CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 30475/03
by MOLDOVAHIDROMAŞ
against Moldova

The European Court of Human Rights (Fourth Section), sitting on 4 April 2006 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mrs L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 18 September 2003,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, "Moldovahidromaş", is a Moldovan company registered in Chişinău. It was represented before the Court by Mr N. Moscin, a lawyer practising in Moldova. The respondent Government were represented by Mr Vitalie Pârlog, their Agent.

A. The circumstances of the case

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

1. Events prior to the quashing of the 1992 judgment

By Government order of 19 June 1990 the Ministry of Heavy Industry of the USSR was given the right to manage the property of "Moldovahidromaş" (the State owned legal predecessor of the applicant, hereinafter called "M."). On 28 November 1990 the Ministry of Heavy Industry concluded with the staff employed within M.'s scientific laboratory a contract for the creation of a separate association to hold and manage the laboratory ("Hidrotehnica", hereinafter called "H.").

The Ministry of Industry of Moldova ("the Ministry") later considered that contract to be unlawful. On 1 September 1992 it ordered H.'s liquidation. H. challenged that order in court. The Ministry also initiated court proceedings for the annulment of the contract creating H.

On 22 October 1992 the Economic Court of Moldova annulled the Ministry's order since the Ministry had not been competent to order the liquidation of a company.

On 22-23 October 1992 the same court accepted the Ministry's claim and declared the contract for the creation of H. null and void ("the 1992 judgment"). That judgment was not appealed against and became final. The court also ordered the liquidation of H., with the distribution of the latter's assets to its creditors. As a result, the assets of H. were returned to M.

In 1997 the court file on this case was destroyed pursuant to regulations establishing a five-year limit for keeping such files in court archives.

On 29 December 1992 M. was privatised: it was registered as a joint stock company and its shares were sold primarily to staff. The staff obtained 58.2 % of the shares, while the rest of the shares remained State property. The applicant company was thereby created and it retained the name of its legal predecessor, "Moldovahidromaş".

In 1994 the applicant registered a subsidiary under the name "Hidrotehnica" (hereinafter called "subsidiary H."), to manage its laboratory and plant.

In 1995 more of the State's shares were privatised, which raised the total percentage of private ownership in the company to 75.3%. By 2001, the company was 100% privately owned.

2. The quashing of the 1992 judgment

On 23 July 2002, on the initiative of the staff of the subsidiary H., the Prosecutor General filed a request with the Supreme Court of Justice for the annulment of the 1992 judgment, but later withdrew the request. On 11 December 2002 the court upheld the Prosecutor General's withdrawal of

the request for annulment. On 22 January 2003 the court rejected the request for revision made by the "shareholders of H." because they had no standing, not having participated in the 1992 proceedings.

On 2 August 2002 the Russian ambassador to Moldova sent a letter to the First Deputy Prime Minister of Moldova asking the latter's help in resolving a problem described in an attached letter. The attached letter was signed by the Head of the Russian Ship Yard Agency and the Russian Chief Navy Commander; it explained that after privatisation the applicant had been asking higher prices for its products sold to Russia (water pumps) than previously and it requested the Government to take action to "give that enterprise a status allowing a mutually beneficial activity in the future".

In a letter from Mr Doronin (a deputy in the Moldovan Parliament) of 31 March 2003 to the President of Moldova, help was sought in resolving the problem regarding the applicant. Mr Doronin mentioned that he had addressed with that issue the Government, the Prosecutor General's office and the Supreme Court of Justice. He claimed that all these authorities, including N. and other judges at the Supreme Court of Justice, agreed that subsidiary H. should be an independent company.

In the second letter, to the Minister of Justice and dated 9 March 2004, Mr Doronin declared: "with my personal involvement, as a deputy in the Parliament of Moldova, property in the illegal ownership of 'Moldovahidromaş' was returned to the State and shareholders". He expressed his hope for a swift response from the Ministry in helping to expedite the work of bookkeeping experts ordered to provide for the splitting off of subsidiary H. from the applicant. The letter bears short handwritten notes signed by the Minister of Justice and officials requesting other officials to give explanations and to take swift measures on the issue.

The Prosecutor General filed a further request with the Plenary Supreme Court of Justice for the annulment of its judgment of 11 December 2002.

On 9 April 2003 the Supreme Court of Justice upheld the request of the managing director of subsidiary H. to freeze all the company's assets pending the court's decision on the case. The applicant contends that in enforcing that decision a number of its own assets were frozen, as well as all the assets of subsidiary H., and that its head office was occupied by the administration of H., seriously disrupting the applicant's activities. The authorities did not react to any of the complaints the applicant made in this regard.

On 21 April 2003 the Supreme Court of Justice upheld the Prosecutor General's request and quashed the judgment of 11 December 2002, ordering a re-hearing of the case by its own Economic Chamber.

The applicant claims that it made an unsuccessful attempt to intervene in the proceedings.

