



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

FOURTH SECTION

CASE OF TUDOR-COMERT v. MOLDOVA

(Application no. 27888/04)

JUDGMENT

STRASBOURG

4 November 2008

FINAL

04/02/2009

This judgment may be subject to editorial revision.

In the case of Tudor-Comert v. Moldova,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 7 October 2008

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

PROCEDURE

1. The case originated in an application (no. 27888/04) 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 Tudor-Comert (“the applicant company”), on 28 June 2004.

2. The applicant company was represented by Mr V. Nagacevschi, a lawyer practising in Chişinău and a member of the non-governmental organisation Lawyers for Human Rights. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicant company alleged, in particular, that the refusal of the domestic courts to examine its appeal due to its inability to pay court fees had breached its right of access to court, guaranteed by Article 6 of the Convention.

4. The application was allocated to the Fourth Section of the Court. On 21 November 2006 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant is a company registered in Chişinău.

6. On 20 December 1994 two companies (Tehoptimed and Tudor & K.) concluded a contract according to which the latter rented a warehouse from the former.

7. In June 1996 the applicant company was registered. On 19 February 1997 the original contract for the use of the warehouse was amended to the effect that all the rights and obligations of Tudor & K. passed to the applicant company. The applicant company stored merchandise (food and clothes) in the warehouse.

8. On 11 June 1997 the police of the Ciocana Commissariat of Chişinău sealed the warehouse rented by the applicant company. On 30 June 1997 the applicant company complained to the Ciocana Commissar about a violation of its right to property and asked for the reasons for the police action. In a reply dated 2 July 1997 the applicant company was informed that the police had acted on the basis of the order of an investigator of the Chişinău Prosecutor's Office.

9. On 30 October 1997 the applicant company requested the Chişinău Prosecutor's Office to revoke the order. In a letter of 19 November 1997 the Chişinău Prosecutor's Office stated that its actions had been lawful. The applicant company made several other complaints to the Ciocana Police Commissariat and the Chişinău Prosecutor's Office and received similar answers. In its complaints, the applicant company claimed that the merchandise taken from the rented warehouse had not been listed in the minutes as required by law and that its total value had been 11,750,000 Moldovan lei (MDL), (approximately 1,059,340 United States Dollars (USD)).

10. The applicant company initiated court proceedings against the Chişinău Prosecutor's Office, the Ciocana Police Commissariat and Tehoptimed, requesting the restitution of the MDL 11,750,000.

11. On 31 March 1998 the Chişinău Economic Court found that the sequestration of the applicant company's property "in the amount of MDL 11,750,000" from its rented warehouse had been unlawful. It ordered the defendants to return the property taken from the applicant company. No appeal was lodged and the judgment became final 15 days later.

12. On 3 September 1998 the applicant company requested an expert report to be prepared in order to establish the current value of the property which had been kept in the sealed warehouse since July 1997. On 4 September 1998 the applicant company obtained access to that property. A list of items found in the warehouse was drawn up.

13. On 14 September 1998 an expert of the Central Laboratory of Scientific Research of the Ministry of Justice concluded that the warehouse had not been heated or ventilated and was infested with moths and rodents. The food and clothes stored in the warehouse had been severely damaged and their monetary value was MDL 74,158 (approximately USD 6,685).

14. On 29 October 1998 the Râșcani District Court returned the enforcement warrant to the applicant company and notified it that the total value of the merchandise found in the warehouse was MDL 74,158 and that there was no other property to be returned.

15. The applicant company requested the Chișinău Economic Court to change the manner of enforcing the warrant by ordering payment of the original value of its property.

16. At the request of the Prosecutor General's Office, on 19 December 2001 the Supreme Court of Justice quashed the judgment of 31 March 1998 and ordered a re-hearing of the case.

17. On 23 December 2002 the Chișinău Economic Court left the applicant company's action unexamined because it had failed to appear and had not submitted the originals of the documents confirming its claims.

