CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF POPOV v. MOLDOVA (No. 2)

(Application no. 19960/04)

JUDGMENT

STRASBOURG

6 December 2005

FINAL

06/03/2006

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 Popov v. Moldova (no. 2),

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr J. BORREGO BORREGO,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 15 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 19960/04) 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, Mr Serghei Popov ("the applicant"), on 7 June 2004.

2. The applicant was represented by Mr V. Jereghi of the Moldovan Helsinki Committee, who submitted a power of attorney on 18 January 2005. The Moldovan Government ("the Government") were represented by their Agent, Mr V. Pârlog.

3. The applicant complained that his right to a fair hearing and his right to the peaceful enjoyment of his possessions were breached as a result of the quashing of a final judgment favourable to him.

4. The application was allocated to the Fourth Section. On 1 March 2005 a Chamber of that Section decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility. It also decided to give priority to the case under Rule 41 of the Rules of Court in view of the applicant's advanced age and poor state of health.

5. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1925 and lives in Chişinău.

7. In 1941 the Soviet authorities nationalised the house owned by his parents. In the same year his family was deported to Russia and to Uzbekistan.

8. On 8 December 1992 the Moldovan Parliament enacted Law No. 1225-XII "on the rehabilitation of the victims of the political repression committed by the totalitarian communist occupying regime". The Law enabled the victims of the Soviet repression to claim restitution of their confiscated or nationalised property.

9. In 1997 the applicant lodged an action with the Centru District Court *(Judecătoria Sectorului Centru)* by which he sought the restitution of his parents' house. As the former tenants of the house had purchased it from the State, the applicant sought a judicial ruling declaring the purchase contracts null and void. He also requested the eviction of all the occupants of the house.

10. By a final judgment of 5 November 1997 the applicant's action was upheld.

11. Between 1997 and 2002 the applicant lodged numerous complaints about the non-enforcement of the judgment of 5 November 1997 with the Municipal Council, Centru District Court and the Ministry of Justice.

12. In 2001 the applicant complained to the Court about the non-enforcement of the final judgment of 5 November 1997. The applicant's application was given number 74153/01 and was communicated to the Government in January 2003.

13. In April 2004 four occupants of the applicant's house lodged with the Chişinău Court of Appeal a request for revision of the judgment of 5 November 1997. Relying on Article 449 of the new Code of Civil Procedure they argued in their request that new information had become known to them. They also asked the court to extend the deadline for lodging the request in view of the fact that the new information had been obtained by them from the National Archives in April 2004.

14. The applicant alleges that on 20 May 2004 the Government Agent offered him for signature an agreement according to the terms of which he would consent to withdrawing his application to the Court and waiving his right to any compensation in exchange for receiving his house. According to the applicant, the Agent allegedly suggested that in the event of his refusal the Court of Appeal would continue the examination of the revision request lodged by the defendants and the proceedings would remain unresolved for a long time. He refused to sign the agreement.

15. On 26 May 2004 the Court of Appeal examined the revision request lodged by the occupants of the applicant's house in which newly discovered facts were invoked.

16. The new facts relied upon by occupants were an issue of the Municipal Official Gazette of 1940 and four certificates from the National Archives and from the Land Register dated 6 April 2004, 18 May 2004 and 19 May 2004.

17. A certificate from the National Archives dated 6 April 2004 had the following content:

> "... according to the Municipal Official Gazette of 1940, there is a house with a new number 36 (old number 46) on the Stefan cel Mare street whose owner is Pelagheia Popova and a house with the new number 33 (old number 37) on the Stefan cel Mare street, whose owner is Pelagheia Popov".

18. Another certificate from the National Archives dated 6 April 2004 stated:

> "... according to the Archives of the Municipal Council on 29 February 1924 the name of the street Nicolaievskaia was changed to Stefan cel Mare."

19. The certificate of 18 May 2004 issued by the National Archives had the following content:

> "... according to the data from the Archives of the Chişinău Municipal Council for the year 1930, there was a house with number 37 on the Stefan cel Mare street (Nicolaevscaia) whose owner was Pelagheia Popova and a house with number 46 on the Stefan cel Mare street (Nicolaevscaia) whose owner was Pelagheia Popov."

