CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF SÎRBU AND OTHERS v. MOLDOVA

(Applications nos. 73562/01, 73565/01, 73712/01, 73744/01, 73972/01 and 73973/01)

JUDGMENT

STRASBOURG

15 June 2004

FINAL

10/11/2004

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 Sirbu v. Moldova,

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

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mr J. CASADEVALL,
Mr S. PAVLOVSCHI,
Mr J. BORREGO BORREGO,
Mrs E. FURA-SANDSTRÖM,
Ms L. MIJOVIĆ, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 25 May 2004,

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

PROCEDURE

1. The case originated in six applications (nos. 73562/01, 73565/01, 73712/01, 73744/01, 73972/01 and 73973/01) 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 six Moldovan nationals, Mr Pavel Sîrbu, Mr Petru Bragoi, Mr Vitalie Cornovan, Mr Gheorghe Bragoi, Mr Alexandru Usatîi and Mr Iulian Guştiuc ("the applicants"), on 10 April 2001.

2. The applicants were represented by Mr Ştefan Urîtu, of the Moldovan Helsinki Committee. The Moldovan Government ("the Government") were represented by their Agent, Mr Vitalie Pârlog.

3. The applicants complained under Article 6 § 1 of the Convention that, because of the non-enforcement of the judgments of 1 August 1997 and 18 August 1997, their right to have their civil rights determined by a court had been violated and that they had been unable to enjoy their possessions, and thus their right to protection of property under Article 1 of Protocol No. 1 to the Convention was violated. The applicants also relied on Article 10 of the Convention.

4. The applications were allocated to the Fourth Section. On 4 February 2003 a Chamber of that Section decided to communicate the applications to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. On 20 January 2004 a Chamber of the Fourth Section decided to join the applications in accordance with Rule 42 (1) of the Rules of the Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants, all of whom are Moldovan citizens, live in the Republic of Moldova.

7. The applicants are inspectors of the Chişinău Fire Department attached to the Ministry of Internal Affairs.

8. On 21 July 1994 the Government passed Decision No. 534-10, classified secret, which concerned the Ministry of Defence, the Ministry of National Security (Intelligence Service) and the Ministry of Internal Affairs. According to that Decision, among other things, the personnel of the above-mentioned institutions were entitled to a monthly allowance of approximately MDL 135 instead of the old allowance of MDL 7.06. This Decision was not published in the Official Gazette *(Monitorul Oficial)* and accordingly the applicants did not know about it.

The applicants started to receive the increased allowance on 1 June 1995. They found out that their colleagues from other Ministries had been receiving the higher rate from 1 July 1994.

9. In June 1997 the applicants lodged an action with the Centru District Court against the Ministry of Internal Affairs seeking the payment of the increased allowance for the period July 1994 – June 1995.

By a judgment of 1 August 1997 the Centru District Court awarded Mr Gheorghe Bragoi, Mr Alexandru Usatîi and Mr Iulian Guştiuc compensation of MDL 1,407[1] each. By another judgment of 18 August 1997 the Centru District Court awarded Mr Pavel Sîrbu and Mr Vitalie Cornovan compensation of MDL 1,407 each and Mr Petru Bragoi compensation of MDL 1,127.02. No appeals were lodged and the judgments became final. Enforcement warrants were issued.

10. On numerous occasions the applicants lodged complaints about the non-enforcement of the judgments of 1 August 1997 and 18 August 1997 with the Ministry of Justice. In its replies, the Ministry of Justice informed the applicants that the judgments could not be enforced due to the "lack of funds in the bank account of the Ministry of Internal Affairs".

11. On 15 May 2003, after the cases were communicated to the Government, the judgments were executed by the Ministry of Internal Affairs.