18. On 14 January 2003 the same court returned the applicant company's appeal (*contestația in anulare*) because of its failure to pay court fees. On 19 March 2003 the Economic Court of the Republic of Moldova ordered a re-hearing of the case, finding that the length of the proceedings had already been excessive and that a decision on the substance of the case was required.

19. On 11 November 2003 the Chișinău Economic Court rejected the applicant company's claims. It found that on 23 December 1997 the prosecution had informed the applicant company about the discontinuation of the proceedings and that all the restrictions on the use of its property had been lifted. Accordingly, the applicant company could have used its property from that date, which meant that there was no outstanding issue to be decided by the court.

20. In its appeal the applicant company stated that the investigator's order to seize its property had been taken in violation of the law and that the seizure itself had been carried out without drawing up a list of all the items seized, again contrary to the law. The applicant company also noted that the unlawful actions of the prosecution and the police had violated its property rights and that not all the items taken from it had been returned. This resulted in its inability to fulfil its contractual obligations towards third parties.

21. On 15 January 2004 the Appeals Chamber of the Economic Court left the appeal unexamined because of the applicant company's failure to pay court fees MDL 352,500, (EUR 21,021 at the time). The court gave the applicant company until 12 February 2004 to pay the court fees.

22. The applicant company requested the postponement of the payment of court fees until after the examination of its case. It relied on its difficult financial situation, annexing bank certificates proving that there had been virtually no money in its accounts since 2002. It also claimed that in 1997, when it lodged its complaint, no court fees were payable. It finally invoked its right to access to justice.

23. In response to the applicant company's request, the court postponed the time-limit for payment of the court fee until 15 March 2004.

24. On 15 March 2004 the Appellate Chamber of the Economic Court rejected the applicant company's request to postpone the payment of the court fees pending the examination of the case. The court refused to examine the applicant company's appeal because of its failure to pay the court fees despite two extensions of the time-limit for payment.

25. In its appeal in cassation the applicant company relied on its difficult financial situation, which, it claimed, had resulted from the unlawful actions of the police and prosecution and had blocked its economic activity. It asked for the postponement of the payment of court fees until after its appeal had been examined.

26. On 6 May 2004 the Supreme Court of Justice rejected as unfounded the applicant company's appeal. The court found that the applicant company's submissions that the lower courts had not taken into consideration its difficult financial situation was unsubstantiated. It found that the courts had the power but not an obligation to postpone the payment of court fees in accordance with Article 86 of the CCP. It also found that no waiver of court fees was possible for legal persons. Since the applicant company had failed to pay the court fees, its appeal was to be rejected.

II. RELEVANT DOMESTIC LAW

27. The relevant provisions of the Code of Civil Procedure, in force at the relevant time, read as follows:

“Article 84

Court fees shall be due for actions lodged by natural and legal persons ..., for appeals and appeals in cassation...:

(1) For court actions of a pecuniary nature ... – 3% of the value of the action or of the amount sought...;

(11) For appeals – 75% of the court fees due when lodging the action ...;

(12) For appeals in cassation – 50% of the court fees due when lodging the action ...;

Article 85

...

(4) The judge (the court) may exempt partly or entirely a natural person from paying court fees, taking into account the person's financial situation."

"Article 86

(1) The judge or the court has the power to postpone the payment of court fees or to allow its payment in instalments by one or both parties to the proceedings, taking into account their financial state. If the plaintiff does not pay the court fee within the time-limit set, the court will strike the case off its list."

"Article 437

...

(2) Proof of payment of court fees shall be annexed to the cassation appeal; Articles 85(4) and 86 do not apply."

THE LAW

28. The applicant company complained that its right of access to a court had been limited and that the principle of legal certainty had not been respected, contrary to Article 6 § 1 of the Convention, which, in so far as relevant, provides:

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

29. It also complained that its rights guaranteed under Article 1 of Protocol No. 1 to the Convention had been violated as a result of the domestic courts' refusal to examine its appeal.

