



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

FOURTH SECTION

**CASE OF MIHALACHI v. MOLDOVA**

*(Application no. 37511/02)*

JUDGMENT

STRASBOURG

9 January 2007

**FINAL**

*09/04/2007*

*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 Mihalachi v. Moldova,**

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr M. PELLONPÄÄ,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr J. ŠIKUTA, *judges*,

and Mrs F. ELEN-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 5 December 2006,

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

## PROCEDURE

1. The case originated in an application (no. 37511/02) 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") on 26 September 2002 by a Moldovan national Mr Nicolae Mihalachi ("the applicant").

2. The Moldovan Government ("the Government") were represented by their Agent, Mr Vitalie Pârlog.

3. The applicant alleged that his rights to a fair hearing and to the peaceful enjoyment of his possessions were breached as a result of the quashing of a final judgment in his favour.

4. On 15 June 2005 the Court decided to communicate the application to the Government under Rule 54 § 2 (b) of the Rules of Court. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

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

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1962 and lives in Chişinău.

7. The applicant worked as a prosecutor. On 15 January 1998 he was charged with bribe-taking and on 14 May 1999 the Court of Appeal found

him guilty and sentenced him to five years' imprisonment. By a final judgment of 3 August 1999 the Supreme Court of Justice acquitted him and ordered his immediate release: he claimed to have been released two days later. The overall period of his detention amounted to 567 days.

8. The applicant brought an action against the Ministry of Finance and his employer seeking payment of compensation for pecuniary and non-pecuniary damage arising from his unlawful prosecution and detention.

9. On 25 July 2001 the Rîșcani District Court ruled in his favour and stated that there had been a violation of his right to liberty. The court awarded him 78,055 Moldovan lei (MDL, the equivalent of 6,945 euros (EUR) at the time) in compensation for pecuniary damage and MDL 500,000 (EUR 44,490 at the time) in compensation for non-pecuniary damage. The defendants appealed.

10. On 6 February 2002 the Chișinău Regional Court partially upheld the appeal, reduced the award of compensation for pecuniary damage to MDL 27,354.77 (EUR 2,401 at the time) and awarded another 87,000 Russian roubles (RUR, the equivalent of EUR 3,251.92 at the time) and 230 American dollars (USD) in respect of costs and expenses incurred during the proceedings. The Regional Court upheld the award of compensation for non-pecuniary damage. The defendants lodged an appeal in cassation.

11. By a final judgment of 26 March 2002 the Court of Appeal partially upheld the appeal in cassation and reduced the award of compensation for non-pecuniary damage to MDL 75,000 (EUR 6,341 at the time).

12. On 25 December 2002 the Prosecutor General lodged with the Supreme Court of Justice a request for annulment of the above-mentioned judgments and for a reduction in the amount of damages.

13. On 5 February 2003 the Supreme Court of Justice upheld the Prosecutor General's request for annulment and quashed the above-mentioned judgments. The Supreme Court adopted a new judgment and reduced the award of compensation for non-pecuniary damage to MDL 50,000 (EUR 3,261 at the time). It also ordered the re-opening of the proceedings in respect of the amount of compensation for pecuniary damage. On 19 February 2003 the applicant received MDL 50,000.

14. Following the re-opening of the proceedings, on 24 June 2003 the Rîșcani District Court ruled in favour of the applicant and awarded him MDL 27,446.09 (EUR 1,679.69 at the time) in respect of pecuniary damage. The remainder of the judgment provided the same as the judgment of the Chișinău Regional Court of 6 February 2002. On 22 July 2003 the judgment was enforced.

## II. RELEVANT DOMESTIC LAW

15. The relevant domestic law was set out in *Roşca v. Moldova*, no. 6267/02, § 16, 22 March 2005.

## THE LAW

16. The applicant complained that his detention from 15 January 1998 to 3 August 1999 had been unlawful. He invoked Article 5 § 1 of the Convention, which provides:

"Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so (...)."

17. He submitted that there had been a violation of Article 6 § 1 of the Convention, mainly because the courts incorrectly applied the law. The applicant also complained about the quashing of a final judgment in his favour by the Supreme Court of Justice on 5 February 2003.

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

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law..."

18. He further complained that the Supreme Court of Justice's judgment of 5 February 2003 had had the effect of infringing his right to the 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."

19. The applicant alleged that he had been discriminated against by his superiors, without providing details of the basis of this claim. He invoked Article 14 of the Convention, which provides:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

## I. ADMISSIBILITY OF THE COMPLAINTS

### **A. The applicant’s complaint under Article 5 § 1 of the Convention**

20. The applicant complained that his detention from 15 January 1998 to 3 August 1999 had been unlawful.

21. The Court notes that the applicant’s detention ended on 3 August 1999 when he was acquitted. However, his complaint was lodged on 26 September 2002, more than six months after his release from detention. It follows that this complaint was introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

### **B. The applicant’s complaint under Article 6 § 1 of the Convention about the incorrect application of the law by the courts**

22. The applicant complained that during the criminal proceedings and the proceedings for compensation the courts had incorrectly applied the law.

23. The Government considered that the applicant had all the necessary procedural safeguards so as to present his case fairly before the domestic courts.

24. The Court has examined the applicant’s complaints under Article 6 about the incorrect interpretation of the law by the courts. However, having regard to all the material in its possession, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. The Court also notes that the complaint about the unfairness of the criminal proceedings which ended on 3 August 1999 was lodged out of time. It follows that this part of the application must be rejected pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

### **C. The quashing of the final judgment in favour of the applicant**

25. In his letter of 17 July 2003 the applicant complained that on 5 February 2003 the Supreme Court of Justice had upheld the Prosecutor General’s request for annulment and quashed a final judgment in his favour.