---

[1] approx. EUR 286 as of 1 August 1997

II. RELEVANT DOMESTIC LAW

12. The relevant provisions of the Code of Civil Procedure, in force between 26 December 1964 and 12 June 2003, stated:

> **Article 336. The decisions of the courts and other authorities susceptible to enforcement**
>
> The following are the acts which have to be enforced in accordance with the provisions of the present Code: 1) Civil law judgments, orders and decisions adopted by the courts...
>
> **Article 338. The issuance of the enforcement warrant**
>
> The enforcement warrant is issued by the court to the creditor, after the judgment has become final, except for cases of immediate enforcement, when the enforcement warrant is issued immediately after the delivery of the judgment.
>
> **Article 343. The request to start the enforcement procedure**
>
> The bailiff starts the enforcement procedure at the request of the persons enumerated in Article 5 of the present Code. In cases provided for in the second paragraph of this article, the bailiff starts the enforcement procedure following the judge's order.
>
> **Article 349. The supervision of enforcement of judgments**
>
> The supervision of the correct and prompt enforcement of judgments is conducted by the Department of Judgment Enforcement of the Ministry of Justice.

THE LAW

13. The applicants complained that their right to have their civil rights determined by a court had been violated by the authorities' failure to enforce the judgments of 1 August 1997 and 18 August 1997. They relied on Article 6 § 1 of the Convention, which in so far as relevant, reads as follows:

> "1. In the determination of his civil rights and obligations ... everyone is entitled to a fair hearing ... by a tribunal ...."

14. The applicants further complained that because of the non-enforcement of the judgments in their favour they were unable to enjoy their possessions, and thus that their right to protection of property under Article 1 of Protocol No. 1 to the Convention had been violated. Article 1 of Protocol No. 1 reads as follows:

> "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.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

15. The applicants finally complained under Article 10 of the Convention that by classifying Decision No. 534-10 of 21 July 1994 as secret, the Government had breached their right to be informed. Article 10 provides:

> "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..."

I. ADMISSIBILITY OF THE COMPLAINTS

A. Alleged violation of Article 10 of the Convention

16. The applicants complained that the secrecy imposed on the Government's Decision No. 534-10 of 21 July 1994 breached their right to be informed.

17. The Court notes that in cases concerning restrictions on freedom of the press it has on a number of occasions recognised that the public has a right to receive information as a corollary of the specific function of journalists, which is to impart information and ideas on matters of public interest (see, among other authorities, the *Observer* and *Guardian* v. *the United Kingdom* judgment of 26 November 1991, Series A no. 216, p. 30, § 59 (b), and the *Thorgeir Thorgeirson v. Iceland* judgment of 25 June 1992, Series A no. 239, p. 27, § 63). The facts of the present case are, however, clearly distinguishable from those of the aforementioned cases since the applicants complained of a failure of the State to make public a Governmental Decision concerning the military, the intelligence service and the Ministry of Internal Affairs.

18. The Court reiterates that freedom to receive information, referred to in paragraph 2 of Article 10 of the Convention, "basically prohibits a government from restricting a person from receiving information that others wish or may be willing to impart to him" (see the *Leander v. Sweden* judgment of 26 March 1987, Series A no. 116, p. 29, § 74). That freedom cannot be construed as imposing on a State, in circumstances such as those of the present case, positive obligations to disclose to the public any secret

documents or information concerning its military, intelligence service or police.

19. Therefore, this head of claim must be declared inadmissible as being manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Other complaints

20. The Court considers that the applicants' complaints under Articles 6 § 1 and under Article 1 of Protocol No. 1 to the Convention raise questions of law which are sufficiently serious that their determination should depend on an examination of the merits, and no other grounds for declaring them inadmissible have been established. The Court therefore declares these complaints 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. MERITS

A. Alleged violation of Article 6 § 1 of the Convention

21. Under Article 6 § 1 of the Convention, the applicants complained about the refusal of the authorities to execute the judgments of the Centru District Court of 1 and 18 August 1997.

22. The Government did not submit observations on the merits of this complaint.

23. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 (see the *Hornsby v. Greece* judgment of 19 March 1997, *Reports* 1997-II, p. 510, § 40).

24. It is not open to a State authority to cite lack of funds as an excuse for not honouring a judgment. Admittedly, a delay in the execution of a judgment may be justified in particular circumstances. But the delay may not be such as to impair the essence of the right protected under Article 6 § 1 of the Convention (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74, ECHR 1999-V). In the instant case, the applicants should not have been prevented from benefiting from the success of the litigation, which concerned the payment of compensation.

25. The Court notes that the Centru District Court's judgments of 1 and 18 August 1997 remained unenforced for more than five years and a half (until after the cases had been communicated to the Government by the Court, on 15 May 2003).

