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

SECOND SECTION

# CASE OF GOSPODĂRIA ȚĂRĂNEASCĂ CHIPER TERENTI GRIGORE v. THE REPUBLIC OF MOLDOVA

*(Application no. 71130/13)*

JUDGMENT

Art 1 P1 • Peaceful enjoyment of possessions • Company's licence to operate a quarry withdrawn for breaches of the Mining Code • Official warnings to remedy breaches unclear, even with specialist advice, as neither expert report nor any further explanation provided • Judgment finding for applicant quashed without sufficient reasoning • Lawfulness and proportionality requirements not fulfilled

STRASBOURG

2 June 2020

**FINAL**

02/09/2020

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

**In the case of Gospodăria țărănească Chiper Terenti Grigore v. the Republic of Moldova,**

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

Robert Spano, *President,*
Marko Bošnjak,
Valeriu Griţco,
Ivana Jelić,
Arnfinn Bårdsen,
Saadet Yüksel,
Peeter Roosma, *judges,*
and Stanley Naismith, *Section Registrar,*

Having regard to:

the application 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 company registered in Moldova, Gospodăria țărănească Chiper Terenti Grigore ("the applicant"), on 26 October 2013;

the decision to give notice to the Moldovan Government ("the Government") of the application;

the parties' observations;

Having deliberated in private on 5 May 2020,

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

# INTRODUCTION

The case concerns the withdrawal of the applicant company's licence to exploit a limestone, gravel and sand quarry. It raises issues under Article 1 of Protocol No. 1 to the Convention.

# THE FACTS

1. The applicant is a company incorporated in Moldova which was represented by Mr C. Lazari, a lawyer practising in Chișinău.

2. The Government were represented by their Agent, Mr O. Rotari.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The applicant company operated a quarry extracting limestone, gravel and sand from 2000. At the time of the events it operated in accordance with a licence issued by the Licensing Chamber *(Camera de Licențiere din Republica Moldova)* on 27 December 2010 for a period of five years.

5. On 15 March 2012 the National Institute of Judicial Expertise was requested by the Prosecutor General's Office to conduct an expert analysis and give answers to three questions concerning the applicant company's

mining activity: (a) What was the surface exploited by the applicant company for the extraction of gravel and sand outside the surface allocated to it in the mining licence? (b) What was the volume of the minerals extracted by the applicant company outside the allocated area? (c) What was the value of the gravel and sand extracted by the applicant company outside the allocated area? (d) What was the value of unpaid taxes from the above extractions? and (e) What was the value of the damage to the environment caused as a result of the above extractions?

6. In an expert report dated 1 June 2012 three experts in the field of immovable property, constructions and construction materials from the National Institute of Judicial Expertise issued an expert report in which they gave the following answers to the questions asked by the Prosecutor General's Office: (a) the applicant company did not exploit any surface beyond the area allocated to it in the mining licence; (b) the volume of the unlawfully extracted minerals was 1,400 cubic metres; (c) the applicant company extracted limestone, gravel and sand; (d) the value of the gravel and sand extracted from the mine was 175,812 Moldovan lei (MDL). The report did not contain any details as to how the experts reached the conclusion that the 1,400 cubic metres of sand had been extracted unlawfully.

7. On 19 June 2012 the Prosecutor General's Office wrote to the Licensing Chamber that following verification, it had discovered that the applicant company had unlawfully extracted some 1,400 cubic metres of sand. The Prosecutor General's Office also submitted that the above quantity of sand had not been declared to the competent authority and the applicant company had not filled in the required official forms for the purpose of taxation, thus acting in breach of Article 39(b), (c) and (g) of the Mining Code *(Codul Subsolului)*. It also stated that the State had sustained damage of some 175,560 Moldovan Lei (MDL) and that a criminal investigation had been initiated in that respect. A copy of the expert report of 1 June 2012 was attached to the letter.

