



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF MATEI AND TUTUNARU v. MOLDOVA

(Application no. 19246/03)

JUDGMENT

STRASBOURG

27 October 2009

FINAL

27/01/2010

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 Matei and Tutunaru 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 Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 6 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 19246/03) 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 two Moldovan nationals, Mr Constantin Matei and Mrs Elena Tutunaru (“the applicants”), on 7 March 2003.

2. The applicants were represented by Ms N. Mardari, a lawyer practising in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent at the time, Mr V. Pârlog.

3. The applicants alleged, in particular, that the proceedings in their case had been excessively long and that they had lost their property rights to part of their company as a result of arbitrary domestic judgments, which included the quashing of a final judgment in their favour.

4. On 8 December 2004 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 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were both born in 1951 and live in Ialoveni and Vorniceni respectively.

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

A. The proceedings prior to the request for annulment

7. In July 1987 the applicants and several other persons founded a business association ('the Association'). After other members of the Association left, the two applicants remained its only members. According to the applicants, in 1989 the Association hired three other persons ("the employees") who were subsequently dismissed in 1992. According to the Government, they had become members of the Association in 1989.

8. In December 1992 the applicants transformed the Association into a limited liability company. The newly registered company retained its old name – Victoria.

9. On 1 June 1993 one of the employees initiated court proceedings against the applicants claiming that he had been a member of the Association and requesting the annulment of the transformation into a limited liability company. He also claimed his part of the assets of the Association. The two other employees initiated identical proceedings on 16 August 1994. The cases were joined.

10. In 1995 the Botanica District Court granted their claims. The Supreme Court of Justice upheld that judgment. On 27 November 1995 the Plenary Supreme Court of Justice quashed that judgment and ordered a full rehearing of the case.

11. On 3 October 1997 the Botanica District Court rejected the employees' claims. On 22 January 1998 the Chişinău Regional Court upheld that judgment. On 10 September 1998 the Court of Appeal also upheld that judgment, which then became final.

B. The proceedings following the request for annulment

12. On an unspecified date the Prosecutor General filed a request for the annulment of all previous judgments and for the claims against the applicants to be granted in full. On 26 January 2000 the Supreme Court of Justice upheld that request and quashed the above-mentioned judgments. It ordered a full rehearing of the case.

13. On 27 November 2001 the Buiucani District Court declared null and void the transformation of the Association into a limited liability company. Although the employees had been hired by the Association, the court found that they had taken part in the decision-making process and had made financial contributions to the common assets of the Association. Accordingly, the court considered that the employees should be recognised as having been members of the Association. The court ordered “the distribution of the assets of the association 'Victoria', situated at 99 Decebal str. in Chişinău” between the applicants and the employees, each of the two groups obtaining various items (production equipment, cars and office equipment) of common property. The court also specified that “the building of the 'Victoria' market” should remain the applicants' property.

14. On 11 April 2002 the Chişinău Regional Court quashed that judgment and adopted a new one by which it rejected all the claims against the applicants. On 12 September 2002 the Court of Appeal quashed the judgment of the Chişinău Regional Court and upheld the judgment of the Buiucani District Court of 27 November 2001 (in favour of the employees). That judgment became final.

C. Enforcement proceedings

1. Enforcement of the judgment of 27 November 2001

15. On 21 February 2003 a bailiff received a warrant for the enforcement of the judgment of 27 November 2001. On the same day he informed all interested parties that the assets would be distributed on 26 February 2003. On that date the bailiff came to Victoria's premises and proceeded to distribute some of the assets, even though the applicants had failed to appear. The items which the bailiff intended to transmit to the applicants were stored for safekeeping with one of the employees. The applicants challenged the bailiff's actions in court, but on 7 April 2003 the Buiucani District Court rejected their complaint.

16. On 23 June 2003 the bailiff informed the parties that the remainder of the assets would be distributed on 8 July 2003. For unknown reasons full enforcement of the warrant was not possible on that date and a new date was set for 23 July 2003.

17. On 23 July 2003 the bailiff reported that one of the applicants refused to take possession of the items distributed to them in accordance with the enforcement warrant, including those items already given to one of the employees for safe-keeping.

18. On 24 July 2003 the applicants complained to the bailiff's office about the events of the previous day. They explained that they had objected to the manner in which the judgment had been enforced, in particular to being given possession of specific rooms allocated to them by the bailiff.