20. The certificate of 19 May 2004 issued by the Land Register to judge N.B. from the Court of Appeal stated that the owner of the house on 33 Columa Street, was Mr Serghei Popov. It also stated that there was no information as to whom that house belonged before 1940 since the first entry in the Land Register was made in 1952.

21. According to the Official Gazette of 15 March 1940 issued by the Municipal Council of Chişinău, Romania, in order to eliminate the confusion in the numbering of houses which created economic and administrative difficulties, a new numbering was adopted for certain streets, including the Stefan cel Mare street. The owners of the houses on the concerned streets were obliged to buy from the Municipal Council new number plates and to install them on their houses. The new numbering should have taken effect as of 1 April 1940. Until that date the owners had to have both the old and the new numbers on their houses, in order to facilitate the orientation of the population and authorities. According to a list containing the names of the house owners and their corresponding house numbers, Mrs Pelagheia Popov [the applicant's mother] was the owner of a house with the old number 37 and the new number 33. The Official Gazette does not contain any other references to her.

22. The Court of Appeal described in its judgment of 26 May 2004 the content of the above documents and concluded that:

> "the above circumstances were not examined by the court which decided on the merits and on the appeal. They [the circumstances] have an essential importance for an objective ruling on the case. The court which will re-examine the merits shall determine exactly the location and the surface of the house from which the applicant and his family were evicted."

The Court of Appeal decided to extend the time limit for the lodging of the revision request without however giving any reasons thereto. It quashed the final judgment of 5 November 1997, ordered the re-opening of the proceedings and sent the file to the first instance court for a fresh examination.

23. After the hearing, on 26 May 2004, the Government Agent allegedly told the applicant's representative that, had he consented to sign the agreement, the revision proceedings and the subsequent quashing and re-opening would not have taken place. The Government deny that this conversation ever took place.

24. On 18 January 2005 the Court adopted a judgment in the case of *Popov v. Moldova*, (no. 74153/01, 18 January 2005), in which violations of Article 6 § 1 and of Article 1 of Protocol No. 1 to the Convention were found because of the non-enforcement of the final judgment of 5 November 1997 until 26 May 2004.

25. The proceedings which were re-opened by the Court of Appeal on 26 May 2004 are still pending before the domestic courts. At the date of adoption of the present judgment they were still pending before the first instance court, the Centru District Court.

II. RELEVANT DOMESTIC LAW

26. Article 325 of the Code of Civil Procedure, in force between 26 December 1964 and 12 June 2003, ("the old Code of Civil Procedure"), reads as follows:

> "Final judgments ... can be revised in the following cases:
>
> 1) the discovery of new facts or circumstances, that were unknown and could not have been known earlier by the parties to the proceedings;"

27. On 12 June 2003 a new Code of Civil Procedure entered into force. Article 449, in so far as relevant, reads as follows:

> "Grounds for revision
>
> Revision may be requested:
>
> c) When new and essential facts or circumstances have been discovered, that were unknown and could not have been known earlier;"

28. Article 450, in so far as relevant, reads as follows:

"A revision request may be lodged:

...

c) within three months from the date on which the concerned person has come to know the essential circumstances or facts of the case which were unknown to him/her earlier and which could not have been known to him/her earlier...."

29. Article 453, in so far as relevant, reads as follows:

...

(2) A decision by which a revision request is upheld ... can be challenged together with the merits of the affair...

THE LAW

30. The applicant complained that the judgment of the Court of Appeal of 26 May 2004, which set aside a final judgment in his favour, had violated Article 6 § 1 of the Convention.

The relevant part of Article 6 § 1 reads as follows:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

31. The applicant also complained that the Court of Appeal's judgment of 26 May 2004 had had the effect of infringing his right to peaceful enjoyment of his possessions as secured by Article 1 of Protocol No. 1, which 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.

32. The applicant also complained under Article 13 of the Convention, which provides:

"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."

