



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

FOURTH SECTION

CASE OF CEACHIR v. MOLDOVA

(Application no. 11712/04)

JUDGMENT

STRASBOURG

15 January 2008

FINAL

15/04/2008

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 Ceachir v. Moldova,

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

Nicolas Bratza, *President*,

Josep Casadevall,

Giovanni Bonello,

Kristaq Traja,

Stanislav Pavlovschi,

Ján Šikuta,

Päivi Hirvelä, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 11 December 2007,

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

PROCEDURE

1. The case originated in an application (no. 11712/04) 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 two Moldovan nationals, Mr Gheorghe Ceachir and Mr Ion Ceachir ("the applicants"), on 9 March 2004.

2. The applicants were represented before the Court by Mr Vladislav Gribincea from Lawyers for Human Rights, a non-governmental organisation based in Chişinău. The Moldovan Government ("the Government") were represented by their Agent at the time, Mr Vitalie Pârlog.

3. The applicants complained that their right to a fair hearing had been infringed by the failure of the Supreme Court of Justice to give any reasons for extending the time-limit for lodging an appeal on points of law.

4. The application was allocated to the Fourth Section of the Court. On 28 October 2005 the President of that Section decided to communicate the application to the Government. 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 applicants and the Government each filed observations on admissibility, merits and just satisfaction.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants, Mr Gheorghe Ceachir, who was born in 1931, and Mr Ion Ceachir, who was born in 1940, live in Chişinău and Bălţi, respectively.

7. In 1949 the applicants' parents were persecuted by the communist authorities. Their property was confiscated and they were exiled to Siberia.

8. In 1989 they were rehabilitated.

9. On 2 August 2002 the applicants brought an action against the Ministry of Finance (“the Ministry”), seeking compensation for the confiscation of their parents' property.

10. On 27 May 2003 the Râşcani District Court ruled in favour of the applicants and ordered the Ministry to pay each of them compensation in the amount of 150,500 Moldovan lei (MDL) (8,988 euros (EUR) at the time). It also issued an enforcement warrant. The Ministry appealed.

11. On 14 August 2003 the Chişinău Court of Appeal dismissed the appeal and upheld the judgment of 27 May 2003. The representative of the Ministry did not attend the hearing.

12. On 29 August 2003 the Ministry lodged with the Supreme Court of Justice an appeal on points of law, dated 28 August 2003.

13. Relying on Articles 437 and 438 of the Code of Civil Procedure (the “CCP”) (see Relevant domestic law below), on 15 September 2003 the Vice-President of the Supreme Court of Justice returned the Ministry's appeal on points of law on the ground that the latter had failed to pay court fees. He also informed the Ministry that it could lodge a renewed appeal on points of law after having remedied previous omissions and after having complied with other legal requirements.

14. On 1 October 2003 the bailiff of the Râşcani Judicial Decisions Enforcement Department received the enforcement warrant of 27 May 2003 and on 7 October 2003 he requested the Ministry to enforce it.

15. On 18 November 2003 the Ministry informed the bailiff that it had lodged an appeal on points of law against the judgment of 14 August 2003 and that it would comply with the enforcement warrant only after the examination of the appeal on points of law by the Supreme Court.

16. In the meantime, on 13 November 2003 the Ministry allegedly sent a letter to the Supreme Court of Justice and argued that according to the law “on the State duty” (*privind taxa de stat*) it was exempted from paying court fees during the examination of the appeal on points of law.

17. On 8 December 2003 the Ministry lodged with the Supreme Court of Justice a new appeal on points of law against the judgment of 14 August 2003. Its content was identical to that of 29 August 2003 and bore the same

date on which it had been drafted by the Ministry – 28 August 2003. The Ministry did not request the reinstatement of the running of the legal time-limit for lodging the new appeal on points of law, nor did it mention the issue of court fees.

18. On 20 May 2004 the applicants lodged with the Supreme Court of Justice their observations on the Ministry's appeal on points of law and argued, *inter alia*, that it had been lodged out of time.

