



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

FOURTH SECTION

CASE OF GUSOVSKI v. MOLDOVA

(Application no. 35967/03)

JUDGMENT

STRASBOURG

13 November 2007

FINAL

31/03/2008

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 Gusovski v. Moldova,

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

Mr J. CASADEVALL, *President*,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 16 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 35967/03) 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 four Moldovan nationals, Ms Valentina Gusovski, Mr Sergiu Gusovski, Mr Vasile Gusovski and Mr Anatol Gusovski (“the applicants”), on 12 September 2003.

2. The Moldovan Government (“the Government”) were represented by their Agent at the time, Mr V. Pârlog.

3. The applicants alleged, in particular, that their right to a judgment within a reasonable time had been violated. They also made a number of complaints regarding alleged unlawful acts against them by the local authorities aimed at removing them from their village.

4. The application was allocated to the Fourth Section of the Court. On 3 December 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1949, 1953, 1919 and 1957 respectively. The first two applicants live in Hagimus; Mr V. Gusovski lives in Tighina and Mr A. Gusovski is interned in a psychiatric hospital in Chişinău. Ms V. Gusovski is a second-degree invalid and Mr A. Gusovski a first-degree invalid.

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

7. The applicants have been in conflict with various local and regional authorities and with their neighbours.

1. Proceedings regarding the disconnection of the applicants' house from the natural gas system

8. In September 1999 the applicants' house was disconnected from the natural gas system owing to their failure to pay the full price of the gas used. On 29 May 2000 Mr S. Gusovski initiated court proceedings against the system's operator "Moldova-Gaz" and the Prefect of Tighina County seeking the re-connection of the house to the gas system and payment of damages.

9. On 26 December 2000 the Tighina Regional Court accepted his claims. On 18 April 2001 the Court of Appeal quashed that judgment and ordered a re-hearing of the case because one of the defendants had not been summoned to court.

10. It appears that the courts allowed the other three applicants to join Mr S. Gusovski's case as co-plaintiffs.

11. On 28 January 2002 the Tighina Regional Court struck the case out of its list because of the failure by the applicants to appear at several of its hearings.

12. On 14 November 2002 the Court of Appeal quashed that judgment and ordered a re-hearing of the case, finding that the applicants had not been summoned to court and that the proceedings had been protracted.

13. On an unknown date the applicants asked for the transfer of the case to another court. On 6 February 2003 the Tighina Regional Court forwarded the request to the Supreme Court of Justice, which rejected it on 5 March 2003.

14. On 17 March 2004 the Tighina Court of Appeal rejected their claims as unfounded. On 19 May 2004 the Supreme Court of Justice quashed that judgment and ordered a full re-hearing of the case. On 8 September 2004 the Supreme Court of Justice refused to re-examine its judgment of 19 March 2004.

15. On 27 October 2004 the applicants sought the removal of one of the judges of the Tighina Court of Appeal. On 9 November 2004 the Supreme Court of Justice rejected this complaint.

16. On 26 January 2005 the Tighina Court of Appeal rejected most of the applicants' complaints, finding that they had persistently refused to submit the necessary documents to the defendant in order to allow the re-connection to the natural gas system in accordance with the law. Moreover, no evidence had been adduced of any damage caused to the applicants. The court also found that the proceedings had lasted a considerable period of time before the courts and it therefore accepted the applicants' main claim and ordered the re-connection of their house to the natural gas system, subject to the submission of the relevant documents by the applicants.

17. On 30 March 2005 the Supreme Court of Justice upheld that judgment, which became final.

2. Requests for the initiation of criminal proceedings

18. In numerous separate proceedings the applicants requested the opening of criminal investigations against a number of persons, most of them being their neighbours who had allegedly damaged the applicants' property and had attempted to drive them away from the village. Several complaints concerned the alleged failure of the local police, the prosecution and other authorities to react to their complaints about unlawful acts committed by the applicants' neighbours and their dog. On each occasion a prosecutor refused to open criminal proceedings, having verified the case file and given detailed reasons for the refusal.

19. A prosecutor's refusal to open a criminal investigation against the Prefect of Tighina County because of the disconnection of the applicants' house from the natural gas system was challenged in court. On 27 January 2004 the Buiucani District Court dismissed the complaint as unfounded. On 25 February 2004 the Court of Appeal upheld that decision.

II. RELEVANT DOMESTIC LAW

20. The relevant provisions of the new Code of Civil Procedure, in force after 12 June 2003, read as follows:

“Article 4: Aims of civil procedure

The aims of civil procedure include the just examination, within a reasonable time, of cases...”