I. ADMISSIBILITY OF THE COMPLAINTS

A. Failure to exhaust domestic remedies

33. The Government submitted that the applicant had not exhausted remedies available to him under Moldovan Law, as required by Article 35 § 1 of the Convention. In particular, they submitted that the applicant could have made use of Article 453 of the Code of Civil Procedure to challenge the decision of the Court of Appeal of 26 May 2004 together with the merits of the case. Since the examination of the merits of the case was still pending before the Centru District Court, the applicant should have waited until that court reached a decision and then challenged it by an ordinary appeal and later by an appeal on points of law.

34. The applicant argued that the Centru District Court could not be expected to quash the decision of 26 May 2004, which was adopted by a hierarchically superior court, namely the Court of Appeal.

35. The Court recalls that "the quashing of a final judgment is an instantaneous act, which does not create a continuing situation, even if it entails a re-opening of the proceedings" (see *Frunze v. Moldova* (dec.), no. 42308/02, 14 September 2004; *Sardin v. Russia* (dec.), no. 69582/01, 12 February 2004). The quashing of the final judgment in this case took place on 26 May 2004 and the proceedings were re-opened. For the reasons which will be set out below, the Court considers that the applicant was not obliged to wait until the end of the re-opened proceedings. Had he done so, he ran the risk of exceeding the six-month time-limit under Article 35 § 1 of the Convention, which started running on both complaints from the date of the quashing. Accordingly, this ground of objection cannot be upheld.

B. Alleged abuse of the right of petition

36. The applicant complained that on 20 May 2004 the Government Agent had offered him for signature an agreement according to the terms of which he would consent to withdrawing his application in the case *Popov v. Moldova*, (no. 74153/01, 18 January 2005) from the Court and waiving his right to any compensation in exchange for receiving his house. According to the applicant, the Agent allegedly suggested that in the event of his refusal the Court of Appeal would examine the revision request lodged by the defendants and would quash the final judgment of 1997 and keep the proceedings unresolved for a long time. The applicant stated that he had refused to sign the agreement and consequently on 26 May 2004 the final judgment was quashed. After the proceedings, on 26 May 2004, the Government Agent allegedly told the applicant that, had he consented to

sign the agreement, the revision proceedings and the subsequent quashing and re-opening would not have taken place.

37. The applicant expressed his concern about the alleged pressure put on him by the Government; he did, however, not submit a complaint under Article 34 of the Convention.

38. The Government denied the applicant's allegations, calling them "erroneous and untrue". They argued that the applicant's allegations were offensive and defamatory in nature and submitted that the Court should declare the application inadmissible for abuse of the right of petition.

39. A similar objection was raised by the Government in the applicant's first case, and was dismissed by the Court (see the *Popov* judgment, cited above, §§ 47-49). Accordingly, the Court will not examine this objection again.

II. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

40. Under Articles 6 § 1 and 13 of the Convention, the applicant complained about the quashing of the judgment of 5 November 1997. He stated that he had no effective domestic remedy against the quashing.

41. The Government argued that the revision was an efficient way of challenging a judgment where new facts were discovered after the judgment had become final. They gave the example of the International Court of Justice, which could revise its judgments if new facts or circumstances of decisive importance were discovered after adoption of a judgment. The revision request had to be done within six months from the date on which the new facts or circumstances were discovered but not later than ten years from the date of adoption of the judgment.

A similar situation could be found in the Rules of the European Court of Human Rights. If new facts concerning a finished case were discovered, and those facts could have had a decisive effect on the outcome of the case, and were unknown or could not reasonably have been known, any party could request the Court, within a period of six months after that party acquired knowledge of the fact, to revise that judgment.

The Government also invoked a recommendation of the Committee of Ministers according to which the Governments were advised to guarantee a procedure of revision and of re-opening of cases.

The Government concluded that the Moldovan legislation concerning revision was compatible with the international standards and that, accordingly, there was no violation of Article 6 § 1 of the Convention.

42. The applicant did not disagree that the Moldovan legislation concerning revision of final judgments was compatible with international standards and that the time limit of three months was reasonable. However, he argued that in his case the court which quashed the final judgment failed

to observe that time limit. Notably, the Court of Appeal accepted as a new fact an issue of the Official Gazette of 1940 which had always been available at the National Archives, and which, according to the applicant, could have easily been found there by the defendants before the adoption of the final judgment of 5 November 1997.

