



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

FOURTH SECTION

CASE OF RUSSU v. MOLDOVA

(Application no. 7413/05)

JUDGMENT

STRASBOURG

13 November 2008

FINAL

13/02/2009

This judgment may be subject to editorial revision.

In the case of Russu v. Moldova,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

David Thór Björgvinsson,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 21 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 7413/05) 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, Ms Alla Russu (“the applicant”), on 7 February 2005.

2. The applicant, who had been granted legal aid, was represented by Mr V. Zama, a lawyer practising in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicant alleged, in particular, that her rights guaranteed under Article 6 § 1 of the Convention had been breached as a result of a court’s failure to hear her in person before fining her.

4. The application was allocated to the Fourth Section of the Court. On 12 December 2006 it 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 applicant was born in 1957 and lives in Chişinău.

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

7. The applicant worked as a journalist for the national public audio-visual institution, Teleradio-Moldova company (T.). According to the applicant, on 27 July 2004 a spontaneous strike began amongst T.'s staff in response to alleged censorship and disrespect for democratic principles enforced within T. by the Communist Party. The applicant was among a group of staff who occupied a room and refused to vacate it until their demands were met. According to the Government, this was an unauthorised demonstration.

8. On 23 September 2004 the applicant, who was present in court, was found guilty of breaching Article 174/1 § 4 of the Code of Administrative Offences by actively participating in an unauthorised demonstration. She was fined 180 Moldovan lei (MDL) (12 euros (EUR) at the time).

9. The applicant appealed, claiming that there was no evidence of her active participation in the meeting and that the meeting had been an unplanned strike which should be examined under the relevant labour legislation.

10. On 7 October 2004 the applicant was dismissed from her position. She remains unemployed, having formally registered as such on 8 January 2005.

11. On 18 November 2004 the Chişinău Court of Appeal examined her case in her absence and rejected her appeal in cassation. The court noted that the applicant had been summoned. According to the applicant, she had not been summoned and found out about the decision of the Court of Appeal only on 6 January 2005 when she inquired about her case at the court's registry.

12. The applicant paid her fine on 11 January 2005.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. The relevant domestic law has been set out in *Ziliberberg v Moldova* no. 61821/00, §§ 22-25, 1 February 2005.

14. In the judgment of 25 April 2007 in the civil case 2ra-460/07 the Supreme Court of Justice dismissed the claim that the appellant had lodged his appeal outside the time-limit established by law (fifteen days from the date when he had been informed of the appealed judgment). The court found that although there was evidence that the court had sent a copy of the judgment to the appellant, there was no evidence in the case file to confirm the date of its delivery. Accordingly, the appeal was considered as having been lodged within the time-limit, despite the fact that it was lodged twenty-six days after the court had sent the copy of the judgment to the appellant.

THE LAW

15. The applicant complained under Article 6 § 1 of the Convention that she had been convicted in her absence. The relevant part of Article 6 reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

16. The applicant also complained of a violation of her rights guaranteed under Article 11 of the Convention, which reads:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

I. ADMISSIBILITY

17. The Court notes that in her observations of May 2007 the applicant asked the Court not to examine her complaint made under Article 11 of the Convention. Accordingly, the Court will not examine this complaint.

18. The Court considers that the applicant’s 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. No grounds for declaring this complaint inadmissible have been established. The Court 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

19. The applicant complained that the Court of Appeal’s failure to summon her to the court hearing of 18 November 2004 had breached her rights guaranteed under Article 6 § 1 of the Convention. There was no evidence that a letter summoning her to the court hearing had indeed been sent, nor any evidence that it had ever reached her. The register of outgoing mail at the Court of Appeal did not mention the address to which the summons had been sent, the person responsible for sending it or any other detail.

20. The applicant submitted that the administrative fine imposed on her had been of a punitive and deterrent nature. She relied on the judgment in *Ziliberberg v. Moldova* no. 61821/00, §§ 27-36, 1 February 2005.

21. The Government submitted that on 10 November 2004 the Court of Appeal had properly summoned the applicant to its hearing of 18 November 2004. Unlike in the *Ziliberberg* case cited above, the applicant had plenty of time to prepare for the hearing, but chose not to attend and did not warn the court of her absence.

