



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

FOURTH SECTION

CASE OF CIUBOTARU v. MOLDOVA

(Application no. 27138/04)

JUDGMENT

STRASBOURG

27 April 2010

FINAL

27/07/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ciubotaru 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 30 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 27138/04) 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 a Moldovan national, Mr Mihai Ciubotaru (“the applicant”), on 19 July 2004.

2. The applicant was represented among others by Mr V. Maximov, a lawyer practising in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicant alleged, in particular, a breach of his right to respect for private life as a result of the authorities' refusal to register his ethnicity as declared by him.

4. On 5 September 2006 the Court decided to give notice of the application to the Government. On 30 September 2008 it also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1952 and lives in Chişinău. He is a writer and a professor of French.

6. The applicant's parents, Dumitru Ciubotaru and the late Sofia Caraiman were born in 1927 and 1928 respectively, in Bălţi, province of

Bessarabia, Romania. Their Romanian civil status documents did not contain any information concerning their ethnic identity. In their marriage certificate issued by the Soviet authorities in 1949, the entry for ethnicity was left blank. However, the applicant's birth certificate issued by the Soviet authorities in 1952 recorded his parents as ethnic Moldovans. On the applicant's mother's birth certificate issued by the Soviet authorities in 1965 the ethnicity was also left blank. Later, the applicant's parents were recorded as ethnic Moldovans on their Soviet identity cards issued in 1976 and 1979, in accordance with applications completed and signed by them in which Moldovan ethnicity was indicated. On his Soviet identity card the applicant was also indicated as an ethnic Moldovan.

7. In 2002 the applicant applied to the Moldovan authorities to have his old Soviet identity card replaced by a Moldovan identity card. On the application form he wrote "Romanian" under ethnicity. However, he was told that his application would not be accepted unless Moldovan ethnicity was indicated on it. The applicant complied.

8. Shortly thereafter the applicant wrote to the local civil registration authority and requested, *inter alia*, that his ethnicity entry be changed from Moldovan to Romanian. In an answer dated 11 February 2003 the applicant was informed that since his parents were not recorded as ethnic Romanians in their birth and marriage certificates, it was impossible for him to be recorded as an ethnic Romanian.

9. On an unspecified date the applicant wrote to the central civil registration authority and again requested that his ethnic identity entry be changed from Moldovan to Romanian. In an answer of 2 July 2004 he was informed that Romanian ethnicity had not been indicated in his parents' documents and that, therefore, he could not claim such an ethnic identity. He was advised to search the National Archives for traces of Romanian origin of his grandparents and other ancestors. The applicant wrote numerous complaints to the Prime Minister, the President of the country and other officials, but to no avail.

10. On 26 July 2004 the applicant initiated proceedings against the State authority responsible for civil registration and identity papers and requested, *inter alia*, that his ethnicity entry and that of his parents be changed to Romanian in the State Population Registry database and in his identity papers. He argued that he did not consider himself to be an ethnic Moldovan and that it was contrary to his right to freedom of conscience and to his personal dignity to be considered part of an ethnic group which he believed to be an artificial creation of the Stalinist regime.

11. On 15 November 2004 the Rascani District Court dismissed the applicant's action on the ground that he had failed to prove that his parents were of Romanian ethnic identity as no such identity had been recorded in their identity papers. The applicant appealed and relied, *inter alia*, on the

provisions of the Law on National Minorities (see paragraph 15 below) and on Article 8 of the Convention.

12. On 15 December 2004 the Chişinău Court of Appeal dismissed the applicant's appeal on the same grounds, stating that the applicant had failed to prove that his parents were ethnic Romanians. The applicant lodged an appeal on points of law with the Supreme Court of Justice.

13. On 6 April 2005 the Supreme Court of Justice dismissed the applicant's appeal on points of law and pointed out that according to section 68 of the Law on Documents pertaining to Civil Status (see paragraph 16 below) it was impossible to change his parents' ethnic identity to Romanian because in none of their identity papers had Romanian ethnicity been indicated.

II. RELEVANT NON-CONVENTION MATERIAL

A. Relevant domestic law

14. The relevant provision of the Constitution of the Republic of Moldova reads:

Article 10 - The unity of the people and the right to identity

“...

(2) The State recognises and guarantees to all the citizens the right to preserve, develop and express their ethnic, cultural, linguistic and religious identity.”

