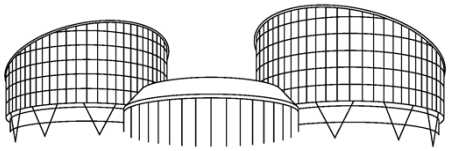

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF EUGENIA AND DOINA DUCA v. THE REPUBLIC OF MOLDOVA

(Application no. 75/07)

JUDGMENT
(*Just satisfaction*)

STRASBOURG

8 April 2014

FINAL

08/07/2014

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Eugenia and Doina Duca v. the Republic of Moldova,

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Ján Šikuta,
Dragoljub Popović,
Kristina Pardalos,
Johannes Silvis,
Iulia Antoanella Motoc, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 18 March 2014,

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

PROCEDURE AND FACTS

1. The case originated in an application (no. 75/07) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Moldovan nationals, Ms Eugenia Duca and Ms Doina Duca ("the applicants"), on 27 December 2006.

2. In a judgment delivered on 3 March 2009 ("the principal judgment"), the Court held that there was a breach of Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention on account of the upholding by the Supreme Court of Justice on 27 November 2006 of a revision request against a final judgment of 1999, in breach of the principle of legal certainty (*Eugenia and Doina Duca v. Moldova*, no. 75/07, 3 March 2009). As a result of that quashing the second applicant lost all of her shares (94.46%) in her company.

3. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicants to submit, within three months of the date on which the judgment became final in accordance with Article 44 § 2 of the Convention, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach.

4. The applicants and the Government each submitted observations in respect of the just satisfaction.

5. In the meantime, after the adoption of the principal judgment by the Court, the Supreme Court of Justice reviewed its judgment of 27 November 2006 and quashed it on 26 October 2009. The Supreme Court also awarded the applicants compensation of MDL 35,000 (the equivalent of EUR 1,963)

for the non-pecuniary damage suffered as a result of the abusive quashing of the judgment of 1999.

6. The judge elected in respect of Moldova, withdrew from sitting in the case (Rule 28 of the Rules of Court) after it had been notified to the Government. On 31 January 2009, the Government, pursuant to Rule 29 § 1 (a), informed the Court that they were content to appoint in his stead another elected judge and left the choice of appointee to the President of the Chamber. On 1 February 2009, the President of the Fourth Section appointed Judge Šikuta to sit in the case. This decision was confirmed by the President of the Third Section after Judge Grițco, the judge elected in respect of Moldova, also withdrew from sitting in the case.

THE LAW

7. 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

1. The parties' submissions

8. The applicants claimed EUR 1,428,251 in respect of pecuniary damage and EUR 1,500,000 in respect of non-pecuniary damage.

9. In respect of the pecuniary claim the applicants submitted that after they had lost control of the company in favour of I.A. and S.A., the latter had carried out several transactions aimed at the diminution of the assets of the company in their favour.

10. Thus, they sold a building belonging to the company and located on the Hîncești street in Chisinau at a fake price. In particular, the building was sold for some EUR 9,400 while in reality its value was much higher. According to an expert report submitted by the applicants the market value of the building was EUR 186,495. The amount claimed by the applicants in respect of this transaction constituted the difference between the market value and the price for which the building had been sold plus compensation for the inflation, totalling EUR 216,914.

11. The applicants further argued that a similar transaction was carried out by I.A. and S.A. in respect of a part of a building belonging to the company and located on Renașterii street in Chisinau. According to the expert reports submitted by the applicants, the company lost as a result of this transaction some EUR 433,471.

12. A further transaction carried out by I.A. and S.A. aimed at the diminution of the company's assets concerned the purchase at an inflated price and the subsequent mortgaging to a bank of a building located in Leova. According to an expert report submitted by the applicants, the company lost EUR 412,472 as a result of this transaction.

13. Further losses caused to the company by I.A. and S.A. concerned the fines received from the tax authorities amounting to EUR 12,401.

14. Further losses of EUR 352,993 were caused by the fact that I.A. and S.A. rented out property belonging to the company to third parties at prices which were way below the market value. The applicants submitted an expert report to substantiate this claim.

15. The Government argued that the applicants were not entitled to any compensation because there was no causal link between the pecuniary damage claimed and the alleged violations. Alternatively, they submitted that the evidence submitted by the applicants was not conclusive and that it did not prove beyond reasonable doubt that the applicants suffered any pecuniary damage. As to the non-pecuniary damage claimed, the Government argued that after the finding of a breach in the principal judgment, on 26 October 2009, the Supreme Court of Justice quashed its judgment of 27 November 2006 and awarded the applicants non-pecuniary compensation of EUR 1,963. Accordingly, the Government contended that the applicants have already been compensated for the non-pecuniary damage suffered and asked the Court to reject their claims under this head.

2. The Court's assessment

16. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 32, ECHR 2000-XI).

17. Turning to the facts of the present case, the Court notes from the outset that before the abusive quashing of the judgment of 27 September 1999, on 27 November 2006, only the second applicant was an associate in the company and that she owned 94.46% of the shares. Accordingly, only the second applicant can pretend to have suffered pecuniary damages as a result of the breaches found in the present case.

18. The Court further notes that the method employed by the applicants to calculate the pecuniary damage is not entirely pertinent as it shows some of the losses suffered by the company during the period 2006-2009 rather than those suffered by its shareholders. The Court considers that the assets of the company shall not be confused with those of the shareholders and that not all losses of a company would necessarily reflect on the value of its shares. Moreover, in accepting such an approach, the Court would have to ignore any eventual profitable transactions conducted by the company

during the relevant period of time. In the Court's view it would have been more useful for the applicants to show the difference in value of their shares before the impugned events of 2006 and after the judgment of 26 October 2009, when the second applicant regained all her shares in the company.

19. Nevertheless, the Court is prepared to accept that the second applicant suffered pecuniary damage as a result of a loss of opportunities. In fact, the second applicant had lost her right to vote in a decisive manner in respect of the management of the company and was deprived of the possibility to influence the decisions of the company's managers in her best interests and to prevent the other associates to conclude transactions which were not in her interest (see *mutatis mutandis*, *Sovtransavto Holding v. Ukraine* (just satisfaction), no. 48553/99, § 72, 2 October 2003).

20. In view of the above considerations and ruling on an equitable basis the Court decides to award EUR 50,000 to the second applicant and to dismiss the remainder of the claim for pecuniary damage.

21. In so far as the non-pecuniary damage is concerned the Court notes that the amount awarded to the applicants by the Supreme Court on 26 October 2009 is comparable to the amounts awarded by the Court in similar cases (see *Roşca v. Moldova*, no. 6267/02, § 41, 22 March 2005). Therefore, the Court does not consider it necessary to make any awards under this head.

B. Costs and expenses

22. The applicant also claimed EUR 5,347 for the costs and expenses incurred in the domestic proceedings.

23. The Government contested this amount and argued that it was excessive and unsubstantiated.

24. In accordance with its case-law, the Court must consider whether the costs and expenses claimed were actually and necessarily incurred by the applicant and are reasonable as to quantum (see *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII). It may have regard in that connection to such matters as the number of hours worked and the hourly rate sought (see *Iatridis v. Greece*, cited above § 55).

25. In the instant case, however, the applicants have not produced any evidence in support of their claims. The Court, therefore, decides not to award any sum under this head.

C. Default interest

26. The Court considers it appropriate that the default interest rate 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. *Holds*
   (a) that the respondent State is to pay the second applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 50,000 (fifty thousand euros) in respect of pecuniary damage to be converted into the currency of the respondent State at the rate applicable at the date of settlement plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

2. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President