Article 1 of Protocol No. 1 to the Convention 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.

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."

I. ADMISSIBILITY

30. The Court notes that, in its initial application, the applicant company referred to the annulment, by the Supreme Court of Justice, of the final court judgment of 31 March 1998, as contrary to the principle of legal certainty, within the meaning of Article 6 § 1 of the Convention. However, in a letter of 9 July 2004 it asked the Court not to proceed with the examination of that complaint.

The applicant company also complained about a violation of its rights guaranteed by Article 1 of Protocol No. 1 to the Convention as a result of the refusal to examine its appeal against the judgment of 11 November 2003. However, in its observations on the admissibility and merits it asked the Court not to proceed with the examination of that complaint.

31. The Court finds no reason to examine either of the complaints referred to above. It considers that the applicant company's only remaining complaint under Article 6 § 1 of the Convention regarding access to court raises questions of law which are sufficiently serious that its determination should depend on an examination of the merits, and no other grounds for declaring it inadmissible have been established. The Court therefore declares this 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 complaint.

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

32. The applicant company submitted that by refusing to examine its appeals, the Appeals Chamber of the Economic Court and the Supreme Court of Justice had infringed its right of access to court. It referred to evidence which it had submitted to the courts regarding its inability to pay the court fees and to the fact that the courts were prevented by law from waiving the court fees in respect of court actions lodged by legal persons. While the applicant company requested postponement of court fee payment since that was the only remedy it had under the law, it had no hope of ever paying those fees since it effectively ended its activity following the major loss of property caused by the State authorities. The repeated postponement of the payment of court fees allowed by the courts had, therefore, no practical effect on the applicant company's right of access to court.

33. The Government considered that there had been no violation of the applicant company's rights. Article 6 of the Convention left a wide margin of appreciation to States in organising their judicial systems. Article 6 did not guarantee an absolute right of access to court and it could legitimately be restricted, including by requiring the payment of court fees as a condition for examining court actions. Moreover, the domestic courts had fulfilled

their positive obligations by giving the applicant company, on two occasions, additional time to pay the court fees. Finally, the applicant company did not show the domestic courts any document to confirm that it was going to pay those fees. In such circumstances, the courts had to take a decision in order to prevent a violation of the applicant company's right to an examination of its case within a reasonable time.

34. The Court refers to the general principles established in its case-law concerning access to a tribunal within the meaning of Article 6 § 1 of the Convention and, more specifically, the requirement to pay court fees (see, among many authorities, *Kreuz v. Poland*, no. 28249/95, §§ 52-57, ECHR 2001-VI and the further references therein).

35. In the present case the Court notes that the relevant proceedings concerned the applicant company's claim for damages. Accordingly, Article 6 § 1 applies under its civil head (see *Kreuz*, cited above, § 35, and *Clionov v. Moldova*, no. 13229/04, § 39, 9 October 2007). The Court also reiterates that Article 6 § 1 does not guarantee a right to appeal from a decision of first instance. Where, however, domestic law provides for a right of appeal, the appeal proceedings will be treated as an extension of the trial process and accordingly will be subject to Article 6 (see *Delcourt v. Belgium*, judgment of 17 January 1970, § 25, Series A no. 11, and *Gurov v. Moldova*, no. 36455/02, § 33, 11 July 2006). It is to be noted that Moldovan law allowed the applicant company to lodge an appeal with the Appeals Chamber of the Economic Court and an appeal in cassation with the Supreme Court of Justice. Those courts could restrict its right of appeal only where they found that the appeal did not correspond to the applicable legal requirements.

36. The Court notes that both these domestic courts relied on the provisions of the law in refusing to examine the applicant's appeal, namely its failure to pay court fees. Accordingly, the Court needs to examine whether, in rejecting the applicant company's appeal, these courts took into account the particular circumstances of its case, first of all its ability to pay.