26. The Government objected to the Court having taken into consideration on its own initiative the issue of the quashing of the judgment in favour of the applicant by the Supreme Court of Justice on 5 February 2003. They requested the Court not to examine this issue.

27. The Court notes that in his letter of 17 July 2003 the applicant specifically complained about the quashing by the Supreme Court of Justice of a final judgment in his favour following the annulment proceedings. It therefore rejects the Government's objection to its examination of this complaint under Article 6 of the Convention and Article 1 of Protocol No. 1.

#### **D. The complaint under Article 14**

28.

The Government considered that the applicant had not substantiated his complaint under Article 14 of the Convention and had not provided evidence of any discrimination.

29. The Court notes that the applicant has not substantiated his complaint under this Article. Insofar as he complained that he had been discriminated against by his superiors, the facts and evidence submitted by the applicant do not disclose any discriminatory treatment in his respect.

30. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

#### **E. Alleged abuse of the right of petition**

31. In his letter of 1 July 2005 the applicant stated that in April and June 2005 his employer had sanctioned him and reduced his monthly payments. He also stated that he had reason to consider the sanctions as pressure put on him to resign; however, he did not submit a complaint under Article 34 of the Convention.

32. The Government denied that there had been any breach of Article 34 of the Convention, calling the applicant's allegations "erroneous and untrue". They stated that the applicant had been sanctioned for improper performance of his duties and that the sanctions had been imposed prior to the communication of the case by the Court. They submitted that the Court should thus declare this complaint inadmissible for abuse, calling it "offensive" or "defamatory".

33. The Court notes that the applicant has made no complaint under Article 34 of the Convention that he has been hindered in the presentation of his complaint and there is no reason to pursue the issue of its own motion.

34. As to the Government's submission concerning the alleged abuse, the Court considers that an application would not normally be rejected as abusive under Article 35 § 3 of the Convention on the basis that it was "offensive" or "defamatory" unless it was knowingly based on untrue facts (see the *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X or *Rehak v. the Czech Republic*, (dec.), no 67208/01, 18 May 2004). However, on the basis of the material in its possession, the Court is unable to conclude that

the applicant has based his allegations on information which he knew to be untrue. Accordingly, this submission fails.

#### **F. Conclusion on admissibility**

35. The Court considers that the applicant's complaints under Article 6 § 1 and under Article 1 of Protocol No. 1 to the Convention, concerning the quashing of the final judgment in his favour, raise questions of law which are sufficiently serious that their determination should depend on an examination of the merits, and no other grounds for declaring them inadmissible have been established. The Court therefore declares these complaints admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider the merits of these complaints.

### **II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION**

36. The applicant complained, in substance, under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention that by its judgment of 5 February 2003, the Supreme Court of Justice had quashed a final judgment in his favour and had reduced the amount of the award for non-pecuniary damages.

37. The Government rejected the applicant's claims and argued that, following the re-opening of the case, the parties had enjoyed the same procedural rights and that the re-opening had been justified.

38. The Court has found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention in numerous cases raising issues similar to those in the present case (see, among other authorities, *Brumărescu v. Romania* [GC], no. 28342/95, §§ 61 and 74, ECHR 1999-VII and *Roșca v. Moldova*, no. 6267/02, 22 March 2005, §§ 29 and 32).

39. Having examined the material submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

40. Having regard to its case-law on the subject, the Court finds that by quashing the final judgment in favour of the applicant, the Supreme Court of Justice breached the applicant's right to a fair hearing under Article 6 § 1 of the Convention and his right to the peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the Convention.

41. There has accordingly been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention in respect of the applicant.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed MDL 450,000 (EUR 9,180) for pecuniary damage, representing the difference between MDL 500,000, awarded by the Rîșcani District Court on 25 July 2001 in respect of non-pecuniary damage for his unlawful detention and MDL 50,000, awarded by the Supreme Court of Justice on 5 February 2003. The applicant sought compensation only in respect of the amount awarded by the domestic courts.

44. The Government disagreed with the amount claimed by the applicant and argued that he was not entitled to any compensation since he had been paid MDL 50,000 in accordance with the judgment of the Supreme Court of Justice of 5 February 2003 and MDL 63,357 in accordance with the judgment of the Rîșcani District Court of 24 June 2003.

45. The Court considers that the applicant suffered pecuniary damage as a result of the quashing of the final judgment of 26 March 2002. The particular amount claimed is, however, excessive. The Court awards the applicant the difference between the amount awarded by the final judgment of 26 March 2002 (EUR 6,341 at the time) and the amount received by him after its quashing (EUR 3,261 at the time), which is EUR 3,080.

#### B. Non-pecuniary damage

46. The applicant claimed compensation for non-pecuniary damage suffered as a result of the violation of his rights, without specifying the amount of compensation. He asked the Court to make an assessment in accordance with its case-law on similar issues.

47. The Government argued that the applicant had not adduced any evidence of having suffered any stress and anxiety.

48. The Court takes the view 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 26 March 2002, which cannot be made good by the mere finding of a violation. Making its assessment on an equitable basis and taking into consideration the amounts awarded by the Court in similar cases (see, for example, *Roșca v. Moldova*, no. 6267/02, § 41, 22 March 2005) and the fact that the applicant had been paid the awarded amounts shortly after the delivery of the judgments, it awards the applicant EUR 1,800 for non-pecuniary damage.

### **C. Costs and expenses**

49. The applicant did not claim any costs and expenses for the Convention proceedings.

### **D. Default interest**

50. 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 complaints under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention concerning the quashing of a final judgment in the applicant's case, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *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 3,080 (three thousand and eighty euros) in respect of pecuniary damage and EUR 1,800 (one thousand eight 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 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 9 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

F. ELEN-PASSOS  
Deputy Registrar

Nicolas BRATZA  
President