Moreover, the applicant argued that it was open to the defendants in the domestic proceedings to challenge the judgment of 5 November 1997 by way of an ordinary appeal on points of law, but they failed to use that avenue at the material time.

According to the applicant the quashing of the final judgment of 5 November 1997, after seven years, without any observance of the legal time limit for lodging the revision request, amounted to a breach of the requirements of Article 6 § 1 of the Convention.

43. The Court reiterates that Article 6 § 1 of the Convention obliges the courts to give reasons for their judgments. In *Ruiz Torija v. Spain*, (judgment of 9 December 1994, Series A no. 303-A), the Court found that the failure of a domestic court to give reasons for not accepting an objection that the action was time-barred amounted to a violation of that provision.

44. The right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which, in its relevant part, declares the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have finally determined an issue, their ruling should not be called into question (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII; *Roşca v. Moldova*, no. 6267/02, § 24, 22 March 2005).

45. Legal certainty presupposes respect for the principle of *res judicata* (ibid., § 62), that is the principle of the finality of judgments. This principle insists that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. Higher courts' power of review should be exercised to correct judicial errors and miscarriages of justice, but not to carry out a fresh examination. The review should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character (*Roşca v. Moldova*, cited above, § 25).

46. The above conclusion in the *Roşca* case was drawn in connection with the request for annulment procedure under which the Prosecutor General's Office could seek review of judgments it disagreed with. The Court held that this procedure, although possible under domestic law, was incompatible with the Convention because it resulted in a litigant's "losing" a favourable judgment. Re-opening due to newly-discovered circumstances

is not, as such, incompatible with the Convention. Moreover, Article 4 of Protocol No. 7 specifically permits the State to correct miscarriages of justice in criminal proceedings. However decisions to revise proceedings must be in accordance with the relevant statutory criteria and the misuse of such a procedure may well be contrary to the Convention, given that its result – the "loss" of the judgment – is the same as that of a request for annulment. The principles of legal certainty and the rule of law require the Court to be vigilant in this area.

47. In the present case the Court notes that the revision procedure provided by Articles 449-453 of the Code of Civil Procedure is indeed a procedure which serves the purpose of correcting judicial errors and miscarriages of justice. The Court's task is to determine whether this procedure was applied in a manner which is compatible with Article 6 of the Convention, and which thus ensured respect for the principle of legal certainty. The Court shall do this while bearing in mind that it is in the first place the responsibility of national courts to interpret provisions of national law (see *Waite and Kennedy v. Germany* [GC], no. 26083/94, 18 February 1999, § 54).

48. It is noted that according to Article 449 of the Moldovan Code of Civil Procedure, proceedings can be re-opened "when new and essential facts or circumstances have been discovered, that were unknown and could not have been known earlier". According to Article 450 of the same Code, a revision request can be lodged "within three months from the date on which the concerned person has come to know the essential circumstances or facts of the case which were unknown to him/her earlier and which could not have been known to him/her earlier".

49. The decision of the Court of Appeal of 26 May 2004 cites as grounds for re-opening four certificates from the National Archives and from the Land Register dated April and May 2004 and an issue of the Municipal Official Gazette of 1940 (see paragraphs 16-21 above).

50. The Court notes that there is no indication in the Court of Appeal's decision whether the certificates from the National Archives and from the Land Register contained information that could not have been obtained earlier by the defendants. Nor is there any indication from the defendants' submissions that they unsuccessfully tried to obtain those documents earlier. Neither the defendants in their pleadings, nor the Court of Appeal in its decision of 26 May 2004, argued that the Municipal Official Gazette was a classified document which was not public and which could not have been easily obtained from the State Archives or from a library prior to April or May 2004. Moreover, the Court of Appeal simply extended the time limit for lodging the revision request without giving any reason.

51. In such circumstances the Court observes that it cannot be said that an issue of the Official Gazette, particularly one which has been in the public domain for more than sixty years, can qualify as "new facts or

circumstances that were unknown and could not have been known earlier by the parties to the proceedings". By definition an Official Gazette serves the purpose of making information public and easily accessible. Indeed, in the present case the copy of the issue of the Gazette in question sent to the Court by the Government bears the stamp of a library.

