



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

FOURTH SECTION

CASE OF EUGENIA AND DOINA DUCA v. MOLDOVA

(Application no. 75/07)

JUDGMENT

STRASBOURG

3 March 2009

FINAL

14/09/2009

This judgment may be subject to editorial revision.

In the case of Eugenia and Doina Duca 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,

Ján Šikuta,

Nebojša Vučinić, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 10 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 75/07) 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, Ms Eugenia Duca and Ms Doina Duca (“the applicants”), on 27 December 2006.

2. The applicants were represented by Mr Alexandru Tanase and Mrs Janeta Hanganu, lawyers practising in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr Vladimir Grosu.

3. The applicants alleged, in particular, that their right to a fair trial and their right to property had been breached as a result of an abusive quashing of a judgment favourable to them.

4. On 1 February 2008 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

5. Judge Poalelungi, the judge elected in respect of Moldova, withdrew from sitting in the case (Rule 28 of the Rules of Court) after it had been notified to the Government. On 31 January 2009, the Government, pursuant to Rule 29 § 1 (a), informed the Court that they were content to appoint in his stead another elected judge and left the choice of appointee to the President of the Chamber. On 1 February 2009, the President appointed Judge Šikuta to sit in the case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are a mother and daughter who were born in 1953 and 1975 respectively and live in Chişinău.

7. The applicants are shareholders in company C. The background to the case lies in a dispute between the applicants and two other shareholders in the company (I.A. and S.A.) which started in 1998. At that time the first applicant owned eighty percent of the company's shares while I.A. and S.A. claimed to be the owners of over fifty percent of the shares. The matter was taken before the courts and the first applicant was successful before the first two instances, which accepted her position in the judgments of the Râşcani District Court of 25 July 1999 and of the Chişinău Regional Court of 27 September 1999. The judgments were reversed, however, by the Court of Appeal on 21 December 1999.

8. The first applicant lodged an extraordinary appeal which was upheld by the Supreme Court on 5 July 2000. The Supreme Court quashed the judgment of the Court of Appeal of 21 December 1999 and left the judgment of the Chişinău Regional Court of 27 September 1999 as the final decision in the case.

9. After that date I.A. and S.A. lodged numerous extraordinary appeals and revision requests challenging the judgment of 27 September 1999. However, they were all unsuccessful.

10. In 2000 the first applicant purchased 13.15% of the shares of the company and in 2003 she donated all her shares to the second applicant. In the same year the second applicant purchased 1.31% of the shares, thus becoming the owner of 94.46% of the shares.

11. On 3 July 2006 I.A. and S.A. lodged a new revision request with the Supreme Court of Justice challenging the judgment of 27 September 1999. The request was based on Article 449 (b), (c) and (h) of the Code of Civil Procedure and the reason given in the request was that following two expert evaluations ordered by them and carried out on 18 and 19 May 2006, it appeared that several documents which had formed the basis of the judgment of 27 September 1999 had been false. I.A. and S.A. also argued that they had lodged an application with the European Court complaining that the principle of legal certainty had been violated by an abusive quashing by the Supreme Court of Justice on 5 July 2000 of the judgment of the Court of Appeal of 21 December 1999. In support of their request I.A. and S.A. attached to their request a copy of their application lodged with the Court and copies of correspondence with the Court concerning application no. 10232/03.

12. The first applicant and company C. objected and argued, *inter alia*, that the revision request was time-barred and that the simple fact of lodging an application with the European Court of Human Rights was not a sufficient basis for quashing a final judgment under the provisions of the Code of Civil Procedure. They also disputed the allegations concerning the false documents and argued that these allegations had been made in previous revision requests lodged by I.A. and S.A. and had been rejected by the courts. In particular they submitted that the conclusion from the expert reports of 18 and 19 May 2006 had been taken from a previous expert report dated 12 July 2005 written by the same expert. Moreover, the first applicant had finally been acquitted in criminal proceedings on charges of forging the above documents on 18 February 2003. Finally, the defendants argued that I.A. and S.A. had failed to pay court fees.

13. On 27 November 2006 the Supreme Court of Justice upheld I.A.'s and S.A.'s revision request. As a result, the judgment of the Chişinău Regional Court of 27 September 1999 was quashed while the judgment of the Court of Appeal of 21 December 1999 became the final decision in the case. The Supreme Court did not examine any of the defendants' contentions and, after acknowledging the existence of the reports of 18 and 19 May 2006 and of the lodging by I.A. and S.A. of an application with the Court, found that the quashing by the Supreme Court on 5 July 2000 of the judgment of the Court of Appeal of 21 December 1999 had been contrary to the principle of legal certainty.