These consisted of a small room of eight square metres and space under the stairs, which belonged to S., another company. They were not reflected in Victoria's accounting documents and did not belong to it, while other rooms belonging to Victoria had either been distributed to the employees or had not been distributed at all.

19. On 16 October 2003 the Decisions Enforcement Department of the Ministry of Justice ("the Department") asked the Buiucani District Court to order the return of the enforcement warrant to the applicants without enforcement, due to their refusal to receive the relevant property. On 4 November 2003 the court rejected that request as unfounded. The court found that the applicants had not refused to receive the assets to which they were entitled under the judgment of 27 November 2001.

20. On 18 November 2003 the applicants asked the Buiucani District Court to explain how its judgment of 27 November 2001 should be enforced, namely, to specify, with reference to the plan of the building, the address and size of the part of the building which should be attributed to them.

21. On 3 March 2004 the Buiucani District Court adopted a decision whereby it amended part of its judgment of 27 November 2001, namely, by describing the exact size and address of the part of the building which should be attributed to the applicants. It added that the applicants had the right to register their property rights with the Territorial Cadastral Office ("the TCO"). One of the applicants was not present at the hearing.

22. Following a request by the applicants who had not been present at the hearing of 3 March 2004, on 27 April 2004 the decision explaining the judgment of 27 November 2001 was set aside and the case was sent for fresh examination.

23. On 31 May 2004 the Buiucani District Court decided that the judgment of 27 November 2001 was to be enforced exactly as it had been formulated, "in accordance with the documents and the description in the relevant property as registered with the relevant authorities". That decision was upheld by the Chişinău Court of Appeal on 18 November 2004.

2. Registration of the applicants' property rights with the TCO

24. On 18 June 2004 the Department asked the TCO to issue one of the applicants with copies of documents concerning Victoria's building situated at 99 Decebal str. in Chişinău. It appears that no such documents were issued.

25. On 3 August 2004 the applicants asked the TCO to register their property rights to Victoria's building situated at 99 Decebal str. in Chişinău, pursuant to the judgment of 27 November 2001 and the decision of 31 May 2004. On the same date the TCO refused the applicants' request and explained that the file did not contain all the necessary documents. In particular there was no exact description of the size and address of the

rooms to be registered in the applicants' names, while a number of other buildings were situated at 99 Decebal str. in Chişinău.

26. On 7 September 2004 the Department asked the Buiucani District Court to explain which exact address, including the specific room in the building, should be attributed to the applicants in accordance with the judgment of 27 November 2001. On 21 February 2005 the court answered that it had already given all the necessary explanations on 31 May 2004. The court added that the judgment was to be enforced as formulated, and that specifying the exact address and specific room to be attributed to the applicants implied an unlawful amendment of the judgment of 27 November 2001.

27. The applicants challenged the TCO's decision of 3 August 2004 in court. On 19 May 2005 the Chişinău Court of Appeal granted their request and set aside that decision, ordering the TCO to register the relevant property in the applicants' names.

28. On 21 September 2005 the Supreme Court of Justice quashed the lower court's decision as unfounded and ordered a rehearing by the Chişinău Court of Appeal. The court noted that the applicants were present at the hearing and that it had examined the materials of the file before reaching its decision.

29. On 22 December 2005 the Chişinău Court of Appeal ordered an expert report to be made. An expert was asked to determine whether there had been any kind of registration of Victoria in the relevant land register, and, if so, in whose name. The expert was also asked to determine, if such a registration existed, the exact address and what rooms (their surface and other details), were included.

30. On 21 June 2007 the Chişinău Court of Appeal found that even though the applicants had paid for the services of the expert and the TCO had made available the relevant register, no expert report had been made. On 26 April 2007 the National Judicial Expert Report Centre ("the Centre") returned the case file to the court with an explanation that its expert had not been allowed onto the premises of the Victoria market. The court found the reason for the failure to carry out the expert report to have been "manifestly invented" since there was no evidence that the expert had been prevented from accessing the building and since on 2 April 2007 the Centre had informed the applicants that, due to a high workload, the relevant report would not be made until May 2007. The court again ordered the Centre, which is a State institution, to make the report in which it was asked to answer essentially the same questions as those raised in 2005. The court also asked the Centre, if Victoria was not registered in the relevant documents, to give a description of the market as actually visible at its location at 99 Decebal str. in Chişinău. The court noted that a representative of the third party S. was also to be present.