19. On 26 May 2004 the Supreme Court of Justice upheld the Ministry's appeal on points of law, quashed the judgments of 27 May and 14 August 2003 and ordered a retrial of the case by the Sângerei District Court. The Supreme Court specifically mentioned in its judgment that the Ministry had lodged the appeal on points of law on 8 December 2003.

20. On 4 October 2004 the Sângerei District Court partially upheld the applicants' action and ordered the Ministry to pay each of them compensation of MDL 36,250 (EUR 2,402 at the time). On 22 October 2004 the applicants lodged an appeal with the Bălți Court of Appeal.

21. By a decision of 7 December 2004 the Bălți Court of Appeal dismissed the applicants' appeal on the ground that it had been lodged out of time. The applicants appealed against this decision.

22. On 13 April 2005 the Supreme Court of Justice upheld the appeal, quashed the decision of 7 December 2004 and ordered that the case be retried before the Bălți Court of Appeal.

23. On 7 July 2005 the Bălți Court of Appeal dismissed the applicants' appeal against the judgment of 4 October 2004. They lodged an appeal on points of law with the Supreme Court of Justice.

24. On 9 November 2005, during the proceedings before the Supreme Court, the applicants sought to withdraw their appeal on points of law and to discontinue the proceedings. On the same date their request was upheld and the proceedings discontinued.

25. On 16 January 2006 the applicants lodged with the Supreme Court of Justice a revision request against its decision of 9 November 2005 by which it discontinued the proceedings. On 24 May 2006 their request was refused.

26. On 17 July 2007 a bailiff requested the Ministry to enforce the judgment of the Sângerei District Court of 4 October 2004.

27. On 11 August 2006 the Ministry lodged an appeal against the judgment of 4 October 2004, which was dismissed by the final judgment of 7 February 2007 of the Supreme Court of Justice as statute-barred.

28. On 28 March 2007 a bailiff enforced the judgment of 4 October 2004 and paid the applicants MDL 36,250 each.

II. RELEVANT DOMESTIC LAW

29. The relevant provisions of the Code of Civil Procedure read as follows:

“Article 254. Final and irrevocable judgments

(1) A judgment becomes final:

...

b) when after having been issued by the first instance court, challenged by way of appeal (*apel*), the appeal is examined by the appeal instance (*instanța de apel*) and dismissed;

...

(2) A judgment becomes irrevocable

a) when after having been issued by the first instance court, the legal time-limit for lodging an appeal runs out;

b) when after having been issued by the first instance court, challenged by way of appeal (*apel*) or appeal on points of law (*recurs*), [the appeal or the appeal on points of law] is examined by the cassation instance (*instanța de recurs*) and dismissed;”

Article 433. Reasons for inadmissibility of an appeal on points of law:

...

b) if the appeal on points of law is lodged outside the time limit set out in Article 434...

Article 434. The time limit for lodging an appeal on points of law:

(1) (...) An appeal on points of law which has been lodged within two months of the date of the judgment or the date when it became known [to the party], is considered to have been lodged within the legal time limit.

(2) The period of two months is restrictive (“*de decădere*”) and cannot be extended.”

“Article 437. The content of an appeal on points of law:

...

(2) Proof of the payment of court fees should be annexed to the appeal on points of law (...)

Article 438. Restitution of an appeal on points of law:

...

(2) If an appeal on points of law does not comply with the requirements of Article 437 or has been lodged without the court fees being paid, the court, by a letter signed by the President or the Vice-President of the panel, returns it [to the appellant] within five days.

(3) The restitution of an appeal on points of law does not prevent [the appellant] from repeated lodging an appeal on points of law after having remedied the omissions and after having complied with other requirements of the law.”

30. The law State Duty Act (no. 1216) of 3 December 1992 reads as follows:

“Section 4. Facilities concerning the State duty:

(1) The following [parties] are exempted from the payment of court fees:

...

