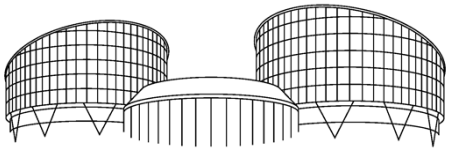

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF STĂVILĂ v. THE REPUBLIC OF MOLDOVA

(Application no. 25819/12)

JUDGMENT

STRASBOURG

24 April 2025

This judgment is final but it may be subject to editorial revision.

In the case of Stăvilă v. the Republic of Moldova,

The European Court of Human Rights (Fifth Section), sitting as a Committee composed of:

Andreas Zünd*, President*,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 25819/12) 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") on 17 April 2012 by a Moldovan, Russian national, Mr Vitalie Stăvilă ("the applicant"), who was born in 1968, lives in Hlinaia and was represented by Mr O. Tănase, a lawyer practising in Chisinau;

the decision to give notice of the application to the Moldovan Government ("the Government"), represented by their Agent at the relevant time, Mr O. Rotari;

the parties' observations;

the withdrawal from the case of Mrs Diana Sârcu, the judge elected in respect of the Republic of Moldova;

the information given to the Moldovan Government that the case was assigned to a Committee;

Having deliberated in private on 20 March 2025,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the proportionality of the State intervention into the business relationship between the shareholders of a private company.

2. The applicant was the CEO and an associate with 70% ownership of the assets of the limited liability company Xenon S.R.L. (hereinafter called "Xenon"). The other 30% belonged to V.V. Since 2009 the applicant and V.V. had disagreements which resulted in court actions against each other. By final decisions of 9 and 22 December 2011 the Supreme Court of Justice ordered V.V. to return a piece of real estate worth approximately 105,747 euros (EUR) at the time to Xenon and to repay it the overall sum of 6,439,222 Moldovan lei ((MDL), the equivalent of approximately EUR 408,689 at the time), for his failure to transfer a building into the company's ownership after having received payment for it.

3. On 1 December 2010 V.V. lodged a court action for the applicant's exclusion from the list of Xenon's owners, relying principally on Article 154 of the Civil Code (see paragraph 8 below). He argued that the applicant had defrauded Xenon and administered its assets in a manner damaging to the company. He also asked the court to order an accounting expert report to

determine Xenon's overall economic state and the value of the share of its associates. On 27 September 2011 the first-instance court rejected the court action, without accepting the request about the expert report mentioned above.

4. On 17 January 2012 the Chișinău Court of Appeal quashed that decision and decided anew, ordering the applicant's exclusion from the company. It established that in August 2009 the applicant, as Xenon's administrator, sold three apartments belonging to the company to W., a private company 50% of which was owned by the applicant's wife. The overall sale price had been MDL 1,045,651 (EUR 64,843), while an expert report mentioned in the contract itself valued them at MDL 1,260,000 (EUR 78,135). According to information from a real estate agency concerning prices generally seen for apartments in the relevant region, the overall market price of the three apartments could be at least MDL 1,800,000 (EUR 111,621). Moreover, after selling the apartments Xenon rented them back from W. The contract provided that the rental price would be gradually deducted from the sum owed by W. for buying the apartments.

Also, Xenon sold a car to W. for MDL 6,000 (EUR 381) "on his own intention and initiative, defrauding the company by causing it damage, selling the goods below their market value". V.V. had argued that the car was actually worth EUR 10,000. No expert report was made to determine the value of the car.

In September 2010 Xenon reported that it was indebted to the level of MDL 40,472,853 (EUR 2,571,304).

The court noted that Xenon owns 97% of shares in P., an independent private company. On 18 December 2009 P. sold two pieces of real estate (435.6 square meters in total) to private persons for the total amount of MDL 183,786 (EUR 10,408), while according to a real estate agency the prices for similar real estate in the relevant region of the city varied between MDL 12,100 – 15,300 (EUR 685 - 866) per square meter. As Xenon's administrator controlling 97% in P., the applicant had failed to prevent this sale at prices below the market value.

The court found that Xenon was the subject of "considerable fraud and suffered enormous damages, as claimed in the court action". It added that, even though the applicant had had the right to sign all the contracts mentioned and they were still valid, this did not prevent them from being contrary to the interests of the company.

5. In his appeal the applicant referred, *inter alia*, to the absence of an audit or expert evaluation of the existence and extent of the damage he had allegedly caused to Xenon; the absence of any explanation about the manner in which the company was to be administered thereafter; and the sum which had to be returned to the applicant for his part in Xenon. He claimed that as a result of the court's decision, V.V. had obtained unjust enrichment. The applicant relied on Article 1 of Protocol No. 1.