31. On 21 April 2008 the Centre submitted its decision, according to which it had been impossible to reply to the court's questions. The reason for that was that Victoria was not registered in the land register, either in the applicants' names or in anybody else's name.

32. On 13 June 2008 the Chişinău Court of Appeal annulled the TCO's decision of 3 August 2004. It found that Victoria was not registered in the land register and had no technical description as required by law. It therefore ordered the TCO to register the market in the applicants' names.

33. On 26 November 2008 the Supreme Court of Justice quashed that judgment. It found that S.'s property rights to the building situated at 99 Decebal str. in Chişinău were registered in the land register. The court concluded that the applicants “asked for registration of their property to real estate which does not exist, since the existence [of a piece of real estate] is confirmed only when the relevant entry is made in the land register”.

D. Access to the case file

34. On 18 July 2005 Ms N. Mardari became the applicants' representative in their case before the Court. On the same day she attempted to obtain access to the case file but was unable to find it at the Buiucani District Court.

35. According to the applicants' lawyer, on 20 July 2005 she was informed by a person from the registry of the Buiucani District Court that the case file had been sent to the Government Agent's Office on 14 January 2005. The case file was returned to the Buiucani District Court on 9 March 2005.

36. On 22 July 2005 she asked the Supreme Council of the Judiciary for assistance in removing obstacles she had encountered at the Buiucani District Court, namely, that she had not been given access to the case file.

37. On 23 July 2005 the Buiucani District Court informed the applicants' lawyer that the case file was nowhere to be found.

38. According to the applicants' lawyer, she obtained access to the case file on 19 October 2005.

THE LAW

39. The applicants complained, under Article 6 § 1 of the Convention, that the length of proceedings was excessive and about the annulment of a final judgment in their favour.

The relevant part of Article 6 reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

40. They also contended that they had been forced into a business association with persons with whom they did not want to associate, contrary to Article 11 of the Convention. Article 11 reads as follows:

“1. Everyone has the right to ... freedom of association with others ...”

41. The applicants complained of a violation of their right to respect for their property as guaranteed by Article 1 of Protocol 1 to the Convention, which reads:

“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.”

42. The applicants finally complained that the failure to give their lawyer access to the file in a timely manner had constituted a violation of Articles 1, 10 and 34 of the Convention.

Article 1 reads as follows:

“The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention.”

Article 10 reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. ...”

Article 34 reads as follows:

“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

I. ADMISSIBILITY

43. The applicants complained, under Article 6 of the Convention, of the quashing of the final judgment in their favour (see paragraph 12 above). 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* (dec.), no. 42308/02, 14 September 2004). The quashing of the final judgment in this case took place on 26 January 2000. The six-month period started running from that date, while this application was introduced on 7 March 2003, more than three years later.

This complaint has therefore been introduced outside the time-limit set down by Article 35 § 1 of the Convention and must be rejected as inadmissible pursuant to Article 35 § 4 of the Convention.

44. The Court notes that in their initial application the applicants complained of a violation of their rights guaranteed under Article 10 of the Convention. However, in their letter of 16 February 2006, they asked the Court not to deal with that complaint. The Court will not therefore examine it.

45. The applicants also complained, under Article 11 of the Convention, that they had been forced to become co-owners of their company with persons with whom they did not want to be partners. The Court considers that they failed to substantiate their complaint, given that the domestic courts did not order them to be partners with the employees, but to split the assets of the company, effectively ending any form of cooperation with them. In any event nothing prevented the applicants from leaving the company at any time.

It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

46. The applicants further complained, under Articles 1 and 34 of the Convention, that their lawyer had been prevented for three months from obtaining access to the case file in order to submit their observations on the case. The Court notes that the lawyer was indeed unable to consult the file for three months. It also notes that the applicants do not argue that the case file was withheld from them on purpose. Rather, they see serious deficiencies in the organisation of the domestic courts' filing and archiving systems which allowed the file to be misplaced for a long time. They also mentioned that the Government Agent's Office had been given better treatment since it was sent the file three days after the relevant request had been made.