(12) Central public authorities, central public administrative bodies (...) during the institution of claims for the protection of the State's patrimonial interests, as well as during the lodging of appeals against the courts' judgments in respect of the above-said claims;”

31. The Civil Code of 12 June 2003, in so far as relevant, reads as follows:

“Article 619. Default interest:

(1) Default interest is payable for delayed execution of pecuniary obligations. Default interest shall be five per cent above the interest rate provided for in Article 585 [NBM refinancing interest rate] unless the law or the contract provides otherwise. Proof that less damage has been incurred shall be admissible.

(2) In non consumer-related situations default interest shall be nine per cent above the interest rate provided for in Article 585 unless the law or the contract provides otherwise. Proof that less damage has been incurred shall be inadmissible.”

THE LAW

32. The applicants complained that their right to a fair trial, as guaranteed by Article 6 § 1 of the Convention, had been infringed by the fact that on 26 May 2004 the Supreme Court of Justice had upheld the Ministry's appeal on points of law even though it was out of time. 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 within a reasonable time by an independent and impartial tribunal established by law. ...”

I. ADMISSIBILITY OF THE COMPLAINTS

A. The applicants' complaints about the non-enforcement of the judgment of 27 May 2003

33. In their initial application the applicants complained of an interference with their rights under Articles 6 § 1 and 14 of the Convention and under Article 1 of Protocol No. 1 to the Convention, namely the non-enforcement of the judgment of the Râșcani District Court of 27 May 2003. However, in their observations on the admissibility and merits of the case, they informed the Court that they did not want to pursue those complaints. Accordingly the Court will not examine them.

B. The complaint concerning the appeal on points of law lodged out of time

34. The Government submitted that the applicants had lost their “victim” status. They argued that in view of the fact that on 9 November 2005 the applicants had requested the Supreme Court to withdraw their appeal on points of law and to discontinue the proceedings, they must be taken to have agreed with the amount of compensation awarded by the Sângerei District Court on 4 October 2004 (see paragraphs 20 and 24 above).

The Government also stated that at the date of submitting the present application with the Court, Mr Gheorghe Ceachir had not been authorised according to the provisions of the Moldovan Code of Civil Procedure to represent his brother before the Court. The Government requested the Court to dismiss the application submitted by Mr Ion Cheachir on the ground that it had not been duly introduced with the Court.

35. The applicants disagreed with the Government's objections and argued that as their complaint related to the unlawful quashing of the judgment of 27 May 2003 as a result of an appeal on points of law lodged out of time, the national authorities had neither acknowledged the breach of the Convention nor paid them any compensation for that unlawful quashing. The applicants considered that the Government's objection concerning the withdrawal of their appeal on points of law had raised an issue of non-exhaustion of domestic remedies. They argued that in cases where the issue of the quashing of a final judgment was at stake, the subsequent development of the unlawfully reopened proceedings was irrelevant.

Secondly, on 21 April 2006 Mr Ion Ceachir informed the Court that on the date of lodging the application, his brother, Mr Gheorghe Ceachir, and his representative, Mr Vladislav Gribincea, had had his consent to act on his behalf and to initiate proceedings before the Court.

36. The Court reiterates that “the quashing of a final judgment is an instantaneous act, which does not create a continuing situation, even if it entails a reopening of the proceedings” (see *Frunze v. Moldova*, no. 42308/02, 14 September 2004). It is to be noted that the applicants' complaint relates to the unlawful quashing of the judgment of 27 May 2003, as upheld on 14 August 2003 by the Chişinău Court of Appeal, and not to the amount of compensation awarded by the domestic courts for the confiscation of their parents' property. It therefore dismisses the Government's first objection and considers that the issue of the lawfulness of the reopening of the proceedings by the Supreme Court on 26 May 2004 is bound up with the examination of the merits of the case. It therefore joins this issue to the merits.

As to the second objection raised by the Government, the Court reiterates that “the representative of an applicant must produce a “power of attorney or a written authority to act”. A simple written authority would be valid for purposes of the proceedings before the Court, in so far as it has not been shown that it was made without the applicants' understanding and consent” (see *Velikova v. Bulgaria*, no. 41488/98, § 50, ECHR 2000-VI). From the content of the letter of 21 April 2006 (see paragraph 35 above) the Court considers that there is no doubt as to Mr Ion Ceachir's understanding and consent to pursue his application.