52. Accordingly, the Court considers that the revision procedure at issue was in essence an attempt to re-argue the case on points which the defendants from the domestic proceedings could have, but apparently did not raise during the proceedings which ended with the final judgment of 5 November 1997. It was in effect an "appeal in disguise" whose purpose was to obtain a fresh examination of the matter rather than a genuine revision procedure as provided for in Articles 449-453 of the Code of Civil Procedure. In addition, the Court of Appeal failed to give any reasons for extending the defendants' time-limit for lodging the revision request (see, *mutatis mutandis*, *Ruiz Torija*, cited above).

53. By granting the defendants' revision request the Court of Appeal infringed the principle of legal certainty and the applicant's "right to a court" under Article 6 § 1 of the Convention (see, *mutatis mutandis*, *Roşca*, cited above, § 28). Moreover, by not giving any reasons for extending the defendant's time limit for revision, the Court of Appeal breached the applicant's right to a fair hearing (see paragraph 43 above).

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

55. The Court does not consider it necessary to rule on the complaint under Article 13 of the Convention because Article 6 § 1 is the *lex specialis* in relation to the applicant's complaint. The requirements of Article 13 in this context are absorbed by those of Article 6 § 1.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

56. The applicant complained that the Court of Appeal's judgment of 26 May 2004 had had the effect of infringing his right to peaceful enjoyment of his possessions as secured by Article 1 of Protocol No. 1 to the Convention.

57. The Court reiterates that a judgment debt may be regarded as a "possession" for the purposes of Article 1 of Protocol No. 1 (see, among other authorities, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III, and the cases cited therein). Furthermore, quashing such a judgment after it has become final and unappealable will constitute an interference with the judgment beneficiary's right to the peaceful enjoyment of that possession (see *Brumărescu*, cited above, § 74). Even assuming that such an interference may be regarded as serving a public interest, the Court finds that it was not justified since a fair balance was not preserved and the

applicant was required to bear an individual and excessive burden (cf. *Brumărescu*, cited above, § 75-80).

58. It follows that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant claimed 138,663 euros (EUR) for pecuniary damage suffered as a result of his inability to use his house and the adjacent plot of land since 5 November 1997.

61. He contended that he would have rented out the house and land had the judgment been enforced in due time, namely immediately after becoming enforceable on 5 November 1997, and had it not been quashed by the Court of Appeal on 26 May 2004. In support of his claims, the applicant presented letters from several estate agents, according to which the rent per square metre in the neighbourhood where the house was located would have varied between 3 and 20 United States dollars (USD) per month. The applicant submitted that he could have obtained USD 10 per square metre. He multiplied the number of square metres by that price and then multiplied the result by the number of months he was unable to use the house.

62. The Government argued that the applicant could not claim any pecuniary damage because he did not have any property. His title was annulled together with the final judgment of 5 November 1997. In any event, the applicant's calculation was not supported by any evidence in respect of the revenues that he might have obtained and of his intention to let the house. Moreover, it was possible that the applicant would not have found any tenants or that he would not have found them immediately. It was also important to note that rent is not stable and fluctuates each month. Lastly, the applicant did not send documents confirming the number of square metres of the house.

63. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Former King of Greece and Others v. Greece* [GC] (just satisfaction), no. 25701/94,

§ 72). In the present case the reparation should aim at putting the applicant in the position in which he would have found himself had the violation not occurred.

64. The Court considers it clear that the applicant must have suffered pecuniary damage as a result of his lack of control over his house from 26 May 2004 to date (see *Prodan v. Moldova*, no. 49806/99, § 71, ECHR 2004-...). It will not take into consideration, however, the period between 5 November 1997 and 26 May 2004, during which the applicant could not use his house due to the non-enforcement of the final judgment of 5 November 1997. That matter relates to the applicant's first case (cited above) and falls to be examined by the Court within a separate procedure.

65. It is noted that the applicant already had accommodation and therefore it is reasonable to surmise that he would have attempted to let the house. As to the adjacent land, the Court does not consider it necessary to take it into consideration, because the judgment of 5 November 1997 did not contain any reference thereto.