22. The Court reiterates that in the case of *Ziliberberg* (cited above, § 35) it found that Article 6 of the Convention was applicable under its criminal head to proceedings concerning the administrative offence provided for under Article 174/1 of the Code of Administrative Offences. It sees no reason to depart from that conclusion in the present case, which concerns the application of the same provision of domestic law. Accordingly, Article 6 was applicable to the proceedings in the applicant's case since they involved "the determination of a criminal charge" against her.

23. The Court notes the Government's contention that the applicant was summoned to the court hearing of 18 November 2004 but chose not to attend. However, the only evidence that she had been summoned submitted by the Government was the Court of Appeal's register of outgoing mail. There is no evidence in the file that the summons actually reached the applicant.

24. In this respect, the Court cannot but note that in practice the domestic courts do not accept as sufficient evidence the sending of a letter by a court and require proof of delivery (see paragraph 14 above).

25. The Court therefore finds that it has not been established that the applicant was properly summoned to the court hearing of 18 November 2004.

26. Article 6 of the Convention, read as a whole, guarantees the right of an accused to participate effectively in his criminal trial. This includes, inter alia, a right not only to be present, but also to hear and follow the proceedings (see, for example, *Stanford v. the United Kingdom*, 23 February 1994, § 26, Series A no. 282-A, and *Barberà, Messegue and Jabardo v. Spain* 6 December 1988, § 78, Series A no. 146). This right is implicit in the very notion of an adversarial procedure and can also be derived from the guarantees contained in sub-paragraphs (c), (d) and (e) of paragraph 3 of Article 6 – "to defend himself in person", "to examine or have examined witnesses", and "to have the free assistance of an interpreter if he cannot understand or speak the language used in court" (see *Colozza v. Italy*, 12 February 1985, § 27, Series A no. 89). It is difficult to see in the present case how the applicant could have exercised these rights without being present.

27. The Court further refers to the principle according to which the presence in person of the accused at a hearing of an appeal where only points of law were considered was not crucial (see *Hermi v. Italy* [GC], no. 18114/02, §§ 58-67, ECHR 2006-...; *Sejdovic v. Italy* [GC], no. 56581/00, §§ 81-85 and 91-95, ECHR 2006-...; *Kremzow v. Austria*, 21 September 1993, Series A no. 268-B; and *Kamasinski v. Austria*, 19 December 1989, Series A no. 168). However, in the instant case, the Court notes that, having had no prior notice of the hearing, the applicant was unable to organise her defence and was not represented by a lawyer (see *Ziliberberg*, cited above, § 41; compare and contrast *Hermi*, cited above, § 102). Moreover, the applicant challenged factual aspects of the case such as whether she had “actively participated” in an unauthorised demonstration, and even whether it had been a demonstration or a strike (see paragraph 9 above). Examining such issues, some of which were closely linked to the applicant’s personality and actions, would require the hearing of the applicant in person, which was not the case in the hearing before the Court of Appeal.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed EUR 5,000 in compensation for the non-pecuniary damage caused to her. She referred to the importance of the proceedings against her, which had to be examined in the light of the campaign against censorship at the national radio and television company.

31. The Government considered that no compensation was due to the applicant and that, in any event, the amount claimed was excessive and unsubstantiated.

32. The Court considers that the proceedings against the applicant concerned an issue of a certain importance to her, regarding as they did an issue of great public interest (alleged censorship at the national television and radio company), and in which she took risks in order to voice a protest. It also notes that the applicant was dismissed shortly after she had been found guilty by the first-instance court and that she remained unemployed

thereafter (see paragraph 10 above). While the Court cannot speculate as to the outcome of the proceedings against her had the Court of Appeal heard her in person, it considers that the failure to give her the chance to state her position caused her damage which cannot be compensated only by a finding of a violation in the present case. Accordingly, and deciding on an equitable basis, the Court awards the applicant EUR 1,000 on this account.

B. Costs and expenses

33. The applicant claimed EUR 1,120 for costs and expenses. She relied on a contract with her lawyer and an itemised list of hours spent by him on the case (18 hours at an hourly rate of EUR 60, plus secretarial expenses).

34. The Government contested the number of hours needed to work on the case, which was fairly simple, and the hourly fee charged.

35. The Court notes that the applicant obtained legal aid from the Court in the amount of EUR 850. It considers that this amount represents a fair reflection of the lawyer's work in the case and that no additional compensation is due on this account.

C. Default interest

36. 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, 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President