47. The Court considers that obstacles created for applicants or their lawyers in accessing documents in order to make submissions requested by it may amount to a violation of Article 34 of the Convention. However, where the respondent State is able to show that there were objective impediments to reasonable efforts on the part of the domestic authorities to ensure observance of an applicant's rights under Article 34, the latter provision will not have been breached (see, *mutatis mutandis*, *Paladi v. Moldova* [GC], no. 39806/05, § 92, ECHR 10 March 2009). The Court notes that in the present case the request to access the file was made on 18 July 2005 (see paragraph 34 above). Even though the main proceedings had ended on 12 September 2002 (see paragraph 14 above), the enforcement proceedings, including the issue of registration of the applicants' ownership of Victoria, were still on-going. Moreover, two judgments were adopted just before and after the request for access to the file (see paragraphs 27 and 28 above), which shows clearly that the case file was in active use by various

courts during the relevant period. It is unfortunate that the filing systems in the various domestic courts were so confusing that they prevented the staff from quickly determining which court had the file at the time of the applicants' lawyer's request. However, the Court also notes that the applicants attended the hearing of the Supreme Court of Justice of 21 September 2005 and that the court had examined the case file (see paragraph 28 above). It follows that the applicants were aware of the whereabouts of the file on 21 September 2005 and there is nothing in the materials before the Court to show that they had asked to see the file at the Supreme Court of Justice on that date. Thus the applicants had missed an opportunity to access their file a month before their lawyer eventually managed to access it.

48. The Court is therefore not convinced that the domestic authorities had acted in a manner incompatible with their obligations under Article 34 of the Convention. It follows that the complaints under Article 1 and 34 must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

49. The applicants also complained, under Article 1 of Protocol No. 1 to the Convention, of a violation of their right to protection of property as a result of the judgments adopted by the domestic courts. In particular, they referred to the continuing impossibility to use the part of Victoria's building which should have been transferred to them in accordance with the final judgment of 27 November 2001. The Court notes that, in its judgment of 26 November 2008, the Supreme Court of Justice mentioned that S. was the registered owner of the disputed building, while the applicants had no registered right (see paragraph 33 above). If the title to the disputed building held by S. is indeed valid, then the applicants cannot complain about a violation of their property rights as a result of the failure to give them such a title in accordance with the judgment of 27 November 2001. In this connection, the Court notes that S. did not participate in the proceedings which resulted in the judgment of 27 November 2001 and that, accordingly, that judgment was not binding on S.

50. In the absence of details as to the circumstances in which S. became the registered owner of the building, the Court will not determine which person or entity is the real owner of that building, since that is for the domestic courts to decide. The applicants did not submit evidence that they challenged in court the title to the building held by S. It follows that the applicants' complaint under Article 1 of Protocol No. 1 to the Convention is premature and must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

51. As to the length of the proceedings complaint, the Court notes that the Government considered that it was incompatible *ratione temporis* with the Court's jurisdiction, given that the alleged violations took place in 1993, before Moldova joined the Convention on 12 September 1997. The Court

notes that the proceedings in the present case lasted at least until 2002, when the final judgment was adopted (see paragraph 14 above). This preliminary objection must therefore be rejected.

52. The Court considers that the applicants' complaint under Article 6 of the Convention (length of the proceedings) raises questions of law which are sufficiently serious that their determination should depend on an examination of the merits. No 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 this complaint.

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

A. Submissions by the parties

53. The applicants complained that the length of the proceedings had been excessive, lasting from 1993 until the present, given that the judgment of 27 November 2001 had not yet been enforced to date. The relevant period started on 12 September 1997 when Moldova joined the Convention. They considered that the case was not very complex and involved only two parties (the applicants on the one hand and the employees on the other), not five as argued by the Government. The applicants submitted that they had acted diligently and had not caused undue delay. At the same time, the courts had allowed lengthy periods of inactivity, despite the case being very important for the livelihoods of the applicants. For instance, only one court hearing had been held in 1999 and only three in 2000. Finally, their refusal to receive some of Victoria's assets had been due to the fact that those items had included massive production equipment of up to four tons in weight which needed space in which to be placed. Yet the judgment in respect of the building had not been enforced and so the applicants had no place in which to store those items.