66. The Court considers reasonable the general approach proposed by the applicant for assessing the loss suffered as a result of quashing of the judgment. However, it is not ready to accept the amount of the monthly rent of USD 10 presented by him. In contrast to the position in the *Prodan v. Moldova* judgment (cited above), the price relied upon by the applicant has not been calculated on the basis of a valuation of the applicant's house, but is the average rental price in the neighbourhood, where, according to the estate agents relied upon by the applicant, prices vary from USD 3 to USD 20 per square metre. In the absence of any more detailed evidence as to local rents and the value of the property, the Court will take as a basis for its calculation the lowest price presented by the estate agencies, namely USD 3 per square metre.

67. The Court does not agree with the Government that there is no proof as to the surface of the applicant's house. It appears clearly from the judgments of the domestic courts and from a certificate issued by the Land Register and sent to the Court by the Government together with their observations on the admissibility and merits, that the total surface of the house is 149.1 square metres.

68. In making its assessment, the Court takes into account the fact that the applicant would inevitably have experienced certain delays in finding suitable tenants and would have incurred certain maintenance expenses in connection with the house and with taxation.

69. Having regard to the above circumstances, and deciding on an equitable basis, the Court awards the applicant the total sum of EUR 3,365 for pecuniary damage suffered as a result of the quashing of the judgment of 5 November 1997.

B. Non-pecuniary damage

70. The applicant claimed EUR 15,000 for the non-pecuniary damage suffered as a result of the quashing of the judgment of 5 November 1997. He claimed to have been caused intense moral suffering.

71. The Government disagreed with the amount claimed by the applicant, arguing that the applicant had already been awarded EUR 5,000 by the Court for the non-enforcement of the judgment of 5 November 1997. The reasoned that award covered a similar dispute between the same parties.

72. The Court considers that the applicant must have been caused a certain amount of stress and frustration as a result of the quashing of the final judgment of 17 April 2001 and of the impossibility to use his house for a further period of eighteen months. It does not agree with the Government that the non-pecuniary damage awarded to the applicant in his first case covered also the damage suffered in this case. In the first case, the problem was the non-enforcement of a final judgment, while in the present the problem is the quashing of that final judgment.

73. In deciding on the amount to be awarded, the Court takes into account the applicant's advanced age, and other circumstances of the case which in the Court's view aggravated his suffering. It awards him EUR 3,000 for non-pecuniary damage.

C. Costs and expenses

74. The applicant also claimed EUR 715 for the costs and expenses incurred before the Court. He argued that this was the amount that he could have claimed from the Council of Europe for legal aid, in accordance with the legal aid rates applicable as of 1 February 2005. The amount consisted of EUR 344 for the preparation of the case, EUR 309 for the observations on the admissibility and merits and EUR 62 for secretarial expenses.

75. The Government did not agree with the amount claimed, stating that the applicant had failed to prove the alleged representation expenses.

76. The Court considers justified the amount claimed by the applicant and awards it in full.

C. Default interest

77. 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 6 votes to 1 that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* unanimously that it is not necessary to examine the complaint under Article 13 of the Convention;

4. *Holds* by 6 votes to 1 that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

5. *Holds* by 6 votes to 1
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 3, 365 (three thousand three hundred and sixty-five euros) in respect of pecuniary damage;
      (ii) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;
      (iii) EUR 715 (seven hundred fifteen euros) in respect of costs and expenses;
      (iv) any tax that may be chargeable on the above amounts;
   (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;

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

Done in English, and notified in writing on 6 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly concurring and partly dissenting opinion of Mr Pavlovschi is annexed to this judgment.

N.B.
M.O'B.

PARTLY CONCURRING AND PARTLY DISSENTING OPINION OF JUDGE PAVLOVSCHI

I greatly regret that I am unable to agree with the findings of the majority in the present case. In my view, this case raises many difficult, important and, at the same time, extremely interesting legal issues which, unfortunately, were not considered.

My objections are broadly similar to those expressed in my dissenting opinion in the first *Popov v. Moldova* case, examined in January 2005 ("Popov (no. 1)"), and I see no reason to repeat them.

However, there are some new issues which I feel it pertinent to analyse in the present opinion.

According to my understanding, each and every case under consideration must be examined by the Court from two basic standpoints: the procedural point of view (procedural part) and the point of view of the substantive law (substantive part).