15. Law no. 382 of 19 July 2001 on the Rights of Persons belonging to National Minorities, in so far as relevant, reads:

Section 1

“Within the meaning of the present law, persons belonging to national minorities shall be all persons who live on the territory of the Republic of Moldova, who are its citizens, who have ethnic, linguistic, cultural and religious particularities which make them distinguishable from the majority of the population – the Moldovans – and who consider themselves as having a different ethnic origin.”

Section 2

“Any person belonging to a national minority shall have the right to choose freely whether or not he or she belongs to that minority. Such a choice or the exercise of rights related thereto shall not put the person in a disadvantageous situation.”

16. Law no. 100 of 26 April 2001 on Documents pertaining to Civil Status, in so far as relevant, reads:

Section 30

“The following information shall be indicated in a birth certificate:

- (a) personal numeric code;
- (b) the surname, given name, date and place of birth of the child;
- (c) the surnames, the given names and the ethnic origin of the parents;
- (d) the date of issue of the birth certificate and its number;
- (e) the issuing authority of the birth certificate; ...”

Section 66

“(1) Applications for modification and rectification of documents pertaining to civil status shall be lodged with the Civil Status Office for the applicant's place of residence.

(2) The Civil Status Office shall uphold an application for modification and rectification of documents pertaining to civil status if:

- (a) the document pertaining to civil status contains errors, blank sections, abbreviations or spelling mistakes, or if it lacks data; or
- (b) the rules concerning the creation of documents pertaining to civil status have been breached; or
- (c) the applicant possesses an official document proving a change of gender.”

Section 68

“It shall be impossible to rectify the ethnic identity of one's parents in their children's birth certificates, on the basis of identity papers of grandparents or other ascendants, if the parents' civil status documents do not contain information concerning the requested ethnic identity.”

17. Government Decision no. 333 of 18 March 2002 lists the information which must be included in the personal entry of each individual in the State Population Registry database. It provides, *inter alia*, that information such as blood group, colour of eyes, height, studies, ethnic identity and a specimen of signature have to be indicated in respect of every citizen. No information about an individual's religion is required.

B. Collection and recording of ethnic data in Moldova

18. During Romanian rule between the two World Wars no ethnic data were collected or recorded by the State and the identity papers issued by the

Romanian authorities did not contain any information concerning the bearer's ethnic identity.

19. After the territory of Moldova became part of the Soviet Union, the Soviet authorities recorded and indicated in each individual's identity papers his or her ethnic identity. The ethnic identity was determined on the basis of the individual's parents' ethnic identities. If the parents had different ethnic identities, the individual had to opt for one of them when receiving his first identity card at the age of sixteen. There was no possibility of subsequently changing one's ethnic identity in identity papers or in the civil records. The ethnic identity of the representatives of the main ethnic group of the MSSR was normally registered as Moldovan. Only in very few cases was it registered as Romanian and it is not clear what criteria were adopted for such a distinction.

20. The Soviet practice of collecting and recording ethnic data was perpetuated by the Moldovan authorities after independence, with the difference that no information concerning ethnic origin was inserted in the new Moldovan identity cards. Information about ethnic identity is recorded in each individual's personal entry in the State Population Registry database (see paragraph 17 above) and does not appear on any identity papers issued to individuals or on birth, marriage, divorce or death certificates. It only appears on the birth certificates of an individual's children under "parents". Information concerning individuals' ethnic identity also appears in criminal judgments and in various documents issued by the prosecuting authorities where the ethnic identity of the participants in criminal proceedings, such as defendants, victims and witnesses, is mentioned. It also appears in the old Soviet passports which are still valid in Moldova and which are usually used by persons with very limited financial resources.

21. As in the Soviet Union, an individual's ethnic identity is recorded by the Moldovan authorities on the basis of the ethnic identities of his or her parents or the identity of one parent if they differ. When applying for identity papers, each individual is requested to complete a form with various personal details such as height, colour of eyes, blood group, mother tongue, ethnic identity and others. In practice, applications are rejected if the ethnic identity indicated in the form by the applicant is not based on that of his or her parents. It is impossible under Moldovan law to change one's ethnic identity without changing the ethnic identity of one's parents and it is impossible to change the ethnic identity of one's parents on the basis of entries in the identity papers of one's grandparents (see paragraph 16 above).