54. The Government agreed that the period to be taken into consideration started on 12 September 1997. They submitted that this was one of the most complex cases to have been examined by the domestic courts, involving as it did four plaintiffs and three defendants. Three witnesses had been heard and several expert reports had been made. The case file contained almost a thousand pages. In addition, the applicants had been responsible for some of the delays, having, on a number of occasions, requested the postponement of court hearings. Moreover, the applicants' refusal to accept the items proposed to them by the bailiff in enforcement of the judgment of 27 November 2001 had contributed to the length of the

proceedings. Finally, the domestic authorities had taken all reasonable steps to ensure a timely examination of the case.

B. The Court's assessment

55. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII, and *Cravcenko v. Moldova*, no. 13012/02, § 44, 15 January 2008).

56. The Court agrees that the period to be taken into consideration started on 12 September 1997 when Moldova joined the Convention. As for when that period ends, the following must be noted. The proceedings in the present case ended on 12 September 2002, upholding the judgment of 27 November 2001 (see paragraph 14 cited above). However, the final judgment awarding the applicants, *inter alia*, a part of Victoria's building, was never enforced. The courts eventually determined that that part of the judgment could not be enforced since S. was the registered owner of the building (see paragraph 33 above). However, it took them six years and two months from the date of the final court judgment to reach that conclusion, despite their obligation to verify the legal basis for awarding property rights already in the original proceedings. In this respect the Court refers to the finding of the Supreme Court of Justice that the existence of real estate could be proved only with evidence of registration in the land register (see paragraph 33 cited above). It follows that in the proceedings which ended on 12 September 2002 the courts failed to verify whether the parties had any legal title to the property which they had claimed to belong to Victoria.

57. The Court notes that the final judgment of 10 September 1998 in the applicants' favour required no enforcement, since it rejected the other party's claims against the applicants. As such, no proceedings were pending between the above-mentioned date and 26 January 2000, when the Supreme Court of Justice quashed the final judgment and ordered a retrial (see paragraph 12 cited above). Therefore, this period of approximately sixteen months is not to be included in the overall length of the proceedings.

58. The Court considers that if the title held by S. is not valid, then the judgment of 27 November 2001 is to be considered not yet enforced. If the title held by S. is proved to be valid, this will also mean that the original distribution of Victoria's property made on 27 November 2001 was unfair to the applicants, who received fewer assets on account of the part of the building which they were awarded. It follows that, until a final determination of the manner of distributing those assets is made, taking account of the results of any verification of the validity of the title held by

S., the original proceedings initiated against the applicants in 1993 must still be considered as pending.

59. The Court thus concludes that the period to be counted for the purposes of verifying compliance with Article 6 of the Convention lasted from 12 September 1997 until the present. After excluding sixteen months as noted in paragraph 57 above, the relevant period equals approximately ten years and eight months.

1. Complexity of the case

60. The Court notes that the domestic courts considered it necessary to order several expert reports in order to determine the ownership of the disputed part of the building, and that the experts were unable to make such a report for lack of relevant documents. As such, the case could be considered somewhat complex. However, such complexity cannot in itself explain the total length of the proceedings, particularly in the light of the fact that the expert took a year and a half to announce before the court that it was impossible to make such a report (see paragraphs 29 and 30 cited above). After the court rejected that reason and ordered a new report to be made, the expert took another ten months before again reporting that it was impossible to make a report (see paragraph 31 cited above). In this latter respect, the Court notes that the principal responsibility for the delay due to waiting for the expert opinions rests ultimately with the State (see *Capuano v. Italy*, 25 June 1987, § 32, Series A no. 119).

2. The applicants' conduct

61. The Court notes the Government's submission that the applicants were responsible for some delay in the proceedings (see paragraph 54 above). They submitted evidence of three requests by the applicants to postpone the hearings. In all three, the applicants asked the courts to postpone the hearing because they were ill, as proved by medical certificates. The Court considers that these delays were too few and too short to explain the overall length of the proceedings.

62. The Government also considered that, by refusing to receive items offered to them by the bailiff in 2003 (see paragraphs 15 and 17 cited above), the applicants had contributed to the overall length of the proceedings. The Court notes that the applicants focused on what they saw as a distribution of the disputed real estate in a manner not conforming to the final judgment. Whether or not they agreed to obtain the remainder of Victoria's assets did not change the fact that the main contentious issue – concerning the building – continued to be examined for many years thereafter. It follows that the refusal to receive the items, in the absence of space in which to put them, did not in any way extend the overall length of the proceedings.