These approaches exist in practice in a variety of forms and can be found, in one form or another, in many judgments.

My problems start when I try to analyse the present case from the procedural point of view.

If we look at paragraph 1 of the judgment, we find a passage stating that the present case originated in an application against the Republic of Moldova lodged with the Court under Article 34 of the Convention by a Moldovan national, Mr Serghei Popov, on 7 June 2004.

I regret to say that the case file contains no application lodged by Mr Serghei Popov on 7 June 2004.

Instead, there is a letter from the applicant's representative Mr Jereghi in the context of Popov (no. 1), in which he describes new developments (the quashing of a final judicial decision by means of a revision procedure), claims that the procedure was initiated by the Government and states the applicant's intention to introduce a separate application concerning the revision procedure (*Toate cele legate de revizuirea cauzei reclamantul intentioneaza sa deplinga Curtii cu o cerere* ***separata***).

In my view, the letter of 7 June 2004, on the basis of its content, cannot be considered as an application, but simply as a statement of intention to lodge an application. An intention to lodge an application and an application itself are two quite different things.

The first judgment in the case of *Popov v. Moldova* confirms that the application did not exist at that time, and also the applicant's intention to introduce **a new application**.

Referring to the letter of 7 June 2004, the Court states in paragraph 44:

> "In his letters of 7 and 24 June 2004, the applicant stated that the decision of the Court of Appeal of 26 May 2004 did not involve a finding on the merits and that accordingly the court had not found that the house did not belong to him. The Court of

> Appeal had merely re-opened the proceedings in view of the newly discovered facts. The applicant alleged that the re-opening of the proceedings was a form of pressure put on him by the Government (see § 46 below) and asked the Court to continue the examination of his complaints relating to the non-enforcement of the final judgment of 5 November 1997. He also expressed his intention to introduce a new application in regard of the breach of the principle of legal certainty due to the quashing of the final judgment of 5 November 1997 after almost seven years..." (see *Popov v. Moldova*, judgment of 18 January 2005, § 44).

The above quotation proves that the Court did not treat the letter of 7 June 2004 as an application but only as an intention to lodge an application.

The same conclusion clearly follows from an analysis of paragraphs 46 and 48 of the *Popov* (no. 1) judgment.

Referring to the Article 34 issue, the Court states:

> "...In his letter of 7 June 2004 the applicant stated that on 20 May 2004, the Government Agent had offered him for signature an agreement according to the terms of which he would consent to withdrawing his application to the Court and waiving his right to any compensation in exchange for receiving his house. According to the applicant, the Agent allegedly suggested that in the event of his refusal the Court of Appeal would examine the revision request lodged by the defendants and would quash the final judgment of 1997 and keep the proceedings unresolved for a long time..."

The final conclusion of the Court concerning the letter of 7 June 2004 can be found in paragraph 48:

> "...Nevertheless, this being said, since the applicant has made no complaint under Article 34 of the Convention that he has been hindered in the presentation of his complaint, the Court sees no reason to pursue the issue of its own motion and thus leaves open the question whether or not the allegation of improper coercion is well founded...".

So, if the Court itself did not treat the letter of 7 June 2004 as an application, we must next examine what document can be considered as an official application lodged with the Court as far as *Popov* (no. 2) is concerned.

Examination of the case file shows that there is only one application annexed to it, which was lodged after the adoption of the judgment in *Popov* (no. 1), namely the application lodged on 2 January 2005 signed by Mr Vanu Jereghi on behalf of Mr Serghei Popov, and not by Mr Serghei Popov himself.

At the same time, it is worth mentioning that the case file contains a power of attorney issued, presumably, by Mr Serghei Popov *post factum* in favour of Mr Vanu Jereghi on 18 January 2005, that is, 16 days later.

In practical terms, this means that at the date on which the above-mentioned application of 2 January 2005 was lodged, Mr Vanu Jereghi was not properly authorised by the applicant to take this step. Moreover, the power of attorney contains some formal mistakes which, in

my view, render it invalid. For instance, it states that it is being issued in favour of Mr Vanu Jereghi:

> "... with a view to his representing me in the proceedings before the European Court of Human Rights ... in relation with the application that I introduced on the basis of Article 34 of the Convention against the Republic of Moldova on 3 January 2005".