8. On 2 July 2012 the Licensing Chamber sent the applicant company an official warning *(prescripție)* informing it about the alleged breaches of Article 39(b), (c) and (g) of the Mining Code found by the Prosecutor General's Office and asking it to remedy all of them within one month. It does not appear from the materials of the case that the applicant company received any explanation concerning the accusations against it or that it had been given a copy of the Office of the Prosecutor General's letter of 19 June 2012 to the Licensing Chamber.

9. On 2 August 2012 the Licensing Chamber repeated its warning, giving the applicant company another month to remedy all the shortcomings found by the Prosecutor General's Office.

10. The applicant company informed the Licensing Chamber that it had not understood what exactly was being imputed to it and that the warnings

received by it had not contained any details or annexes. It also challenged the official warnings in court, but the outcome of the proceedings is not known to the Court.

11. On 7 September 2012 the Licensing Chamber revoked the applicant company's licence and on 11 September 2012 it applied to the Centru District Court for confirmation of that measure on the grounds invoked by the Prosecutor General's Office in its letter of 19 June 2012 (see paragraph 7 above).

12. In its written submissions before the court, the applicant company submitted that it was not clear from the Licensing Chamber's application to which breaches they referred. If the alleged breaches had taken place before 2009, then the provisions of the old Mining Code should have been relied upon and not those of the new one, which entered into force in 2009. The applicant company also argued that it had never been informed about the criminal investigation initiated by the Prosecutor's Office and had not been made familiar with any documents which served as a basis for the Licensing Chamber's official warnings. Moreover, it submitted that the experts who had produced the report had not had the necessary qualifications. As to the two official warnings sent by the Licensing Chamber in July and August 2012, the applicant company submitted that they had been too vague and that it had not understood from them what exactly had been imputed to it. The applicant company submitted that it had declared to the Mining Authority all the quantities of sand extracted and had filled in the official forms required in a timely manner. The applicant specified that initially the official forms did not require distinguishing between the minerals extracted; therefore no such distinction had been made. Later, however, new forms were issued in which it was required to distinguish between the different minerals extracted. The applicant company had also submitted all the required tax declarations to the tax authority. The applicant submitted documents in support of its submissions. The applicant also argued that according to the Mining Code, the only authority with competence in the field of mining and with a right to apply to the Licensing Chamber was the Mining Authority and not the Prosecutor's Office.

13. In a judgment of 6 December 2012 the Centru District Court rejected the Licensing Chamber's action as ill-founded. The court found that the only piece of evidence in support of its application was the expert report of 1 June 2012 by the National Institute of Judicial Expertise. The court found in the first place that, according to Article 52 of the Mining Code, the only State authority competent to conduct expertise in the field of mining was the Mining Authority. Moreover, the experts who had conducted the expert examination at the request of the Prosecutor General's Office had not even visited the applicant company's mine, nor had they obtained any documents from it. The conclusions reached by the experts were confusing because after finding that the applicant company had not exploited any surface

beyond the area allocated to it in the mining licence, they have stated that the applicant company had extracted unlawfully 1,400 square metres of sand without explaining on what ground they considered that extraction unlawful. The court finally found that, according to information obtained from the Mining Authority, the applicant company had declared to it the entire quantity of sand extracted and had filled out and submitted all the necessary official forms to it. The Licensing Chamber appealed against this judgment.

14. On 28 February 2013 the Chişinău Court of Appeal upheld the appeal lodged by the Licensing Chamber and reversed the judgment of the first instance court. The Court of Appeal found that the applicant company had failed to comply with the official warnings of 2 July and 2 August 2012 by the Licensing Chamber. Moreover, for the first time the Court of Appeal relied on an expert report of 3 September 2012 according to which the applicant company had allegedly exploited a surface beyond the area allocated to it in the mining licence. The court found well-founded the grounds relied upon by the Licensing Chamber and found in its favour.

15. The applicant company lodged an appeal on points of law against the above judgment in which it reiterated its initial arguments concerning the action lodged by the Licensing Chamber and criticised the Court of Appeal for the fact that it did not even mention its arguments in its judgment.