37. The Court notes that only the Supreme Court of Justice mentioned, in its judgment, the applicant company's claim that it was unable to pay the court fees (see paragraph 26 above). That court found that submission unsubstantiated, but did not refer to any part of the lower courts' judgments in which the applicant company's ability to pay had been examined. Neither did the Supreme Court of Justice itself make such a verification.

38. Moreover, the Supreme Court of Justice expressly stated that courts were prevented by the law from waiving court fees in law suits lodged by legal persons (see paragraph 26 above). Such a blanket prohibition on granting court fee waivers raises in itself an issue under Article 6 § 1 of the Convention (see *Clionov*, cited above, § 41).

39. The Court also notes that, according to the documents in the case file and which had also been submitted to the domestic courts, the applicant

company had no economic activity at the relevant time and was therefore unable to pay the court fees. It further takes account of the nature of the law suit initiated by the applicant company, namely a complaint about allegedly unlawful acts of State authorities which had effectively ruined the company, rather than a commercial dispute relating to its normal economic activity.

40. In so far as it might be argued that the applicant company allowed itself to be saddled with the payment of a fairly substantial amount of court fees (EUR 21,021) by claiming compensation in excess of 1 million USD, the Court can but note that the applicant company based its estimated financial loss on the amount actually awarded by the Chişinău Economic Court in its final judgment of 31 March 1998 (see paragraph 11 above). That judgment was later quashed in extraordinary proceedings. In these circumstances, the applicant company cannot be criticised for inflating the amount of compensation claimed, thus unnecessarily exposing itself to hefty court fees.

41. In view of the above, and having regard to the amount claimed, the court fees requested and considering the domestic courts' failure to determine the applicant company's ability to pay the court fees, the Court concludes that the applicant company's right of access to court was effectively limited to the point where it became illusory.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Non-pecuniary damage

44. The applicant company claimed 20,000 euros (EUR) in compensation for non-pecuniary damage. It submitted that, as a result of the courts' refusal to examine its claim against the authorities, its economic activity had ended and it had had to dismiss all of its employees. The management's plans for the future had all been abandoned.

45. The Government disagreed and argued that the applicant company had not submitted any evidence of non-pecuniary damage. In any event, the amount sought by the applicant company was exaggerated. The Government

submitted that a finding of a violation of Article 6 of the Convention would constitute sufficient just satisfaction in the present case.

46. The Court notes that, as a result of the domestic courts' failure to examine its claims in circumstances where it could not pay the court fees, the applicant company effectively discontinued its activity, which must have caused a major change of plans and uncertainty for the company's management. In these circumstances, the Court awards the applicant company EUR 5,000 for non-pecuniary damage (cf. *Sovtransavto Holding v. Ukraine* (just satisfaction), no. 48553/99, §§ 78-82, 2 October 2003, and *Nistas GmbH v. Moldova*, no. 30303/03, § 56, 12 December 2006).

B. Costs and expenses

47. The applicant company also claimed EUR 1,785 for costs and expenses, as well as EUR 30 for translation costs. In support of this claim it submitted a contract with its representative and an itemised list of hours spent by the representative in working on the case. The rates applied were within the limits recommended for representation before the international tribunals by the Moldovan Bar Association in its decision of 29 December 2005.

48. The Government considered that the amount claimed was excessive and that the Moldovan Bar Association's decision was only a recommendation. They contested the number of hours spent by the applicant company's representative working on the case, the hourly fee (EUR 85) and the translation costs.

49. In the present case, regard being had to the legal representation provided by the applicant company's lawyer and the complexity of the case, the Court awards the applicant company EUR 1,530 for costs and expenses.

C. 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* the application admissible;
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 applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage and EUR 1,530 (one thousand five hundred and thirty euros) in respect of costs and expenses, 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;

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

Done in English, and notified in writing on 4 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President