6. On 16 May 2012 the Supreme Court of Justice upheld the lower court's judgment, essentially repeating its arguments and dealing in more detail with the conflict of interests that the applicant had when selling the apartments at a low price to a company co-owned by his wife. The court found that the applicant had defrauded Xenon as its administrator by knowingly and intentionally hurting its interests through legal acts substantially diminishing its assets.

7. It appears from the documents in the file that Xenon went into liquidation proceedings on 14 December 2020.

RELEVANT DOMESTIC LAW

8. Article 154 § 1(b) of the Civil Code, as it read at the relevant time, provided that an associate could request the exclusion from a limited liability company of another associate who, being its administrator, defrauded the company or used its assets in his own interest or in the interest of third parties. Under Article 154 § 3 such an excluded associate should be repaid the value of his share in the company's equity, after compensating the company for the damage caused to it.

9. The Law on limited liability companies (no. 135-XVI, in force since 17 November 2007) provides in section 47(1)-(3) that an associate can be excluded from the company by a court decision if, while being its administrator, he defrauds the company or uses its assets in his own interest or in the interest of third parties. In such a case, the excluded associate does not have the right to obtain a proportionate share in the assets of the company, but only in its equity, unless the court decides otherwise.

Under section 76(1) and (4) of the same law, the company's administrator bears full responsibility for damage(s) he has caused the company; any associate can lodge a court action claiming compensation for such damage.

THE COURT'S ASSESSMENT

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

10. The applicant complained that he was deprived in a disproportionate manner of his company, contrary to Article 1 of Protocol No. 1.

11. The Government argued that the applicant had failed to exhaust available domestic remedies. In particular, the proceedings initiated by V.V. concerned only the issue of excluding the applicant from Xenon and did not touch upon his right to obtain his share in the company's equity capital. The law allowed him to claim this share, which he had failed to do.

12. The Court notes that the applicant's complaint concerns not only his share in the company's equity, but generally the proportionality of the

measures taken against him, resulting in the loss of control over the company. Since the applicant raised this issue before the domestic courts, the Government's preliminary objection must be dismissed.

13. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

14. The Court reiterates that Article 1 of Protocol No. 1, the essential object of which is to protect the individual against unjustified interference by the State with the peaceful enjoyment of his or her possessions, may also entail positive obligations requiring the State to take certain measures necessary to protect the right of property, particularly where there is a direct link between the measures an applicant may legitimately expect from the authorities and his effective enjoyment of his possessions (see *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 96, ECHR 2002-VII). Even in horizontal relations there may be public-interest considerations involved which may impose some obligations on the State (see *Zolotas v. Greece (no. 2)*, no. 66610/09, § 39, ECHR 2013 (extracts)).

15. The boundaries between the State's positive and negative obligations under Article 1 of Protocol No. 1 do not lend themselves to precise definition. The applicable principles are nonetheless similar. Whether the case is analysed in terms of a positive duty of the State or in terms of interference by a public authority which needs to be justified, the criteria to be applied do not differ in substance. Both an interference with the peaceful enjoyment of possessions and an abstention from action must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (*idem*, § 40; see also *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 69, Series A no. 52, and *Kotov v. Russia* [GC], no. 54522/00, § 110, 3 April 2012).

16. In the present case the Court considers that there has been an interference with the applicant's right guaranteed under Article 1 of Protocol No. 1 as a result of the court decisions resulting in his losing control of his own company.

17. That interference was provided by law (see paragraphs 8 and 9 above). The Court will assume that there was a public interest in the measures taken, namely the State's obligation to protect the rights of minority owners in private companies.

18. The Court will therefore examine whether the measure taken in respect of the applicant was proportionate to that public interest under examination.

19. The domestic courts noted that there was nothing illegal in the applicant's actions and that all the contracts he had concluded remained in force (see paragraph 4 above). However, they also found that he had acted while having a conflict of interests and in doing so he had caused substantial damage to the company. The Court considers that damage to one's own

private company of itself is no reason for State intervention. What required the courts to react was the complaint of the minority owner V.V. that this affected his property right by reducing the value of his share in the company. Accordingly, the authorities had the positive obligation of protecting the property right of the minority owner from abuse by the majority owner, while observing the principle of proportionality of the means used to the aim pursued (see paragraph 14 above; see also, *mutatis mutandis*, *Suda v. the Czech Republic*, no. 1643/06, § 55, 28 October 2010).

20. In this respect it is noted that the law gave V.V. three distinct possibilities to protect his rights in the company: (a) he could request the administrator under section 73 of the law on limited liability companies (see paragraph 9 above) to compensate the company for any damage caused to it, (b) he could sell his part in the company if dissatisfied with the manner of its administration, and (c) he could request the courts to exclude the administrator.