14. After the enforcement of the above judgment I.A. and S.A. obtained control of 50.925% of the shares of company C.; the first applicant kept control of 48.775% of the shares, while the second applicant lost all of her shares.

15. On 20 February 2007 a committee of three judges of the European Court declared application no. 10232/03 lodged by I.A. and S.A. manifestly ill-founded and therefore inadmissible.

16. After learning about the Court's decision in the above case, the applicants initiated revision proceedings with the Supreme Court of Justice seeking revision of the judgment of 27 November 2006. In particular, they argued that the application to the Court which had served as grounds for the revision of the final judgment of 27 September 1999 had been declared inadmissible. They also argued that the second applicant, who had had over 94% of the company's shares, was not a party to the revision proceedings which had ended with the judgment of 27 November 2006.

17. On 2 July 2007, the Plenary Supreme Court of Justice dismissed the applicants' revision request. Judge D.V. wrote a separate opinion in which he disagreed with the decision of the majority and expressed the view that the applicants' revision request should have been upheld, especially in view of the European Court's decision to dismiss application no. 10232/03.

II. RELEVANT DOMESTIC LAW

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

“Article 449

A revision request shall be granted when:

- b) Certain essential circumstances or facts of the case become known which were not and could not have been known to the applicant;
- (c) After a judgment has been adopted, new documents have been discovered which have been held by one of the participants to the proceedings or which could not have been submitted to the court during the proceedings because of circumstances beyond the control of the interested party;
- (h) The European Court has found a violation of the fundamental rights and freedoms...

Article 450

A revision request may be lodged:

...

- (c) within three months of the date on which the person concerned has come to know essential circumstances or facts of the case which were unknown to him/her earlier and which could not have been known to him/her earlier - in cases concerning Article 449 (b);
- (d) within three months of the date on which the document was discovered - in cases concerning Article 449 (c);
- (g) within three months of the date on which the European Court of Human Rights adopted the judgment – in cases concerning Article 449 (h).”

THE LAW

19. The applicants complained that the quashing of the final judgment of 27 September 1999 by the Supreme Court of Justice on 27 November 2006 had violated Article 6 § 1 of the Convention.

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

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...”

20. They also submitted that the quashing of the final judgment in their favour had had the effect of infringing their right to peaceful enjoyment of their possessions as secured by Article 1 of Protocol No. 1 to the Convention, 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.”

I. ADMISSIBILITY OF THE CASE

21. The Government argued that the second applicant could not claim to be a victim within the meaning of Article 34 of the Convention because the revision proceedings examined by the Supreme Court of Justice on 27 November 2006 did not concern the issue of transfer of shares between the first and the second applicant. Moreover, the second applicant received the shares from the first applicant free of charge and therefore she could not have suffered any loss even if the shares had been taken away from her. In any event, the Government expressed the opinion that the transfer of shares between the first and the second applicant by way of donation was not genuine but was only intended to avoid restitution of shares to I.A and S.A.

22. The applicants disagreed with the Government and argued that while the judgment of the Supreme Court of Justice had not expressly ruled on the fate of the second applicant's shares, as a result of the enforcement of that judgment she had lost all of her shares. The applicants also contested the Government's other submissions.

23. The Court reiterates that the word “victim” in Article 34 refers to the person directly affected by the act or omission at issue; and the existence of a violation is conceivable even in the absence of prejudice, prejudice being relevant only for the purposes of Article 41 (see, *inter alia*, *Walston v. Norway*, no. 37372/97, § 58, 3 June 2003, and *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, § 66).

24. It is undisputed in the present case that, as a result of the judgment of the Supreme Court of Justice of 27 November 2006, the second applicant lost all of her shares in company C. The Court does not consider of any relevance the fact that the Supreme Court of Justice did not expressly annul the second applicant's title. The deprivation took place during the ensuing enforcement proceedings of the judgment of 27 November 2006. Nor does the Court consider relevant the fact that the second applicant had received the shares free of charge.

25. The Court also recalls that in its previous case-law concerning the issue of quashing of a final judgment it has established that the new owner of an asset concerned by the quashing, and not any previous owner, can claim all the rights, including procedural ones, which could be claimed by the party in whose favour the original judgment had been adopted (see *Anghelescu v. Romania*, no. 29411/95, §§ 49 et seq. and §§ 66 et seq., 9 April 2002; *Mihailescu v. Romania* (dec.), no. 32913/96, 22 June 2004). This approach underlines the continuing validity and finality of the original judgment, which is at the heart of the Court's jurisprudence concerning the quashing of final judgments (see *Moldovahidromaş v. Moldova* (dec.), no. 30475/03, 4 April 2006).