“Article 192: Time-limits for examination of civil cases

(1) Civil cases shall be decided by the first-instance court within a reasonable time. The criteria for determining the reasonable time are: the complexity of the case, the conduct of the parties, and the conduct of the courts. The court shall ensure

observance of the reasonable time requirement in dealing with a case. In examining a specific case on appeal, higher courts shall verify observance with the reasonable time requirement.”

THE LAW

21. The applicants complained that there had been a violation of their rights under Article 3 of the Convention.

Article 3 reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

22. The applicants further complained of a violation of their right to a trial within a reasonable time, as guaranteed by Article 6 of the Convention. They also complained, under the same Article, about the refusal of the various authorities to open criminal proceedings against their neighbours and the police.

Article 6 § 1 of the Convention, in so far as relevant, provides:

“1. In the determination of his civil rights and obligations ... everyone is entitled to a fair hearing ... within a reasonable time...”

23. The applicants also complained of a violation of Article 8 and Article 1 of Protocol No. 1 to the Convention as a result of the damage to their assets.

Article 8 reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Article 1 of Protocol No. 1 to the Convention reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

24. The applicants further complained, without giving details, of a violation of their rights under Articles 13, 14 and 17 of the Convention.

Article 13 reads:

“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.”

Article 14 reads:

“The enjoyment of the rights and freedoms set forth in [the] 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.”

Article 17 reads:

“Nothing in [the] Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”

25. The applicants lastly complained of a violation of their right to move freely within the territory of their own country, contrary to Article 2 of Protocol No. 4 to the Convention, the relevant parts of which read:

“1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence...”

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.”

I. ADMISSIBILITY

26. The Court notes that in their observations the applicants made several new complaints which had not been mentioned in the initial application, including the alleged expropriation of two apartments and the unlawful detention of Mr A. Gusovski in a psychiatric institution without medical justification. Such complaints cannot be examined by the Court within the framework of the instant application, the applicants having the right to submit them in a fresh application if they so wish.

27. The Court also considers that, even assuming that Articles 3, 6, 13, 14 and 17 of the Convention, as well as Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4 to the Convention are applicable to the present

case, the applicants have not substantiated their complaints under these Articles. The applicants describe, in a confused manner and without submitting relevant evidence, that they had been the subject of ill-treatment, property destruction and genocide with the aim of physically exterminating them and of driving them away from their village. The Court notes that the applicants lodged numerous complaints attempting to settle their disputes with their neighbours through State authorities, and then complained about the authorities' refusal to initiate criminal proceedings against the neighbours and against the officials who had refused to intervene. It also notes that the local administration, the police, the prosecution and other authorities have given exhaustive answers to some of these complaints, while treating as vexatious, not without reason, certain other, repeated complaints. On the rare occasions when the applicants challenged the authorities' decisions, their appeals were dismissed as unfounded. The applicants did not submit sufficient evidence and reasons for the Court to doubt the correctness of the domestic authorities' decisions.

28. Accordingly, the Court concludes that these complaints are manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected under Article 35 § 4.

29. The Court considers that the applicants' complaint under Article 6 of the Convention regarding the length of the proceedings raises questions of law which are sufficiently serious for their determination to warrant an examination of the merits. It moreover considers that no other ground for declaring it inadmissible has been established and therefore declares it 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 this complaint.

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

30. The applicants considered that the length of the proceedings regarding the disconnection of their house from the natural gas system was excessive.

31. The Government disagreed. They considered that the applicants had themselves contributed to most of the delays in the proceedings by lodging numerous appeals and applications to have judges removed, and by failing to appear at numerous court hearings (see paragraph 11 above).

A. Period to be taken into consideration

32. The Court notes that the relevant proceedings were initiated on 29 May 2000 and ended with the final judgment of the Supreme Court of Justice of 30 March 2005. Accordingly, the relevant period amounted to four years and ten months.

B. Reasonableness of the length of the proceedings

33. The Court will assess the reasonableness of the length of the proceedings in the light of the circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what was at stake for the applicant in the litigation (see, among other authorities, *Styranski v. Poland*, judgment of 30 October 1998, *Reports of Judgments and Decisions* 1998-VIII, § 47).

1. Complexity of the case

34. The Court considers that the case was not particularly difficult to determine as the courts did not need to have recourse to expert advice, to examine many witnesses or to undertake other time-consuming activities. As the length of the proceedings cannot be explained in terms of the complexity of the issues involved, the Court will examine it in the light of the conduct of the applicants and of the national authorities.