21. The courts were bound to respond to V.V.'s specific claim made in the court action, that is the applicant's exclusion. At the same time, in deciding whether this measure was proportionate to the aim of protecting V.V.'s rights, the courts had to take into consideration that an associate's exclusion was the most serious form of interference with his or her rights. However, they did not examine whether other forms of protection mentioned in the preceding paragraph were sufficient to protect V.V.'s rights without completely removing the applicant from the company. The courts had no consideration for the fact that the applicant owned 70% of the company. Excluding him from it essentially meant expropriating the company from him, in favour of the minority owner.

22. It is true that there could be situations in which other, less serious forms of interference could be insufficient, and where the removal of the faulty majority owner is the only feasible way of effectively protecting minority owners' rights. For instance, a majority owner could run the company in such a manner as to endanger its viability or (s)he could also be insolvent and thus unable to repay the company for the damage caused to it. However, in order to decide whether or not the company was brought to such an extreme situation, the courts would have had to determine the overall impact of the majority owner's actions on the company. In the present case, it is unclear how the courts could determine that the applicant had caused such a substantial damage to the company without ordering an audit or other expert evaluation of its true economic situation and of the extent of damage caused. This had been expressly requested (see paragraph 3 above), but never carried out. It is also noted that the overall estimated damage caused by the applicant was the equivalent of between over EUR 344,000 and 423,000, less damage than over EUR 500,000 that V.V. had caused (see paragraph 2 above). The estimated damage as a result of the applicant's actions was only a small part of Xenon's overall debt, that was the equivalent of more than

EUR 2.5 million in 2010. However, by 2012 the company was still functioning and by then none of the parties or the courts in the domestic proceedings mentioned it defaulting on any of its debts or being in a process of liquidation. The domestic courts never verified to what extent the applicant's actions truly endangered the livelihood of the company, so as to require essentially taking the company from him, nor assessed his ability to repay Xenon the damage caused, as had been done in respect of V.V.

23. The Government submitted that the applicant had never asked the courts for an expert report to determine the level of damage he had caused, nor submitted an audit report by an expert contracted by him or by Xenon, which he still administered at the relevant time. The Court notes that the applicant was a defendant in civil proceedings, in which each party had to substantiate his submissions. It was V.V.'s claim that the applicant had caused damage, which he had to substantiate. The applicant raised the issue of the absence of substantiation in the form of an expert report in the domestic proceedings (see paragraph 5 above) and it was for the courts to decide whether they could adopt proportionate measures in the absence of such a report.

24. The Government also argued that the applicant could have claimed the monetary value of his share in the company, as expressly provided by law for such situations. However, it is noted that the law expressly limited the amount of compensation that could be sought in this manner to the person's share in the equity of the company, not its overall value. The Court finds that claiming such compensation cannot offer sufficient protection from the effects of losing control of one's company when the proportionality of such an interference has never been examined.

25. The Court concludes that the domestic courts have not carried out a proper assessment of the proportionality of the measure taken with the aim of protecting V.V.'s rights. They endorsed the most severe form of interference, essentially expropriating the applicant of his company in favour of the minority owner, without determining whether his actions had caused so severe consequences for the minority owner that no other, less intrusive ways allowed by law, would be sufficient.

26. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

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

27. The applicant also complained, under Article 6 § 1 of the Convention, that the domestic courts had insufficiently reasoned their decisions, had failed to react to his request for an expert report and had been subjected to pressure by the authorities. He also claimed that a last-minute change in the composition of the Court of Appeal without any reasons meant that that court had not been "established by law".

28. Having regard to the facts of the case, the submissions of the parties, and its findings above in respect of the complaint under Article 1 of Protocol No. 1, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. The applicant claimed 3,570,000 Moldovan lei ((MDL), the equivalent of 234,419 euros (EUR)) in respect of pecuniary damage, consisting of 70% of the company's equity. He also claimed compensation for non-pecuniary damage, which he left to the Court's discretion.

30. The Government considered that in the absence of a violation no award was to be made.

31. The Court notes that, although complaining about the disproportionate actions resulting in his loss of control over Xenon, the applicant's claim under Article 41 of the Convention did not refer to any compensation for the market value of his share in the company. He limited his claims for just satisfaction to his share in the company's equity. However, section 47 of the law on limited liability companies (see paragraph 9 above) expressly provided for the right to claim the share in the equity in case of exclusion of an associate. The applicant did not make such a claim. The Court finds that not obtaining the monetary value of his share in the company's equity was the result of the applicant's own inaction. It therefore rejects the claim for compensatory pecuniary damage.

32. As for non-pecuniary damage, the Court considers that the applicant must have suffered anxiety and inconvenience as the manager and majority owner who lost control of his own company (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 35, ECHR 2000-IV, and *Sovtransavto Holding v. Ukraine* (just satisfaction), no. 48553/99, § 61, 2 October 2003). It therefore awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 1 of Protocol No. 1 to the Convention admissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds* that there is no need to examine the admissibility and merits of the complaints under Article 6 § 1 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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 amount 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 24 April 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Andreas Zünd President