26. Accordingly, the Court concludes that the second applicant was directly affected by the quashing of the judgment of 27 September 1999 and can therefore claim to be a victim within the meaning of Article 34 of the Convention. The Government's objection is dismissed.

27. The Court considers that the present application raises questions of fact and law which are sufficiently serious for their determination to depend on an examination of the merits, and that no grounds for declaring it inadmissible have been established. The Court therefore declares the application admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider its merits.

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

28. The applicants complained that the principle of legal certainty had been breached and relied on Article 6 § 1 of the Convention. They argued that the revision proceedings were an appeal in disguise because I.A. and S.A. had merely tried to obtain a rehearing and a fresh determination of the case. They had relied on arguments which had been raised before, such as the issue concerning the false documents, and on the fact that they had lodged an application with the Court. The Supreme Court of Justice had failed to give reasons for accepting their revision request.

29. The Government disagreed and argued that the Supreme Court of Justice had accepted I.A.'s and S.A.'s arguments concerning the false documents and had corrected a judicial error. Moreover, the Supreme Court of Justice had found that the upholding of the Prosecutor General's request for annulment on 5 July 2000 had breached I.A.'s and S.A.'s right to a fair hearing as it had set aside an entire judicial process which had ended with a final judgment. By upholding the revision request on 27 November 2007, the Supreme Court of Justice had corrected that error.

30. The right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which, in its relevant part, declares the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have finally determined an issue their ruling should not be called into question (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII, and *Roşca v. Moldova*, no. 6267/02, § 24, 22 March 2005).

31. Legal certainty presupposes respect for the principle of *res judicata* (see *Brumărescu*, cited above, § 62), that is, the principle of the finality of judgments. This principle insists that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. Higher courts' power of review should be exercised to correct judicial errors and miscarriages of justice, but not to carry out a fresh examination. The review should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character (see *Roşca*, cited above, § 25).

32. The above conclusion in *Roşca* was drawn in connection with the request for annulment procedure under which the Prosecutor General's Office could seek review of final judgments it disagreed with. The Court held that this procedure, although possible under domestic law, was incompatible with the Convention because it resulted in a litigant's "losing" a final judgment in his favour.

33. As to the reopening of the proceedings owing to newly discovered circumstances, the Court observes that this issue was considered in *Popov v. Moldova* (no. 2) (no. 19960/04, 6 December 2005) and in *Oferta Plus SRL v. Moldova* (no. 14385/04, 19 December 2006), where it had found a violation of Article 6 § 1 on account of a misuse of revision proceedings. The Court held in those cases that reopening is not, as such, incompatible with the Convention. However, decisions to revise final judgments must be in accordance with the relevant statutory criteria; and the misuse of such a procedure may well be contrary to the Convention, given that its result – the "loss" of the judgment – is the same as that of a request for annulment. The

principles of legal certainty and the rule of law require the Court to be vigilant in this area (see *Popov (no. 2)*, cited above, § 46).

34. In the present case the Court notes that the revision procedure provided for by Article 449 of the Code of Civil Procedure does indeed serve the purpose of correcting judicial errors and miscarriages of justice. The Court's task, exactly as in *Popov (no. 2)* and in *Oferta Plus*, is to determine whether this procedure was applied in a manner which was compatible with Article 6 of the Convention, and thus ensured respect for the principle of legal certainty. In doing so, the Court must bear in mind that it is in the first place the responsibility of national courts to interpret provisions of national law (see *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 54, ECHR 1999-I).

35. The plaintiffs in the revision proceedings based their revision request on Article 449 (b), (c) and (h) of the Code of Civil Procedure. It is noted that under paragraphs (b) and (c), proceedings can be reopened when new and essential facts, circumstances or documents have been discovered, which were not and could not have been known to the interested party earlier. Under paragraph (h) of the Article, proceedings can be reopened after the finding of a violation by the European Court. Under Article 450 of the same Code, a revision request on the grounds provided in paragraphs (b) and (c) can be lodged within three months of the date on which the person concerned has come to know essential circumstances or facts of the case or documents which were unknown to him or her earlier and which could not have been known to him or her earlier. As to the grounds provided in paragraph (h), the time-limit is three months from the date on which the Court adopted the judgment.

36. The decision of the Supreme Court of 27 November 2006 appears to cite the expert reports of 18 and 19 May 2006 finding several documents to be false as grounds for reopening the proceedings under Article 449 (b) and (c) of the Code of Civil Procedure (see paragraph 11 above).