There are two mistakes here. First, no application was introduced by Mr Popov and second, the date of introduction of the application by Mr Jereghi was 2 January and not 3 January 2005.

Perhaps my approach to the procedural part of cases is a little strict, but I am firmly convinced that, in the sphere of judicial activity, we must ensure that all the formalities have been observed. We should not forget the educational aspect of our decisions and must do everything we can to raise standards and improve accuracy in the preparation of documents submitted to the Court, especially in situations where the applicant has legal representation.

The Government, in their observations, tried to raise this issue. Unfortunately, however, and without any reason being given, their position was ignored and was not even mentioned in the judgment.

I find this ignoring of a party's position – be it a Government or an applicant – absolutely unacceptable. I consider that all the questions raised by both parties, including Governments, should be properly reflected upon and analysed, and an answer given to the questions raised.

This is particularly important in a situation – admittedly not the case here – where the question of which date to accept as the date of lodging an application may potentially influence the calculation of the six-month time-limit.

As far as the substantive part of the judgment is concerned, I agree, in principle, that a problem of "legal certainty" could in theory arise in situations where final judicial decisions are quashed by means of a revision procedure, and where the revision proceedings have taken place in breach of the relevant legal provisions or without convincing legal grounds being given, or have been based on an unfounded or arbitrary extension of time-limits for lodging requests for revision. Moreover, I would have readily supported a finding of a violation of the "principle of legal certainty" in such a situation, subject to certain conditions.

The first of these conditions is the existence of a properly lodged application. Such an application, in my view and as shown above, is missing in the present case. And the second condition is that any violation found should be based on a complaint introduced by the applicant or, alternatively, on an issue raised by the Court of its own motion. In the latter case convincing reasons must be provided.

Since the whole judgment is centred on the issue of a violation of the "principle of legal certainty" it remains to be examined whether the applicant or, more accurately, his representative, ever alleged such a violation.

If we look at the application lodged by Mr Jereghi on 2 January 2005, we find the following passage relating to Article 6:

> "...I consider that my right to a fair trial, provided for by Article 6 §1 of the European Convention, has been violated, because Article 6 §1 provides that each person has a right to have his case resolved within a reasonable time. The reopening of a case after more than 6 years does not meet the requirement of a reasonable time. The principle of a fair hearing guaranteed under the Convention has also been violated by the Government as a result of the reopening of the proceedings."

In my view, it is clear that in the first part of his complaint the applicant's representative relied on the "unreasonable length of proceedings" argument. As far as the second part is concerned, Mr Jereghi failed to substantiate his complaint, which, in practical terms, made it impossible for the Court to understand under what particular aspect of Article 6 §1 he was complaining.

In his memorial sent to the Court, the applicant's representative complained as follows:

> "...The right to an equitable law trial, stipulated by the art. 6 of the European Convention, because- the disposition of the art.6 p.1 of the European Convention stipulates that every person has the right to resolving his case in a reasonable term, that is why the revision over seven years is not included in the notion of the reasonable term, the judgment in equitable way that is guaranteed by the Convention was also violated by the Government by the present revision ...".

Hence, neither in his application nor in his memorial did the applicant's representative complain about a violation of the "principle of legal certainty".

Since he alleged a violation of the principle of the "reasonable length of proceedings", his application should have been examined from that angle. Unfortunately, no examination whatsoever was made of this complaint from the applicant's representative, nor was any decision taken on it; it was as though it did not exist.

I find it unacceptable not to examine the applicant's allegation of a violation of the principle of the "reasonable length of proceedings". However, equally unacceptable is the examination of a breach of the "principle of legal certainty" when the applicant had not raised this question and when the Court had not decided to raise it of its own motion. However, I repeat that I entirely agree that there could in theory be a problem in this respect.

Since neither the applicant nor the Court, acting of its own motion, raised the question of a breach of the "principle of legal certainty", I find Article 6 § 1, in the form examined by the Chamber from this angle, inapplicable to the present case. Accordingly, Article 1 of Protocol No. 1 should also not apply.

This is where I respectfully disagree with my fellow Judges.