C. Relevant case-law of the domestic courts and ethnic statistics

22. The Government submitted a domestic court judgment dating from June 2006 in the case of *Caragheorghi* where a person had succeeded in

having his ethnic identity changed from Gagauz to Greek. Neither of his parents were registered as ethnic Greeks; however, the court accepted evidence concerning one of his ancestors, born in 1822, who was a Greek from the Ottoman Empire.

23. According to a press release of the National Bureau of Statistics of the Republic of Moldova, according to the latest census conducted in 2004, the country had the following ethnic composition: 75.8% Moldovan, 8.4% Ukrainian, 5.9% Russian, 4.4% Gagauz, 2.2% Romanian, 1.9% Bulgarian and 0.1% other ethnic origins.

D. Activity of International Organisations

24. The relevant provisions of the Framework Convention for the Protection of National Minorities of 1995, which entered into force in respect of Moldova on 1 February 1998, provide as follows:

Article 3

“Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.”

25. The relevant part of the document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE/OSCE of 1990 reads as follows:

“Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will.”

THE LAW

26. The applicant claimed that there had been a violation of Article 8 of the Convention on account of the fact that when collecting and recording information concerning his identity the authorities had refused to register his Romanian ethnic identity and forced on him an ethnic identity with which he did not identify. The relevant part of Article 8 provides as follows:

“1. Everyone has the right to respect for his private ... life...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, 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.”

27. The applicant also claimed that there had been a violation of Article 6 of the Convention on account of the fact that under Moldovan law it was impossible for him to adduce evidence in support of his claim to have his ethnic origin changed from Moldovan to Romanian. Article 6 § 1 of the Convention, in so far as relevant, provides:

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

I. ADMISSIBILITY OF THE COMPLAINTS

28. The Government submitted that the applicant was not a victim of any interference because none of his identity papers contained reference to his ethnic identity. His birth certificate contained a reference only to the ethnic identity of his parents.

29. In any event the applicant had failed to search the archives for traces of Romanian ancestry prior to his grandparents, as indicated by the central civil registration authority (see paragraph 9 above). The Government referred to the *Caragheorghii* case (see paragraph 22 above) and argued that the applicant alone was responsible for the outcome of the proceedings and that, therefore, the application was improper.

30. The applicant disputed the Government's assertions and submitted that his ethnic identity had been recorded, *inter alia*, in the State Population Registry's database. He also argued that the impossibility for him to adduce evidence concerning his Romanian ethnic identity was the subject matter of his complaint under Article 6 of the Convention.

31. The Court reiterates that, in order to be able to lodge an application by virtue of Article 34, a person, non-governmental organisation or group of individuals must be able to claim to be the victim of a violation of the rights set forth in the Convention. In order to claim to be a victim of a violation, a person must be directly affected by the impugned measure. The Convention does not, therefore, envisage the bringing of an *actio popularis* for the interpretation of the rights set out therein or permit individuals to complain about a provision of national law simply because they consider, without having been directly affected by it, that it may contravene the Convention (see *Burden v. the United Kingdom* [GC], no. 13378/05, §§ 33).

32. In the present case the Court notes that information concerning the applicant's ethnic identity was indicated in his personal entry in the State Population Registry's database. It also appeared in the birth certificates of his children and in other materials such as documents pertaining to matters of criminal justice (see paragraph 20 above). At the same time, the Court considers it impossible to determine the applicant's victim status under Article 8 before determining the question of applicability of that article to

his case, an issue which is also disputed by the parties. Therefore, it decides to join the issue of victim status to the merits of the case.

33. In so far as the Government's submission concerning the applicant's failure to search the archives could be considered to be an objection concerning a failure to exhaust domestic remedies, the Court notes that the domestic law distinctly states that an individual's ethnic identity cannot be changed on the basis of the ethnic identity of his or her grandparents or other ascendants if the civil status documents of his or her parents did not indicate such identity (see paragraph 16 above). It would therefore appear pointless for the applicant to search the archives for information about the ethnic origin of his ancestors. The Court notes that the solution given in the case of *Caragheorghii* by the domestic courts appears, on the face of it, to be at odds with the provisions of section 68 of the Law on Documents pertaining to Civil Status (see paragraph 16 above), a provision to which the Supreme Court of Justice made express reference when dismissing the applicant's appeal on points of law (see paragraph 13 above). In such circumstances, the Court considers that the applicant's complaints cannot be declared inadmissible for non-exhaustion of domestic remedies.