37. The Court notes that there is no indication in the Supreme Court's decision as to whether the expert reports of 18 and 19 May 2006 were documents which could not have been obtained earlier or whether they contained information that could not have been obtained earlier by the I.A. and S.A. Nor is there any indication from the plaintiffs' submissions that they had unsuccessfully tried to obtain those documents earlier. The defendants in the revision proceedings objected, *inter alia*, that the conclusion from the expert reports of 18 and 19 May 2006 had been taken from a previous report dated 12 July 2005 written by the same expert and that the allegations concerning forgery of the documents had already been dismissed by courts during the previous stages of the proceedings. The Supreme Court did not address this important objection in any way. Neither did it address the statute of limitation objection but simply extended the time-limit for lodging the revision request without giving any reason.

38. In such circumstances the Court considers that it cannot be said that the reports of 18 and 19 May 2006 qualified as new facts, circumstances or documents that were unknown and could not have been known earlier by the parties to the proceedings.

39. In so far as the ground based on Article 449 (h) is concerned, the Court finds it striking that the Supreme Court of Justice did not dismiss it, in the circumstances in which I.A. and S.A. relied on the fact of their lodging an application with the Court. The Court cannot but note the different approach taken by the Supreme Court of Justice in the case of *Moldovahidromaş v. Moldova* (no. 30475/03, §§ 38 and 39, 27 February 2007). In that case, after the Court had declared the application admissible, within the context of friendly-settlement negotiations, the Government Agent requested the Supreme Court of Justice to revise a decision by which a *Brumărescu*-type request had been upheld. The Supreme Court of Justice dismissed the revision request on the ground, *inter alia*, that the Court had not adopted a judgment on the merits of the case.

40. In the light of the above considerations, the Court considers that the revision procedure at issue was in essence an attempt to re-argue the case after more than six years. It was in effect an “appeal in disguise” whose purpose was to obtain a fresh examination of the matter rather than a genuine revision procedure as provided for in Articles 449-451 of the Code of Civil Procedure. In addition, the Supreme Court of Justice failed to give any reasons for extending the plaintiffs’ time-limit for lodging the revision request (see, *mutatis mutandis*, *Ruiz Torija*, cited above).

41. By granting the plaintiffs’ revision request the Supreme Court of Justice infringed the principle of legal certainty and the applicants’ “right to a court” under Article 6 § 1 of the Convention (see, *mutatis mutandis*, *Roşca*, cited above, § 28). Moreover, by not giving any reasons for extending the plaintiffs’ time limit for revision, the Supreme Court breached the applicants’ right to a fair hearing.

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

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

43. The applicants complained that the Supreme Court’s judgment of 27 November 2006 had had the effect of infringing their right to peaceful enjoyment of their possessions as secured by Article 1 of Protocol No. 1 to the Convention. The Government disputed the applicants’ contention.

44. The Court considers that the applicants had a “possession” for the purposes of Article 1 of Protocol No. 1 on the basis of the judgment of the Chişinău Regional Court of 27 September 1999 (see, among other authorities, *Brumărescu*, cited above, § 70). Quashing that judgment six

years after it has become final and unappealable constitutes an interference with the judgment beneficiaries' right to the peaceful enjoyment of that possession (see *Brumărescu*, cited above, § 74). Even assuming that such an interference may be regarded as serving a public interest, the Court finds that it was not justified since a fair balance was not preserved and the applicants were required to bear an individual and excessive burden (see *Brumărescu*, cited above, § 75-80).

45. It follows that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

IV. 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.”

47. The applicants claimed 140,815 euros (EUR) for pecuniary damage suffered as a result of the quashing of the judgment of 27 September 1999. They also claimed EUR 3,000 for the non-pecuniary damage and EUR 3,000 for costs and expenses.

48. The Government disagreed with the amounts claimed by the applicants and asked the Court to dismiss the applicants' claims.

49. The Court considers that the question of the application of Article 41 is not ready for decision. The question must accordingly be reserved and a further procedure fixed, with due regard to the possibility of agreement being reached between the Moldovan Government and the applicants.

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* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds*
 - (a) that the question of the application of Article 41 of the Convention is not ready for decision;
accordingly,
 - (b) reserves the said question;

- (c) invites the Moldovan Government and the applicant company to submit, within the forthcoming three months, their written observations on the matter and, in particular, to notify the Court of any agreement they may reach;
- (d) reserves the further procedure and delegates to the President of the Chamber power to fix the same if need be.

Done in English, and notified in writing on 3 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President