R.’s credibility or those concerning the discrepancy between the address of the alleged wrongdoing as described in R.’s complaint and that mentioned in the courts’ decisions, were not clearly inadmissible and were supported by evidence. Moreover, the first-instance court’s failure to give any reasons for finding the applicant guilty of the offence hindered her from appealing in an effective way against her conviction.

33. Moreover, it is apparent that the domestic courts did not comply with their duty under Section 266 of the Code of Administrative Offences (see paragraph 16 above), notably by failing to verify whether an administrative offence had indeed been committed by the applicant.

34. In the light of the foregoing considerations, the Court considers that the applicant did not have the benefit of fair proceedings (see *Suominen v. Finland*, cited above, § 38 and *Grădinar v. Moldova*, no. 7170/02, § 117, 8 April 2008). Since the domestic courts have failed to deal in any manner with the applicant’s arguments and evidence or to specify the reasons underlying her conviction, the Court finds that the case has not been “duly considered by a domestic tribunal”. Accordingly, the Court concludes that the criterion introduced in Protocol No. 14 to the Convention is not applicable in the present case and that there has been a violation of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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. Pecuniary damage

36. The applicant claimed EUR 8.80 in compensation for the pecuniary damage caused to her, representing the amount of fine imposed on her.

37. The Government considered that this claim should be rejected since the applicant had been fined in strict conformity with the law.

38. The Court observes that it has found a violation of Article 6 § 1 of the Convention in respect of the domestic courts’ failure to give sufficient reasons for the applicant’s conviction. However, it will not speculate as to the outcome of the proceedings against the applicant, had the courts given reasons for their decisions. It therefore makes no award in this respect.

B. Non-pecuniary damage

39. The applicant claimed EUR 10,000 in compensation for the non-pecuniary damage caused to her as a result of the courts’ failure to give reasons for her conviction.

40. The Government considered that the applicant’s claim was exaggerated.

41. The Court considers that the applicant’s conviction without sufficiently specifying the underlying reasons has clearly caused the applicant non-pecuniary damage. In the Court’s view, this finding does not in itself afford sufficient just satisfaction in this respect (see, for instance, *Suominen v. Finland*, cited above, § 43). Judging on an equitable basis, the Court awards the applicant EUR 1,200 for non-pecuniary damage.

C. Costs and expenses

42. The applicant claimed EUR 1,100 for legal costs. She relied on a contract with her lawyer, as well as a detailed time-sheet of the hours which her lawyer had spent working on the case.

43. The Government considered that the applicant’s claim was exaggerated, and disputed the number of hours worked and the hourly rate charged.

44. The Court reiterates that costs and expenses will not be awarded under Article 41 unless it is established that they have been actually and necessarily incurred and are also reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

45. In the present case, regard being had to the documents in its possession and the above criteria, the Court awards the applicant EUR 1,000 for costs and expenses.

D. Default interest

46. 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

1. *Declares* by a majority the application admissible;
2. *Holds* by five votes to two that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* by five votes to two
 - (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, the following amounts, to be converted into Moldovan lei at the rate applicable at the date of settlement:
 - (i) EUR 1,200 (one thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 11 October 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Deputy Registrar

Josep Casadevall
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge López Guerra joined by Judge Gyulumyan is annexed to this judgment.

J.C.M.
M.T.

DISSENTING OPINION OF JUDGE LÓPEZ GUERRA
JOINED BY JUDGE GYULUMYAN

The ruling given by the Section in the present case refers to a fine imposed by a Moldovan court amounting to a total of 8.80 euros. That fine was the result of domestic proceedings involving two levels of jurisdiction and four court rulings by the Soroca District Court on 26 July 2005; the Bălți Court of Appeal on an unknown date (paragraph 11); the Soroca District Court again, on 19 December 2005; and finally by the Bălți Court of Appeal again, on 8 February 2006.

To address the merits, given the nature of the proceedings, which dealt with a verbal dispute between the applicant and another person, the insignificant amount of the penalty imposed, the fact that the case was heard four times by domestic courts and the handling of the case by those courts as described in the Section judgment, I cannot find any violation of Article 6 § 1 of the Convention. Concerning the alleged lack of reasoning in the domestic judicial rulings, as the Section's judgment points out (paragraph 25), Article 6 § 1 does not require the courts to answer the parties' arguments in any specific detail. Indeed, cases such as the present one dealing with minor administrative offences can certainly be adequately adjudicated in oral proceedings, hearing the parties' claims, stating the facts as found, deciding the case and citing the applicable norms in a summary judgment. This was the procedure followed by the Soroca District Court. Moreover, the Bălți Court of Appeal subsequently delivered a longer judgment, which provided an analysis of the applicant's complaint (paragraph 15).

The present dissent refers, therefore, to the Section's ruling on the merits of this case. But I also strongly question whether the Court should have ruled on the merits in the first place. The Section posed the question as to whether the applicant's complaints were inadmissible under Article 35 § 3 (b) of the Convention concerning the absence of any significant disadvantage to the applicant. The Section was certainly justified in posing that question in view of the reduced amount of the fine imposed, as well as the fact that the issue raised by the applicant has been amply dealt with by the Court. But the Section decided in favour of admission because it concluded that the question as to whether the case had been duly considered by a domestic tribunal (provided for under Article 35 § 3 (b) of the Convention) was closely related to the applicant's complaint under Article 6. In my opinion, this approach, which equates an examination of the existence of due consideration by a domestic tribunal with the examination of the Article 6 requisites for a fair trial, is contrary to the very terms of Article 35 § 3 (b). In accordance with the Court's case-law in *Holub v. the Czech Republic* ((dec.), no. 24880/05, 14 December 2010), the requirement of having been "duly considered" should not be interpreted as

strictly as the requirements of a fair trial. Thus the Section's interpretation voids the content of Article 35 § 3 (b), which represents a reflection of the principle of subsidiarity, and the guarantee that the Court shall examine any complaint brought before it which has not been duly considered by a domestic tribunal. Therefore, it would have been preferable to have declared this case inadmissible by virtue of Article 35 § 3 (b).