34. The Court finally notes that in his initial application the applicant also complained under Article 9 of the Convention. However, in his observations on the admissibility and merits, he asked the Court not to proceed with the examination of this complaint. Accordingly, the Court will not examine it.

35. Since the applicant's complaints under Article 6 and under Article 8 of the Convention raise questions of fact and law which are sufficiently serious for their determination to depend on an examination of the merits and since no other grounds for declaring them inadmissible have been established, the Court declares them 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 these complaints.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

A. Submissions of the parties

1. The applicant's arguments

36. The applicant submitted that ethnic identity, exactly like gender identification and sexual orientation, fell within the notion of private life and that Article 8 of the Convention was therefore applicable to his case.

37. The applicant considered that the Moldovan ethnic identity had been created artificially by the Soviets and perpetuated by the new Moldovan

authorities for political reasons. He felt humiliated as a result of being forced to assume an ethnic identity which was contrary to his philosophy and his inner belief about his true identity.

38. In the applicant's view, the present case could be examined both from the perspective of the State's negative obligations and from that of its positive obligations under Article 8 of the Convention. In his submission, the forced imposition of the Moldovan ethnic identity on him constituted an interference with his right to identity and consequently with his right to respect for his private life. Alternatively, the applicant considered that the authorities had a positive obligation to allow him freely to choose his association with any cultural group, including Romanian, without being required to provide evidence.

39. The applicant, who focused in his submissions on the State's negative obligations, believed that since his parents' ethnic identity had not been recorded in their birth certificates, the Moldovan State had to refrain from forcing a particular ethnic identity on him when issuing his new identity documents. Moreover, he believed that even if his parents had freely declared themselves ethnic Moldovans, Russians, Ukrainians or Gagauz, he should be able to enjoy the freedom to choose to declare and have recorded an ethnic identity to which he intimately considered himself to belong without being obliged to assume an ethnicity chosen by his parents. He mentioned, in this context, that his parents had been forced to declare themselves ethnic Moldovans by the Soviets under the general Soviet policy concerning the population of Bessarabia.

40. The applicant strongly disagreed with the theory promoted by the Moldovan authorities that there was a Moldovan ethnicity distinct from the Romanian ethnicity. However, even assuming that the Romanians were an ethnic minority in the Republic of Moldova, as alleged by the Government, he should have been allowed to enjoy the right provided for in section 2 of the Law on National Minorities (see paragraph 15 above) and to be able to choose freely whether he belonged to that minority or not. Since the Moldovan authorities and courts neglected that right, they breached the provisions of that section and therefore the interference was not in accordance with the law within the meaning of Article 8 § 2 of the Convention.

41. According to the applicant, the interference in the present case did not pursue a legitimate aim. In fact, the Government were pursuing the aim of "Moldovenisation" of the population representing the majority ethnic group but not any of the legitimate aims provided for in the second paragraph of Article 8.

42. In the applicant's opinion, the State's policy of imposing by force the Moldovan ethnic identity on him and on others amounted to xenophobia as it was not in accordance with any democratic values and did not promote the value of pluralism, inherent in a democratic society. The applicant

denied the Government's argument that he needed to be indicated as an ethnic Romanian in the records in order to obtain Romanian citizenship. He argued that according to the law of Romania, Romanian citizenship was issued to former Romanian citizens and their descendants irrespective of ethnic origin. The applicant contended that the State had placed on him an excessive and insurmountable burden by requesting documentary evidence of his Romanian origin in circumstances in which it was common ground that almost all the representatives of the majority ethnic group had been deliberately recorded as ethnic Moldovans during the Soviet era. Moreover, the applicant had been placed in a position of substantial disadvantage *vis-à-vis* the Government, which did not have to produce any evidence of his Moldovan ethnic identity.

2. The Government's arguments

43. The Government submitted that Article 8 of the Convention was not applicable in the present case because the right to respect for private life did not cover the right to ethnic identity and that there was no interference with the applicant's rights under that provision.