16. On 26 June 2013 the Supreme Court of Justice dismissed the applicant company's appeal on points of law.

17. On 17 July 2013 the head of the applicant company was invited to the Prosecutor General's Office where he was handed a decision of 16 April 2013 by which the criminal investigation in its respect had been discontinued. The Prosecutor's Office found, *inter alia*, that the applicant company had in fact declared to the competent authority all the extracted minerals, although without distinguishing between the different types of minerals, and it had filled in the required official forms for the purpose of taxation.

18. Shortly thereafter the applicant company lodged a revision request with the Supreme Court of Justice against its judgment of 26 June 2013 invoking the above decision of the Prosecutor General's Office as a ground for review. However, on 4 December 2013, the Supreme Court dismissed it as ill-founded.

## RELEVANT LEGAL FRAMEWORK

19. The relevant provisions of the Mining Code, in force at the material time, read as follows:

**Article 39. The obligations of the beneficiaries of mining licences**

"[...]

b) to use the mining areas only for the purposes for which they have been attributed;

c) to pay in a timely manner and in full taxes for the use of the mines;

[...]

g) to provide the mining authority with information concerning the underground as well as true data concerning the reserves of mineral substances extracted or remaining in the mine, its compositions (the movement of the reserves) and about the use of the underground for non-mining related purposes;

[...]

20. Under Article 21 of Law No. 451 on Licensing, a licence can be withdrawn, *inter alia*, for failure to comply with two official warnings by the Licensing Chamber.

# THE LAW

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

21. The applicant company complained that the withdrawal of its licence had had the effect of infringing its right to peaceful enjoyment of its possessions as secured by Article 1 of Protocol No. 1 to the Convention which, in so far as relevant, provides:

> "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...."

### A. Admissibility

22. The Court notes 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. Merits

#### *1. The parties' submissions*

23. The applicant company argued in the first place that it had not been informed about the conduct of the expertise which had ended with the expert report of 1 June 2012. It had thus been unable to participate in the appointment of the experts, to put questions to them, to provide answers to

their questions and to provide them with any documents and other evidence. In any event, the sole State authority competent to exercise supervision in the field of mining was the State Mining Authority and not the Prosecutor General's Office. The Court of Appeal had disregarded the arguments put forward by the applicant company and reached conclusions which were unjust and arbitrary.

24. The Government did not dispute the fact that the applicant company's licence to extract minerals from its quarry constituted a possession within the meaning of Article 1 of Protocol No. 1 to the Convention and that its revocation amounted to an interference with the applicant company's right to peaceful enjoyment of that possession. In the Government's opinion the interference in question constituted a measure of control of use of property which fell to be examined under the second paragraph of Article 1 of Protocol No. 1 to the Convention.

25. According to the Government, the interference in question was provided for by law, namely by Section 21 of the Law on Licensing, which provided that a licence could be withdrawn if the licence holder failed to comply with two official warnings by the Licensing Chamber. Since the applicant company had not complied with the warnings of 2 July and 2 August 2012, the Licensing Chamber applied the provisions of Section 21 of the Law on Licensing and revoked its licence. The above warnings were made by the Licensing Chamber because the applicant had extracted some 1,400 cubic metres of sand without declaring it to the competent authority and without filling in the required official forms for the purpose of taxation, thus acting in breach of Section 39(b), (c) and (g) of the Mining Code.

26. According to the Government, the measure applied by the Licensing Chamber was in the general interest and a fair balance was struck between the demands of the general interest and the individual interests of the applicant company. In any event, the Government expressed the opinion that the applicant company, being a farming company, should not have been accorded a licence in the field of mining.

### 2. *The Court's assessment*

27. It is undisputed between the parties that the applicant company's licence constituted a possession for the purposes of Article 1 of Protocol No. 1 to the Convention and that its withdrawal constituted an interference with the applicant company's right to the peaceful enjoyment of their possessions. The Court reiterates that, according to its case-law, the termination of a valid licence to run a business amounts to an interference with the right to the peaceful enjoyment of possessions guaranteed by Article 1 of Protocol No. 1 to the Convention (*Tre Traktörer AB v. Sweden*, no. 10873/84, judgment of 7 July 1989, Series A no. 159, § 55; *Rosenzweig and Bonded Warehouses Ltd. v. Poland*, no. 51728/99, § 49, 28 July 2005; and *Malik v. the United Kingdom*, no. 23780/08, § 91, 13 March 2012).

