



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

THIRD SECTION

CASE OF RASSOHIN v. MOLDOVA

(Application no. 11373/05)

JUDGMENT

STRASBOURG

18 October 2011

FINAL

18/01/2012

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

In the case of Rassohin v. Moldova,

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

Josep Casadevall, *President*,

Alvina Gyulumyan,

Ján Šikuta,

Ineta Ziemele,

Luis López Guerra,

Nona Tsotsoria,

Mihai Poalelungi, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 27 September 2011,

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

PROCEDURE

1. The case originated in an application (no. 11373/05) 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 Varvara Rassohin (“the applicant”), on 2 March 2005.

2. The applicant was represented by Mr A. Bodnariuc, a lawyer practising in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicant alleged, in particular, that her right to peaceful enjoyment of her property had been breached, and that a court examined her appeal in her absence.

4. On 11 February 2008 the Court 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

5. The applicant was born in 1937 and lives in Chişinău.

6. The applicant has lived in her house since 1950. Her house is situated in a courtyard with two other private houses. According to a document issued by the Chişinău General Directorate for Architecture and Urbanism (a subdivision of the Chişinău Municipality) on 8 December 1998, there is

only one common entrance into the courtyard and a single access serving houses nos. 10 and 14 (the latter being the applicant's house).

7. In 1992 one of the applicant's neighbours (D.) built a fence around her own house which, according to the applicant, included a part of the area left for common use by the owners of the three houses in the courtyard. The fence blocked the applicant's access to the only entry into the courtyard, and she was only able to reach her house through a gate left in the fence.

8. In 1998 D. replaced the fence with a bigger one and did not leave any opening for the applicant to go through. On 19 October 1998 the applicant's son-in-law (S.) came to visit her and discovered the new fence. At the request of his mother-in-law he demolished part of the fence in order to create an unobstructed passage to the applicant's house.

9. At D.'s request, criminal proceedings were initiated against S. On 2 February 1999 the Centru District Court acquitted him. The court noted statements made by several neighbours and an expert from the Chişinău Land Registry, as well as the certificate issued on 8 December 1998 (see paragraph 6 above), according to which the courtyard had been reserved for common use by the owners of all three houses and that there was only one access to the applicant's house, now blocked by the newly built fence. The court found that D. had built the fence unlawfully and blocked the applicant's access to her own house, and that the actions of S. to free the passage to the house had been dictated by strict necessity. No appeal was lodged and the judgment became final.

10. In reply to a complaint by the applicant, on 2 May 2000 the Chief Architect of Chişinău informed her that, following an on-site visit, he had established that the territory on which the applicant's and D.'s houses were situated had been in common use and that, accordingly, the access to the applicant's house was also in common use. This was confirmed by a map annexed to the letter. The Department added that no decisions had been adopted which could have provoked disputes between the applicant and D.

11. On 18 May 2000 the Chişinău municipal council decided to sell D. a plot of land around her house, which included the common access road. On 16 June 2000 the council and D. concluded a contract for the sale of land.

12. Following a complaint by the applicant, on 5 July 2001 the same authority amended its decision of 18 May 2000 by reducing the surface of the plot of land sold to D., in order to resolve the dispute between D. and the applicant and to secure access to the applicant's house.

13. D. challenged the municipality's decision of 5 July 2001 in court. On 15 April 2002 the Chişinău Regional Court annulled the decision of 5 July 2001 as unlawful. The court found that, according to a letter from the municipality's finance department dated 11 September 2000, the access road to the applicant's house had not been included in the plot of land sold to D.

14. In a separate court action, on 6 December 2001 the municipality initiated court proceedings, asking for modification of the contract of sale of land to D. It claimed that the plot of land had mistakenly included the common access road used to access the applicant's house.

15. In January 2002 the applicant initiated court proceedings against D. and the municipality, asking for the annulment of all decisions taken in favour of D. since 1992, including the decision of 18 May 2000, and of all contracts between the two parties. She also noted that the fence built by D. had blocked all access to her house and had even left her without a water supply, which had previously been secured via a water pipe ending in the common courtyard, now situated on D.'s land. The applicant asked for an order to remove all obstacles to her use of the house and to determine the manner of common use of the access by all the owners of the houses in the courtyard.