44. Alternatively, a simple declaration by the applicant that he and his parents were of Romanian ethnic identity was not sufficient for the records to be changed. There was a need for evidence but not for arguments based on an alleged scientific and historical truth. The Government submitted that the applicant was the only person who had ever instituted proceedings with a view to changing his ethnic identity from Moldovan to Romanian. They had to rely therefore on a similar case concerning other ethnic identities, namely on the domestic judgment in the case of *Caragheorghii*, where a person had been able to have his ethnic identity changed from Gagauz to Greek on the basis of evidence proving the Greek ethnic identity of one of his ancestors (see paragraph 22 above). At the same time they drew attention to section 68 of the Law on Documents pertaining to Civil Status, which clearly stated that it was impossible to rectify the ethnic identity of one's parents in their children's birth certificates, on the basis of identity papers of grandparents or other ascendants, if the parents' civil status documents did not contain information concerning the requested ethnic identity.

45. The Government further submitted that in their requests of 1976 and 1979 for Soviet identity cards the applicants' parents had written in their own hands that they were ethnic Moldovans. Accordingly, the applicants' parents had never declared themselves to be ethnic Romanians.

46. The Government disputed the applicant's allegation to the effect that the Soviet and Moldovan authorities had pursued a policy of denationalisation on the territory of Moldova and submitted that besides Moldovan ethnic origin, origins such as Romanian, Polish, Ukrainian, Bulgarian, Jewish, Byelorussian, Tajik, Gypsy, German and others were

recorded in respect of a significant number of persons. The Government submitted copies of such records.

47. According to the Government, a blanket acceptance of requests concerning changes in ethnic identity, based solely on the applicants' declaration but not on evidence, could lead to serious consequences of an administrative nature. The Government asked a rhetorical question as to what might happen if a significant number of Moldovan nationals declared themselves to be ethnic French, German or English and were recorded as such solely on the basis of their declarations. In the Government's view such a situation could constitute an abuse in respect of other countries. The Government suggested that the applicant's desire to be recorded as an ethnic Romanian might be motivated by his intention to obtain Romanian citizenship and argued that it was within the Government's margin of appreciation to determine the extent to which requests concerning changes in records concerning ethnic origin could be accepted. In any event, the Convention was to be interpreted in the light of present circumstances and not in the light of the history of a period during which the Convention was not yet in existence.

48. Referring to the Framework Convention for the Protection of National Minorities, the Government submitted that a person's personal choice of a particular ethnicity was an essential element but was not sufficient for the purpose of enjoying special privileges.

B. The Court's assessment

49. The Court reiterates that the concept of "private life" is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person (see *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III, and *Y.F. v. Turkey*, no. 24209/94, § 33, ECHR 2003-IX). The notion of personal autonomy is an important principle underlying the interpretation of the guarantees provided for by Article 8. Under this principle protection is given to the personal sphere of each individual, including the right to establish details of their identity as individual human beings (see *Burghartz v. Switzerland*, 22 February 1994, § 24, Series A no. 280-B; *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 90, ECHR 2002-VI). The Court has held that gender identification, name and sexual orientation and sexual life were details pertaining to an individual's identity falling within the personal sphere protected by Article 8 (see, among other authorities, *Bensaid v. the United Kingdom*, no. 44599/98, § 47, ECHR 2001-I with further references, and *Peck v. the United Kingdom*, no. 44647/98, § 57, ECHR 2003-I). In a more recent judgment, in the case of *S. and Marper v. the United Kingdom* ([GC], nos. 30562/04 and 30566/04, § 66, 4 December 2008), the Court further

held that ethnic identity was also a detail pertaining to the individual's identity falling within the ambit of Article 8.

50. Although the object of Article 8 is essentially to protect the individual against arbitrary interference by public authorities, it does not merely compel the State to abstain from such interference. There may, in addition to this primary negative undertaking, be positive obligations inherent in an effective respect for private life. These obligations may involve the adoption of measures designed to secure respect for private life (see *X and Y v. the Netherlands*, 26 March 1985, § 23, Series A no. 91). The boundaries between the State's positive and negative obligations under this provision do not always lend themselves to precise definition; nonetheless, the applicable principles are similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and the community as a whole, and in both contexts the State is recognised as enjoying a certain margin of appreciation (see *Paulik v. Slovakia*, no. 10699/05, § 43, ECHR 2006-XI (extracts)).