37. The Court therefore dismisses the Government's objection.

C. Conclusion on admissibility

38. The Court considers that the applicants' complaint under Article 6 § 1 of the Convention raises 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 the complaint 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 the applicants' complaint.

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

39. The applicants complained under Article 6 § 1 of the Convention about the quashing by the Supreme Court of Justice of the judgment of the Râşcani District Court of 27 May 2003 without providing any reasons for upholding an appeal in cassation which had been lodged out of time.

40. The Government submitted that the Ministry had lodged the appeal on points of law on 29 August 2003 and thus within the legal time-limit. They contended that by its letter of 13 November 2003 the Ministry had clarified the issue of court fees (see paragraph 16 and paragraph 30 of Relevant domestic law above) and that the appeal on points of law of 8 December 2003 had been a reiteration of that of 29 August 2003. In so far as the Supreme Court in its judgment of 26 May 2004 had provided sufficient reasons for upholding the Ministry's appeal on points of law, the Government considered that there had been no infringement of the applicants' rights under the Convention.

41. The Court observes that the general principles which apply in cases of this type are set out in *Melnic v. Moldova* (no. 6923/03, §§ 41-43, 14 November 2006).

42. It is to be noted that according to Article 434 of the CCP an appeal on points of law may be lodged within a two-month restrictive period, which cannot be extended. This period shall be calculated from the date of the judgment or from the date when it became known to the party. Failure to observe it renders a judgment final and irrevocable, as provided for by Article 254 of the CCP (see paragraph 29 above).

43. In the present case, the Court notes that the Ministry's representative had not been present during the proceedings before the Chişinău Court of Appeal of 14 August 2003 (see paragraph 11 above). In the absence of any evidence submitted by the parties concerning the date on which the Ministry became aware of the judgment of 14 August 2003, the Court is ready to consider the date appearing on the Ministry's appeal application as being the date on which it had found out and from which the two month time limit started to run (see paragraphs 12 and 17 above). Thus, the legal time-limit during which the Ministry could have lodged an appeal on points of law expired on 29 October 2003.

44. The Government argued that on 13 November 2003 the Ministry had sent a letter to the Supreme Court to clarify the issue of court fees. However, that letter appears to have been sent outside the time-limit provided for by Article 434 of the CCP (see paragraphs 16 and 40 above). Indeed, Article 434 sets out clearly that the two month time-limit cannot be extended.

45. The Court attaches particular importance to the fact that despite the applicants' objection of 20 May 2004 that the Ministry's appeal on points of law was statute-barred, the Supreme Court did not give any reasons for dismissing it and apparently treated it as irrelevant.

46. Finally, the Court notes that on 26 May 2004 the Supreme Court of Justice specifically mentioned that it had examined the appeal on points of law lodged on 8 December 2003, and not the Ministry's appeal of 29 August 2003.

47. The Court recalls that similar situations have already been examined in *Popov v. Moldova* (no. 2), (no. 19960/04, § 53, 6 December 2005) and *Melnic* (cited above, §§ 40 and 41), in which it was found that by not giving any reasons for extending the defendants' time-limit for lodging a procedural act, the domestic courts had infringed the applicants' rights to a fair hearing.

48. There has accordingly been a violation of Article 6 § 1 of the Convention, and the Government's preliminary objection (see paragraph 36 above) must be therefore dismissed.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

1. Judgment debt

50. The applicants claimed that they should be awarded MDL 114,250 each, representing the difference between the amount awarded by the judgment of 27 May 2003 of the Râșcani District Court and MDL 36,250, which had already been paid to them (see paragraph 28 above).

51. The Government disagreed with the amount claimed and argued that since the applicants had withdrawn their appeal on points of law, they had therefore agreed with the amount of compensation awarded by the Sângerei District Court on 4 October 2004. Having received MDL 36,250 each, their claims should be dismissed.