28. Consistent with the Court's case-law referred to in the preceding paragraph, such interference constitutes a measure of control of the use of property which falls to be examined under the second paragraph of Article 1 of Protocol No. 1 to the Convention.

29. In order for a measure constituting control of use to be justified, it must be lawful (see *Katsaros v. Greece*, no. 51473/99, § 43, 6 June 2002) and "for the general interest". The measure must also be proportionate to the aim pursued.

30. In so far as the lawfulness of the interference is concerned, the Court finds that the issue of practical compliance with the law is closely related to whether the interference was "necessary in a democratic society" and will therefore examine this issue below.

31. The Court also considers it unnecessary, for the purposes of the present case, to determine the question of the legitimate aim pursued by the interference. It will leave this issue open and will focus on the question of proportionality.

32. The Court notes in the first place that the basis for the Licensing Chamber's official warnings of 2 July and 2 August 2012 was a letter from the Prosecutor General's Office which referred to an expert report of 1 June 2012. The latter report was produced by several experts who had been asked to give answers to several questions put by the Prosecutor General's Office, the essence of which was to determine whether the applicant company had extracted minerals outside the area allocated to it in the licence and, if so, what was the quantity and the value of those minerals (see paragraph 6 above). In a report dated 1 June 2012, the experts replied that the applicant company had not exploited any area outside that allocated to it under its licence. In spite of that comprehensive answer, the experts went on by stating that the applicant had unlawfully extracted 1,400 cubic metres of sand valued at MDL 175,812. No explanation was provided as regards how the experts had reached the conclusion that the 1,400 cubic metres of sand had been extracted unlawfully or what relation that finding had with the questions asked (see paragraph 7 above). The court of first instance made the same observations in respect of the findings in the expert report (see paragraph 13 above).

33. The Court notes from the materials before it that there is no evidence that the applicant had any knowledge about the expertise conducted at the request of the Prosecutor General's Office in respect of its activity or that it was involved in any way in the appointment of the experts or asked to provide the experts with any documents or information. This finding is consistent with the finding of the court of first instance in its judgment of 6 December 2012 (see paragraph 13 above).

34. On the basis of the above expert report, the Prosecutor General's Office wrote to the Licensing Chamber informing it about the 1,400 cubic metres of sand allegedly unlawfully extracted by the applicant company.

The Prosecutor General's Office added to the findings of the experts that the impugned quantity of sand had not been declared to the competent authority and that the applicant company had not filled in the required official forms for the purpose of taxation. The applicant company was thus accused of a breach of Article 39(b), (c) and (g) of the Mining Code (see paragraph 7 above). The Court notes that there is no evidence in the materials submitted by the parties that before writing to the Licensing Chamber the Prosecutor General's Office had asked the applicant company for information on whether it had declared to the competent authority the impugned quantity of sand or whether it had filled in the required official forms.

35. In its warning letters of 2 July and 2 August 2012 the Licensing Chamber informed the applicant company about the Prosecutor General's Office's allegations that it had breached the provisions of Article 39 (b), (c) and (g) of the Mining Code and gave it one month to remedy the breaches. The warning letters did not contain any explanation as to what exactly was imputed to the applicant company and there is no evidence in the materials of the case file that the applicant company was given a copy of the Prosecutor General's Office's letter of 19 June 2012 or of the expert report of 1 June 2012 together with the warning letters. Indeed, the applicant company submitted before the first instance court that it did not have access to any of the above documents. Thus, the Court cannot but note that the applicant company was not aware that it was being accused of not having declared to the competent authority 1,400 cubic metres of sand and of not having filled in the required official forms for the purpose of taxation in respect of that quantity of sand. The absence of such information in the Licensing Chamber's warning letters limited if not excluded the applicant company's ability to effectively defend itself when faced with the accusations that it had breached the provisions of Article 39(b), (c) and (g) of the Mining Code.