51. The Court reiterates that in the assessment of the present case it should be borne in mind that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see *Airey v. Ireland*, 9 October 1979, § 24, Series A no. 32). Whilst Article 8 contains no explicit procedural requirements, it is important for the effective enjoyment of the rights guaranteed by this provision that the relevant decision-making process is fair and such as to afford due respect to the interests safeguarded by it. Such a process may require the existence of an effective procedural framework whereby an applicant can assert his or her rights under Article 8 under conditions of fairness, including as regards matters of proof and evidence. The Court recalls in this latter connection that in the case of *I. v. Finland* (no. 20511/03, § 44, 17 July 2008) in finding a violation of Article 8 of the Convention the Court gave weight to the fact that the State had placed too heavy a burden of proof on the applicant in civil proceedings in which she sought compensation for the dissemination of information about her medical condition.

52. The Court is aware of the highly sensitive nature of the issues involved in the present case. It therefore stresses from the outset that, for the purposes of the present judgment, it will distance itself from the debate within Moldovan society concerning the ethnic identity of the main ethnic group and will take as a working basis the legislation of the Republic of Moldova and the official position of the respondent State (see paragraphs 15 and 23 above) when referring to Moldovans and Romanians.

53. As noted above, along with such aspects as name, gender, religion and sexual orientation, an individual's ethnic identity constitutes an essential aspect of his or her private life and identity. This must be particularly true in the current social setting of the Republic of Moldova, where the problem of ethnic identity has been the subject matter of social tension and heated

debate for a long time and, more importantly, where an individual's recorded ethnic identity, unlike other recorded aspects of identity, is decisive for the determination of the ethnic identity of his or her children and of the next generations. Accordingly, the facts of the present case fall within the ambit of "private life" under Article 8 of the Convention and since the authorities refused to record the applicant's declared ethnic identity, he may claim to be a victim of a breach of the provisions of this Article. The Court therefore dismisses the Government's preliminary objection (see paragraph 32 above).

54. The applicant contended that the authorities' actions were not "in accordance with the law"; however, the Court considers that the provisions of section 68 of the Law on Documents pertaining to Civil Status were couched in sufficiently clear terms in so far as their accessibility and foreseeability are concerned.

55. While the applicant contested the existence of a legitimate aim, the Government did not expressly refer to any legitimate aim pursued in this case. The Court, for its part, is ready to accept that the impugned measure pursued the legitimate aims of safeguarding national security and preventing disorder.

56. The Government's main argument was that recording an individual's ethnic identity, solely on the basis of his or her declaration and in the absence of any objective grounds linking the individual to the ethnicity claimed, could lead to serious administrative consequences and to possible tensions with other countries.

57. The Court does not dispute the right of a Government to require the existence of objective evidence of a claimed ethnicity. In a similar vein, the Court is ready to accept that it should be open to the authorities to refuse a claim to be officially recorded as belonging to a particular ethnicity where such a claim is based on purely subjective and unsubstantiated grounds. In the instant case, however, the applicant appears to have been confronted with a legal requirement which made it impossible for him to adduce any evidence in support of his claim. This is precisely because section 68 of the Law on Documents pertaining to Civil Status and the current practice of recording ethnic identity create insurmountable barriers for someone wishing to have recorded an ethnic identity different from that recorded in respect of his or her parents by the Soviet authorities. According to this section the applicant could change his ethnic identity only if he could show that one of his parents had been recorded as being of Romanian ethnicity in the official records, which represented a disproportionate burden in view of the historical realities of the Republic of Moldova (see paragraphs 18 and 19 above).

58. The Court would further observe that Mr Ciubotaru's claim is based on more than his subjective perception of his own ethnicity. It is clear that he is able to provide objectively verifiable links with the Romanian ethnic

group such as language, name, empathy and others. However, no such objective evidence can be relied on under the Moldovan law in force.

59. Having regard to the circumstances of the case as a whole, it cannot be said that the procedure in place to enable the applicant to have his recorded ethnicity changed complied with Moldova's positive obligations to safeguard his right to respect for his private life. For the Court, the State's failure consists in the inability for the applicant to have examined his claim to belong to a certain ethnic group in the light of the objectively verifiable evidence adduced in support of that claim. The Court therefore concludes that the authorities failed to comply with their positive obligation to secure to the applicant the effective respect for his private life. There has, accordingly, been a breach of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

60. The applicant also alleged a violation of Article 6 of the Convention on account of the fact that under Moldovan law it was impossible for him to adduce evidence in support of his claim to have his ethnic origin changed from Moldovan to Romanian. Since this complaint relates to the same matters as those considered under Article 8, the Court does not consider it necessary to examine it separately (see, *mutatis mutandis*, *Megadat.com S.R.L. v. Moldova*, no. 21151/04, § 80, 8 April 2008).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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. Damage

62. The applicant claimed 3,000 euros (EUR) in respect of non-pecuniary damage.

63. The Government disagreed, arguing that this amount was unfounded and that the claim should thus be dismissed.

64. Having regard to the violation found above, the Court considers that an award of compensation for non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards the applicant EUR 1,500.