2. Conduct of the applicants

35. The Court notes the Government's submission that the applicants had contributed in a decisive manner to the length of the proceedings by refusing to submit the necessary documents to the defendant (see paragraph 16 above). It also notes that in their court action the applicants asked for the reconnection of their house to the gas system and claimed damages for the period of time during which the house had been disconnected (see paragraph 8 above). In this connection, the Court considers that even if the applicants had submitted the relevant documents after initiating the court proceedings, thus allowing the gas company to reconnect their house, this would not have affected the on-going proceedings in the part concerning the claims for damages for the period of time during which the house had not been connected.

In the light of its findings below regarding the conduct of the authorities, the Court does not consider the applicants' failure to submit documents to be a decisive element, although it can be taken into account when dealing with any claims for just satisfaction.

36. The Court notes, moreover, the Government's position that the applicants had failed to appear in court when summoned on numerous occasions. It observes that the court decision on which that position is based was annulled by the higher court, which found that the applicants had not been summoned to the relevant court hearings (see paragraph 12 above).

37. It follows that at least a part of the delays for which the Government blamed the applicants had not been the result of their actions but rather that of the domestic courts.

3. *Conduct of the authorities*

38. The Court notes that the domestic courts remained inactive during the period from 18 April 2001, when the Court of Appeal ordered a re-hearing of the case, until 28 January 2002, when the Tighina Regional Court struck the case out of its list of cases. As found on 14 November 2002 by the Court of Appeal, the lower court had failed to summon the applicants to hearings during this period. The court also found that, by that time, the proceedings had been protracted (see paragraph 12 above).

39. There was a further period of inactivity between 14 November 2002 and 17 March 2004, interrupted by a one-month period during which the courts examined the applicants' request to have the case transferred to another court (see paragraph 13 above).

40. The Government have not submitted a reasonable explanation for these delays.

41. Moreover, the Court notes that the case was repeatedly referred back for re-examination and was considered by the courts on four occasions (see paragraphs 9, 12 and 14 above). In this connection the Court reiterates that, although it is not in a position to analyse the quality of the case-law of the domestic courts, it considers that, since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings discloses a serious deficiency in the judicial system (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003, and *Pavlyulynets v. Ukraine*, no. 70767/01, § 51, 6 September 2005).

42. The Court observes that the domestic courts themselves found that the proceedings had lasted an excessive period of time (see paragraph 12 above) and yet they allowed further delays to occur, only to find again that the delay in the proceedings had been excessive (see paragraph 16 above). Moreover, they refused to award any compensation to the applicants.

4. *What was at stake for the applicants*

43. Lastly, the Court notes that the proceedings concerned the applicants' right to have their house re-connected to the gas system so that they could heat their house. The length of the proceedings was such that the applicants had to wait five winters to obtain a final judgment. This necessarily put the applicants' health at risk. The Court is also mindful of the fact that one of the applicants living in the house is a second-degree invalid.

5. *Conclusion*

44. On the basis of the above-mentioned periods of inactivity and the repeated re-hearing of the case, and having regard to the circumstances of the instant case and the overall length of the proceedings, the Court

concludes that there was an unreasonable delay in dealing with the applicants' case.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicants claimed 1,030,800 United States dollars (USD) in compensation for the damage caused to Mr Sergiu Gusovski. This amount covered the value of two apartments allegedly confiscated by the Soviet authorities and salaries not received owing to his alleged persecution. They left to the Court's discretion the determination of the amount of damages to be awarded for the alleged violations of the rights of the other applicants.

48. The Government considered these amounts entirely unrealistic and asked the Court to reject all of the applicants' claims for just satisfaction.

49. The Court refers to its decision to reject as inadmissible all of the applicants' complaints except the one regarding the length of the proceedings. It therefore sees no causal link between the violation found and most of the claims made. However, the Court considers that the applicants must have been caused a certain amount of stress and frustration as a result of the delay in the proceedings, considering the importance of the proceedings to the applicants. At the same time, the Court takes into account that some of the delays were caused by the applicants themselves (see paragraphs 16 and 35 above). Deciding on an equitable basis, the Court awards them jointly 1,000 euros (EUR) for non-pecuniary damage.

B. Costs and expenses

50. The applicants made no claims under this head.

C. Default interest

51. 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 applicants' complaint under Article 6 § 1 of the Convention concerning the length of proceedings, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Josep CASADEVALL
President