3. *Conduct of the authorities*

63. As to the conduct of the judicial authorities, the Court reiterates that it is for the Contracting States to organise their legal systems in such a way that their courts can guarantee to everyone the right to a final decision within a reasonable time in the determination of his or her civil rights and obligations (see *Frydlender*, cited above, § 45). The manner in which a State provides for mechanisms to comply with this requirement – whether by way of increasing the numbers of judges, or by automatic time-limits and directions, or by some other method – is for the State to decide. If a State lets proceedings continue beyond the “reasonable time” prescribed by Article 6 of the Convention without doing anything to advance them, it will be responsible for the resultant delay (see *Price and Lowe v. the United Kingdom*, nos. 43185/98 and 43186/98, § 23, 29 July 2003).

64. The Court notes that there were very long unexplained periods of inactivity by the courts in the present case (see, for instance, paragraphs 26 and 29-31 cited above).

65. It also notes that the case was first decided by a final court judgment on 10 September 1998. The proceedings were subsequently reopened through an extraordinary procedure of a type that is in itself contrary to Article 6 of the Convention (see, for instance, *Brumărescu v. Romania* [GC], no. 28342/95, § 65, ECHR 1999-VII, and *Roșca v. Moldova*, no. 6267/02, § 29, 22 March 2005). The applicants lodged their complaint in this respect outside the six-month period established in Article 35 of the Convention. However, it remains true that, following the reopening of a final court judgment, the judicial authorities need to take particular care to ensure a swift conclusion to the reopened proceedings. The Court assumes that, since a final judgment was adopted in the case, the factual and legal issues had largely been resolved. Unless new important facts are discovered and form the ground for the reopening, the courts do not have difficult issues to examine in any reopened proceedings. However, in the present case, most of the delays occurred after the quashing of the final judgment.

4. *What was at stake for the applicants*

66. The Court notes that, when the proceedings started, Victoria was the applicants' main activity. Having been effectively prevented from continuing it, they were consequently deprived of their income. The proceedings thus concerned an important issue for the applicants.

5. *Conclusion*

67. The Court considers that the present case was somewhat complex, but that this in itself does not explain the overall length of the proceedings of more than ten years. The applicants could not be reproached for any serious delays, while the authorities and the courts allowed lengthy delays

caused by inactivity. Moreover, after the case was resolved by a final court judgment, its reopening called for a swift determination of the outstanding issues, rather than a lengthy fresh examination. In the light of the above, the Court concludes that the requirement of a “reasonable time” laid down in Article 6 § 1 of the Convention was not complied with in the present case. There has therefore been a breach of that provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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

69. The applicants sought the return of the disputed building, in accordance with the judgment of 27 November 2001.

70. The Court notes its finding that the complaint about obtaining title to the disputed building was inadmissible as premature (see paragraph 49 above). It therefore rejects the applicants' claim for return of the disputed building.

B. Non-pecuniary damage

71. The applicants claimed 10,000 euros (EUR) each in compensation for non-pecuniary damage caused to them. They submitted that they had suffered from the excessive length of the proceedings, during which their company had been prevented from working.

72. The Government submitted that the applicants could not claim any compensation, in the absence of any violation of their Convention rights. In any event, the amount claimed was unsubstantiated and excessive in comparison with similar cases.

73. The Court considers that the applicants must have been caused a certain level of stress and frustration as a result of the excessive length of the proceedings. Considering the total length of the proceedings, and deciding on an equitable basis, the Court awards each applicant EUR 2,000 for non-pecuniary damage.

C. Costs and expenses

74. The applicants claimed jointly EUR 556 for costs and expenses, including EUR 450 for legal costs.

75. The Government considered that the amount claimed for legal costs was excessive.

76. In the light of the materials in the file, the Court allows the applicants' claim in full.

C. Default interest

77. 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 complaint under Article 6 § 1 of the Convention concerning the excessive length of the 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, the following amounts, to be converted into Moldovan lei at the rate applicable at the date of settlement:
 - (i) EUR 2,000 (two thousand euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 556 (five hundred and fifty six euros) jointly, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
 - (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 27 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President