The two court actions were joined.

16. On 19 November 2002 the Centru District Court rejected the requests of the applicant and the municipality. The court found that the applicant had sufficient space to use her house and that, since the water pipe ran through the land owned by D., the applicant could only ensure access to water with D.'s agreement. It decided to discontinue the applicant's request to annul the decision of 18 May 2000, since its lawfulness had already been confirmed by the final judgment of the Chişinău Regional Court on 15 April 2002.

17. On 13 January 2003 the Chişinău Regional Court quashed the lower court's judgment and ordered a full re-hearing of the case.

18. On 19 February 2004 the Centru District Court struck the applicant's action out of its list due to her failure to appear in court when summoned. That decision was quashed by the Chişinău Court of Appeal on 8 April 2004 because there was no evidence in the file that the applicant had been summoned.

19. On 8 July 2004 the Centru District Court rejected the applicant's and the municipality's requests. It stated, *inter alia*, that the applicant had unobstructed access to her house, without giving any details. It also repeated the reasons it had given in its judgment of 19 November 2002 regarding the applicant's access to water. The court refused to annul the contract for the sale of land concluded between D. and the municipality on 16 June 2000, given that it was based on the municipality's decision of 18 May 2000, a decision previously confirmed as lawful.

20. On 7 October 2004 the Chişinău Regional Court upheld that judgment. It essentially repeated the lower court's reasons regarding the lawfulness of the contract for the sale of land.

21. In her appeal on points of law the applicant referred, *inter alia*, to her inability to fully enjoy her property right over the house, the access to which was blocked by the fence built by D. She claimed that the contract of

16 June 2000 had been concluded in breach of the law. The applicant asked for the annulment of the contract and the demolition of the fence in order to secure unobstructed access to her house.

22. On 22 December 2004 the Supreme Court of Justice dismissed the applicant's appeal, in her absence. The court acknowledged the confirmation by the Chief Architect of Chişinău of 2 May 2000, after he had visited the relevant courtyard, that the land and access road in question were in fact in common use. However, in the absence of any decision by the Chişinău Municipality expressly reserving that land for common use, the Chief Architect's opinion could not serve as a ground for annulling the lower court's judgments. Therefore the lower courts had correctly decided that the land sold to D. had not been land in common use.

23. The court also found that the applicant had been summoned to the hearing but had failed to appear without giving plausible reasons. The applicant claims that she was not summoned. The judgment of 22 December 2004 was final.

II. RELEVANT DOMESTIC LAW

24. The relevant provisions of domestic law and the relevant domestic practice have been set out in *Godorozea v. Moldova*, no. 17023/05, §§ 23-25, 6 October 2009).

25. In addition, Article 449 (h) of the Code of Civil Procedure reads as follows:

“A revision request shall be granted when:

...

(h) The European Court has found a violation of the fundamental rights and freedoms...”

THE LAW

26. The applicant complained under Article 6 § 1 of the Convention that the final court judgment in her case had been adopted in her absence. She also complained that as a Russian-speaker she had not benefited from a proper translation into Russian of the court proceedings.

The relevant part of Article 6 reads as follows:

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

27. She also complained of obstacles to the use of her property, contrary to Article 1 of Protocol No. 1 to the Convention, which reads:

“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.”

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

A. As to admissibility

28. The Court notes that the applicant complained under Article 6 of the Convention of the insufficiency of translation of the court proceedings and related documents. Assuming that Article 6 of the Convention is applicable to this claim, the applicant did not submit any evidence in its support, such as a rejection of a request to have a document translated. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

29. The Court considers that the applicant’s complaint under Article 6 § 1 of the Convention concerning the examination of her appeal by the Supreme Court of Justice in her absence raises questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits, and no other grounds for declaring these complaints inadmissible have been established. The Court therefore declares this complaint admissible.

B. As to the merits

30. The applicant complained of the examination of her appeal in her absence. Even though there was evidence in the file that a summon had been sent to her address, she claimed that she never received that summons and there was no evidence to the contrary.