B. Costs and expenses

65. The applicant claimed EUR 6,280 for legal costs and expenses incurred during the proceedings before the Court by the representative who submitted the observations on the case. He requested that the amount be paid directly to that representative.

66. The Government considered this claim unjustified and excessive.

67. In the present case, regard being had to the itemised list submitted and to the complexity of the case, the Court awards EUR 3,500 in respect of the costs incurred by the applicant's representative, who submitted the observations on the case, to be paid into a bank account indicated by him (see *Denizci and Others v. Cyprus*, nos. 25316-25321/94 and 27207/95, § 428, ECHR 2001-V, and *Cobzaru v. Romania*, no. 48254/99, § 111, 26 July 2007).

C. Default interest

68. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins to the merits* the Government's objection based on lack of victim status and *declares* the application admissible;
2. *Holds* that there has been a violation of Article 8 of the Convention and *dismisses* the Government's above-mentioned objection;
3. *Holds* that there is no need to examine separately the complaint under Article 6 of the Convention;
4. *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 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, and EUR 3,500 (three thousand five hundred euros) in respect of costs and expenses, to be converted into Moldovan lei at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 27 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Mijović is annexed to this judgment.

N.B.
F.A.

CONCURRING OPINION OF JUDGE MIJOVIĆ

Although I have voted with the majority of the Chamber, my reasoning with respect to the finding of a violation of Article 8 of the Convention differs to a significant extent from the views expressed in the judgment.

According to the present judgment, Article 8 of the Convention has been violated because there is no possibility, under the Moldovan law in force, for the applicant to have examined his claim to belong to a particular ethnic group in the light of objectively verifiable evidence adduced in support of that claim (see paragraph 59 of the judgment). While the majority concentrated on the requirements of Moldovan law that made it impossible for the applicant to adduce any evidence in support of his claim, in my personal opinion a violation should have been based on the authorities' refusal to uphold the applicant's request to change the records in such a way as to reflect his own perception of his ethnic identity.

Turning to the facts of this case, one cannot but notice that there is an apparent inconsistency between, on the one hand, the practice of the Moldovan authorities in the field of recording ethnic identity and, on the other hand, both the domestic (the Constitution of Moldova and the Law on the Rights of Persons belonging to National Minorities) and international law (Article 3 of the Framework Convention for the Protection of National Minorities of 1995) (see paragraphs 14, 15 and 24 of the judgment). While both domestic and international law provide that any person has the right freely to choose whether or not to belong to an ethnic minority, it seems to be the practice of the Moldovan authorities to impose a particular ethnicity (Moldovan) on an individual, a practice which I find *per se* contrary to the principle of self-identification which was not only accepted but further developed in the Grand Chamber's *Sejdić and Finci v. Bosnia and Herzegovina* judgment (*Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, 22 December 2009). In that judgment, the Grand Chamber established that the applicants, who described themselves as being of Roma and Jewish origin and who did not wish to declare affiliation with the constituent peoples (Bosniacs, Croats and Serbs), were discriminated against (see paragraph 45 of the judgment.). The issue of ethnicity as discussed in that particular judgment was explained as having its origin in the idea of societal groups characterised in particular by a common nationality, religious faith, shared language or cultural and traditional origins and backgrounds (see paragraph 43 of the judgment). The particular importance of that case for the present one is to be found in the conclusion to be drawn from the Grand Chamber's reasoning, namely that one's choice to declare affiliation with an ethnic group (or not) needs to be respected. In Moldova, just as in Bosnia and Herzegovina, ethnic affiliation

is not to be regarded as a legal and objective concept, but a political and subjective one. It has not been shown in the present case that there were any objective parameters for establishing affiliation with a particular ethnic group, nor any legal consequences for an individual who establishes such affiliation. Thus, I consider self-identification primarily as a matter of personal perception rather than a matter based on objective grounds, and that is why I do not share the Chamber's reasoning in the judgment.