36. During the proceedings before the first instance court, the applicant company learned finally about the accusations brought against it and presented evidence to counter them (see paragraph 12 above). As a result, the first instance court found, *inter alia*, that the applicant company had declared to the competent authority the entire quantity of sand extracted and had filled in and submitted all the necessary official forms. It dismissed the action of the Licensing Chamber seeking the revocation of the applicant company's licence.

37. The Court of Appeal quashed the above judgment and found in favour of the Licensing Chamber. In so doing, the Court of Appeal contented itself with finding that the applicant had not complied with the official warnings from the Licensing Chamber of 2 July and 2 August 2012. It did not examine any of the arguments and evidence brought by the applicant company to the effect that the warning letters were unclear, not to mention that the applicant company had in fact declared to the competent

authority the entire quantity of sand extracted and had filled in and submitted all the necessary official forms. The Supreme Court of Justice did not react in any way to the applicant company's arguments and dismissed its appeal on points of law in a judgment of 26 June 2013.

38. In the light of the foregoing, the Court comes to the conclusion that the warning letters of 2 July and 2 August 2012 were completely unclear to the applicant company and that the latter could not understand from them and from the text of Article 39 (b), (c) and (g) referred to in them, even with specialist advice, that it had been accused of not having declared to the competent authority 1,400 cubic metres of sand and of not having filled in the required official forms for the purpose of taxation in respect of that quantity of sand. Unlike the first instance court, the Chişinău Court of Appeal and the Supreme Court did not remedy the situation but merely took note of the fact that the applicant company had failed to comply with the warning letters of the Licensing Chamber and ordered the revocation of its licence.

39. In the light of the above, the Court comes to the conclusion that the interference with the applicant's possessions which followed as a result of non-compliance with those unclear warning letters cannot be considered lawful and that no fair balance was struck between the demands of the public interest on the one hand and the applicant's right to the peaceful enjoyment of its possessions on the other.

40. There has therefore been a violation of Article 1 of Protocol No. 1.

## II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

41. The applicant company complained that the proceedings as a result of which its licence was revoked were not fair. It relied on Article 6 § 1 of the Convention, which, in so far as relevant, provides as follows:

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

42. Having regard to the facts of the case, the submissions of the parties and its findings under Article 1 of Protocol No. 1 to the Convention, the Court considers that it is not necessary to examine either the admissibility or the merits of the complaint under Article 6 (see *Kaos GL v. Turkey*, no. 4982/07, § 65, 22 November 2016; and *Ghiulfer Predescu v. Romania*, no. 29751/09, § 67, 27 June 2017).

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed 30,000 euros (EUR) in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage. In so far as the pecuniary damage was concerned, the applicant company submitted a handwritten document by its head in which he made financial projections for the years 2013, 2014 and 2015. The projections were made on the basis of the company’s earnings for the previous three years. However, no evidence was presented to support the latter figures.

45. The Government submitted that the claim for pecuniary damage was unsubstantiated and that for non-pecuniary damage was excessive.

46. The Court notes that the applicant company failed to substantiate its claim for pecuniary damage. Namely, it failed to provide the Court with any evidence proving the profit it claims to have had in the years prior to the revocation of its licence. The Court therefore rejects this claim. On the other hand, it awards the applicant company EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

### B. Costs and expenses

47. The applicant also claimed EUR 5,000 for the costs and expenses incurred before the Court.

48. The Government argued that the amount was excessive and asked the Court to dismiss it.

49. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,500 for costs and expenses.

### C. Default interest

50. The Court considers it appropriate that the default interest rate 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 under Article 1 of Protocol No. 1 admissible;

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

3. *Holds* that there is no need to examine the admissibility or the merits of the complaint under Article 6 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant company, 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 the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,500 (two thousand five hundred 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;

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

Done in English, and notified in writing on 2 June 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith — Registrar

Robert Spano — President