31. The Government submitted that the applicant had been properly summoned to the hearing, as evidenced by the registration of the sending of the letter to her address. It was for the applicant to show that she had not received the summons and she had failed to submit such evidence.

32. The Court reiterates that Article 6 § 1 does not guarantee a right to appeal from a decision of first or second instance. Where, however, domestic law provides for a right of appeal, the appeal proceedings will be treated as an extension of the trial process and accordingly will be subject to Article 6 (*Delcourt v. Belgium*, 17 January 1970, § 25, Series A no. 11;

Gurov v. Moldova, no. 36455/02, § 33, 11 July 2006 and *Clionov v. Moldova*, no. 13229/04, § 39, 9 October 2007). This implies, for instance, that litigants must be guaranteed an effective right of access to courts for the determination of their “civil rights and obligations” (see, for example, *Brualla Gómez de la Torre v. Spain*, 19 December 1997, § 37, *Reports of Judgments and Decisions* 1997-VIII).

33. It is to be noted that Moldovan law allowed the applicant to be summoned to the hearing of the Supreme Court of Justice and to address the court during that hearing. Moreover, the proceedings in the present case concerned the effects of a contract on the applicant’s enjoyment of her house and of her access to the only water source in the common courtyard. This, in the Court’s view and in the specific circumstances of the present case, made necessary to hear the applicant. Only if she clearly chose not to appear the law expressly allowed the court to examine the case in her absence (see Article 444 of the Code of Civil Procedure, cited in the above-mentioned case of *Godorozea*, § 23). Therefore, it is necessary to determine whether the applicant was properly summoned to that hearing, in accordance with the domestic law and practice.

34. The Court notes that in *Russu v. Moldova* (no. 7413/05, §§ 23-28, 13 November 2008) it has already found that “in practice the domestic courts do not accept as sufficient evidence the sending of a letter by a court and require proof of delivery”. The case-law of the Supreme Court of Justice, mentioned in *Godorozea* (cited above, §§ 24 and 25) confirms that conclusion. The Court does not see in the file before it any confirmation that the summons – which was sent by the Supreme Court of Justice to the applicant’s address – was in fact delivered to her. The Court therefore concludes that the applicant was unable to fully present her case before the Supreme Court of Justice. In the particular circumstances of the present case where the applicant’s presence was necessary, the failure to properly summon her deprived her of her right of access to court.

35. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No.1 TO THE CONVENTION

As to admissibility

36. The applicant complained that her right to protection of her property had been breached. In particular, the access road to her house was blocked and only a narrow 80 cm side passage was left, preventing any meaningful access to the house. Moreover, as a result of the sale of the land reserved for common use the applicant was cut off from the water supply, which she had

enjoyed for many years and which pre-dated the purchase of the house by her neighbour D.

37. The Government considered that the applicant's complaint was ill-founded. There was no interference with her property right since she never had a legitimate claim to the land sold to D., given that the domestic courts clearly established that access to the applicant's house had not been blocked. As for the water supply to the applicant's house, it was a matter for her to settle with the owner of the land on which the water pipe was situated, as also established by the courts. Moreover, this was a dispute between two private individuals and the mere fact that the State had set in place a court system allowing the parties to solve their disputes did not imply any responsibility for the State for the result of the dispute resolution.

38. The Court notes that it has found a violation of Article 6 § 1 of the Convention due to the failure of the Supreme Court of Justice to hear the applicant. It cannot, however, speculate as to the outcome of the proceedings had the court heard the applicant. It therefore considers that this complaint is inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant claimed 50,000 euros (EUR) in compensation for the damage caused to her, without giving any further details.

41. The Government considered this claim unsubstantiated.

42. The Court considers that she must have suffered frustration as a result of the Supreme Court of Justice's failure to hear her before dismissing her appeal. Deciding on an equitable basis, the Court awards the applicant EUR 3,200 for non-pecuniary damage.

B. Costs and expenses

43. The applicant made no claims under this head.

C. Default interest

44. 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* admissible the complaint under Article 6 § 1 of the Convention concerning the examination of her appeal in her absence, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
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 3,200 (three thousand two hundred euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (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 October 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President