26. By failing for years to take the necessary measures to comply with the final judgments in the instant case, the Moldovan authorities deprived the provisions of Article 6 § 1 of the Convention of all useful effect.

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

B. Alleged violation of Article 1 of Protocol No. 1 to the Convention

28. The applicants further complained that because of the non-enforcement of the judgments in their favour they were unable to enjoy their possessions, and thus their right to protection of property under Article 1 of Protocol No. 1 to the Convention was violated.

29. The Government did not submit observations on the merits of this complaint.

30. The Court reiterates that a "claim" can constitute a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention if it is sufficiently established to be enforceable (see the *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, § 59).

31. The Court notes that the applicants had enforceable claims deriving from the judgments of 1 and 18 August 1997. It follows that the impossibility for the applicants to obtain the execution of the judgments until 15 May 2003, constituted an interference with their right to peaceful enjoyment of their possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 to the Convention.

32. By failing to comply with the judgments of the Centru District Court the national authorities prevented the applicants from having their compensation paid and from enjoying the possession of their money. The Government have not advanced any justification for this interference and the Court considers that lack of funds cannot justify such an omission (see, *mutatis mutandis, Ambruosi v. Italy*, no. 31227/96, §§ 28-34, 19 October 2000).

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. Mr Pavel Sîrbu, Mr Vitalie Cornovan, Mr Gheorghe Bragoi, Mr Alexandru Usatîi and Mr Iulian Guştiuc each claimed EUR 84 for pecuniary damage suffered as a result of the refusal of the authorities to enforce the judgments. Mr Petru Bragoi claimed EUR 67 for pecuniary damage.

36. The Government claimed that since the judgments had been executed on 15 May 2003, the applicants were not entitled to any pecuniary damage.

37. The Court considers that the applicants must have suffered pecuniary damage as a result of the non-execution of the judgments of 1 and 18 August 1997. The Court awards Mr Pavel Sîrbu, Mr Vitalie Cornovan, Mr Gheorghe Bragoi, Mr Alexandru Usatîi and Mr Iulian Guştiuc the sum of EUR 84 each and Mr Petru Bragoi the sum of EUR 67.

B. Non-pecuniary damage

38. The applicants each claimed EUR 10,300 for non-pecuniary damage suffered as a result of the refusal of the authorities to enforce the judgments of 1 and 18 August 1997.

39. The Government disagreed with the amounts claimed by the applicants, arguing that they were excessive in light of the case-law of the Court. They stated that in some cases the mere fact of finding a violation is considered to be just satisfaction. The Government further cited the case of *Burdov v. Russia*, no. 59498/00, ECHR 2002-III, where the applicant was awarded EUR 3,000 for non-pecuniary damage.

40. The Court considers that the applicants must have been caused a certain amount of stress and frustration as a result of the non-enforcement of the judgments. It awards them EUR 1000 each for non-pecuniary damage.

C. Costs and expenses

41. The applicants also claimed EUR 990 each for the costs and expenses incurred before the Court, of which EUR 840 were representation fees and the rest, expenses for transportation and communication.

42. The Government did not agree with the amounts claimed, stating that the applicants had failed to prove the alleged representation expenses.

43. The Court recalls that in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII).

44. In the present case, regard being had to the itemised list submitted by the applicants, the above criteria, and to the fact that this was a relatively straightforward case in which the applicants were all represented by the same lawyer, the Court does not consider that the costs claimed were reasonable as to quantum. It awards the applicants EUR 200 each, plus any tax that may be payable.

D. Default interest

45. 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* inadmissible, the applicants' complaints concerning Article 10 of the Convention;

2. *Declares* the rest of the applications admissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

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

5. *Holds* unanimously
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 84 each to Mr Pavel Sîrbu, Mr Vitalie Cornovan,

Mr Gheorghe Bragoi, Mr Alexandru Usatîi and Mr Iulian Guştiuc and EUR 67 to Mr Petru Bragoi in respect of pecuniary damage; EUR 1000 each in respect of non-pecuniary damage; and EUR 200 each in respect of costs and expenses;

(b) that the amounts shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount[s] at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 15 June 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President