52. In view of its finding that the authorities have breached the applicants' rights by quashing the judgment awarding each of them MDL 150,500 and given that they have been paid MDL 36,250, the Court finds that the applicants are still entitled to recover MDL 114,250 (EUR 6,586) each, representing the rest of the judgment debt as awarded by the Râșcani District Court on 27 May 2003.

2. Default interest

53. Relying on Article 619 of the Civil Code (see the Relevant domestic law above), the applicants requested to be paid interest for the delayed execution of the pecuniary obligation, namely MDL 150,500 as awarded by the judgment of 27 May 2003. According to their method of calculation the

interest due to each applicant was EUR 7,278.99, which should be calculated from the date of adoption of the judgment.

54. The Government did not depart from their position as submitted in paragraph 51 above and considered the applicants' claims to be groundless.

55. The Court considers that the applicants must have suffered pecuniary damage as a result of the upholding by the Supreme Court of Justice of an appeal on points of law lodged out of time. Taking into account the domestic legislation concerning the calculation of default interest (see paragraph 31 above), the Court awards each of the applicants EUR 7,279 in compensation for the lost interest.

B. Non-pecuniary damage

56. Referring to *Popov (no. 2)* (cited above), the applicants claimed EUR 3,000 each, in compensation for non-pecuniary damage suffered as a result of the infringement of their rights under the Convention.

57. The Government disagreed with the amount claimed by the applicants and stated that they were not entitled to receive compensation.

58. The Court considers that the applicants must have been caused a certain amount of stress and frustration as a result of the breach of their rights under the Convention. The particular amount claimed is, however, excessive. Making its assessment on an equitable basis, the Court awards the applicants jointly EUR 3,600 for non-pecuniary damage.

C. Costs and expenses

59. The applicants claimed EUR 2,730 for the costs and expenses incurred before the Court. He submitted a detailed timesheet according to which the lawyer's hourly rate was EUR 60 and relied on the decision of the Moldovan Bar Association adopted on 29 December 2005, which set out the recommended level of remuneration for lawyers representing applicants before international courts. They also submitted a receipt according to which on 21 April 2006 their representative had been paid MDL 41,402 (EUR 2,580). The amount claimed was due to the fact that the initial application had been drafted in respect of non-enforcement of the judgment of 27 May 2003. Following the Supreme Court of Justice's decision to uphold the Ministry's appeal on points of law, the initial complaints had to be fully re-drafted. Lastly, in view of the partial payment of MDL 36,250, the claims for just satisfaction had to be repeatedly submitted.

60. The Government disagreed with the amount claimed for representation and stated that the Court should not award them any compensation for costs and expenses since those claims had been excessive.

61. The Court reiterates that in order for costs and expenses to be included in an award under Article 41 of the Convention, it must be

established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Amihalachioaie v. Moldova*, no. 60115/00, § 47, ECHR 2004-...).

62. In the present case, regard being had to the itemised list submitted and the complexity of the case, and also to the fact that the applicants' representative had to substantially redraft the initial application, the Court awards the applicants EUR 1,800 for costs and expenses.

D. Default interest

63. 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. *Joins to the merits* the Government's preliminary objection regarding the applicant's "victim" status;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention and *dismisses* the Government's preliminary objection;
4. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final under Article 44 § 2 of the Convention the following amounts, to be converted into Moldovan lei at the rate applicable at the date of settlement:
 - (i) EUR 6,586 (six thousand five hundred and eighty six euros) each in respect of pecuniary damage, representing the judgment debt;
 - (ii) EUR 7,279 (seven thousand two hundred and seventy-nine euros) each in respect of pecuniary damage, representing the lost interest;
 - (iii) EUR 3,600 (three thousand six hundred euros) in total in respect of non-pecuniary damage;
 - (iv) EUR 1,800 (one thousand and eight hundred euros) in total in respect of costs and expenses; and
 - (v) 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;

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

Done in English, and notified in writing on 15 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President