On 24 April 2003 the Economic Chamber of the Supreme Court of Justice upheld the Prosecutor General's request and quashed the 1992

judgment. It adopted a new judgment whereby it rejected the Ministry's request to declare null and void the contract concluded in 1990 creating H. As a result, the applicant's subsidiary lost ownership over its assets (the laboratory, a plant and other assets). However, there was no express annulment of the privatisation of the applicant's predecessor, which included H., at the relevant time, nor was there any compensation awarded to the applicant.

3. Events after the quashing of the 1992 judgment

The applicant made a request for the annulment of the judgment of 24 April 2003. On 26 June 2003 the court rejected that request, referring to the new Code of Civil Procedure and the introduction of a new form of court proceedings (revision).

The applicant made a request for the revision of the judgment of 24 April 2003 on the ground, *inter alia*, that it had not been allowed to intervene in proceedings which affected its pecuniary rights. On 10 July 2003 the Supreme Court of Justice rejected the request as unfounded but gave no reasons.

By its judgment of 24 July 2003 the Supreme Court of Justice added that the company, H., created by the 1990 contract could be registered by the Chamber of Commerce under the same name and that the 1994 registration of the applicant's subsidiary bearing the same name should be deleted. At the same time, the court declared null and void all the decisions for the creation of the applicant's subsidiary H., including the applicant's decisions of 1992-1994.

The new H. also requested amendments to the State real estate register to confirm its title to the buildings previously registered as belonging to the applicant. On 25 March 2005 the Chişinău Court of Appeal accepted that request. That judgment was upheld by the Supreme Court of Justice on 22 June 2005. Both courts relied on the judgment of 24 April 2003 in finding that the applicant did not have title to those buildings.

N., one of the Supreme Court of Justice judges, participated at the preliminary stage of proceedings (the freezing of subsidiary H.'s property), was one of the judges of the Supreme Court of Justice who ordered a re-opening of the annulment proceedings (21 April 2003), presided over the three-judge panel which decided the merits of the case in the re-opened proceedings (on 24 April 2003) and presided over the three-judge panel which rejected the applicant's requests for the revision of the judgment of 24 April 2003. Judge S. also participated as a judge in all these proceedings (except the freezing of the assets of subsidiary H.).

The applicant also alleged that, soon after the annulment proceedings, H. was included in a list of State companies ownership of which Moldova offered to Russia as a means of re-paying its debts.

B. Relevant domestic law

The relevant domestic law is summarised in the case of *Roşca v. Moldova* (no. 6267/02, §§ 16 and 17, 22 March 2005).

In addition, the provisions of the Code of Civil Procedure concerning revision of final judgments, where relevant, read as follows:

"Article 446: Court decisions which may be subject to revision

Final decisions ... and judgments of all courts may be subject to revision, under the conditions of the present Chapter.

Article 447: Persons who may lodge a request for revision:

The following have the right to lodge a request for revision:

...

(b) persons who have not participated in the proceedings but whose rights were violated by the relevant judgment;

...

Article 449: Reasons for declaring the revision:

Revision is declared when:

...

(g) The court adopted a decision in respect of the rights of persons not participating in the proceedings;"

COMPLAINTS

1. The applicant complained under Article 6 § 1 of the Convention that the judgment of the Supreme Court of Justice in upholding the Prosecutor General's request for annulment violated its right to a fair trial.

2. The applicant claims that its right, as guaranteed by Article 1 of Protocol No. 1 to the Convention, to the peaceful enjoyment of possessions (namely, ownership by its subsidiary awarded by a final judgment) was breached by the State and in particular, by the judgment of the Supreme Court of Justice that upheld the request for annulment.

3. The applicant also alleges a violation of its right to access to court as guaranteed by Article 6 § 1 of the Convention because it was not allowed to intervene in the annulment proceedings which concerned its property, as well as the reversal of a court judgment in the absence of the original case file.

4. The applicant also alleges a number of violations of Article 6 § 1 as regards the proceedings before the Supreme Court of Justice (in particular the participation of a judge who had dealt with the case earlier, the interference by State authorities with the judicial proceedings).

THE LAW

A. The Government's objection

The Government submit that the applicant cannot claim to be a victim of a violation of its rights. Referring to Article 34 of the Convention as interpreted, *inter alia*, in the case of *Brumărescu v. Romania* (no. 28342/95, ECHR 1999-VI), they argue that only persons directly concerned by the impugned act and having participated to the relevant proceedings may claim victim status as a result of that act. Since the applicant was not a party to either the 1992 or the 2002 proceedings, it cannot be considered a victim of the 2002 quashing.

In addition, the act should be "directly decisive" for the relevant right (see *Le Compte, Van Leuven and De Meyere v. Belgium*, judgment of 23 June 1981, Series A no. 43, § 47). The Government submit that in view of a certain "organisational and functional autonomy" enjoyed by the applicant's subsidiary H. during 1992-2003, the applicant cannot be seen as having suffered any direct effects in consequence of the quashing of the 1992 judgment.

The applicant disagrees with the Government's position. It argues that the object of the proceedings in 2002 and thereafter constituted its private property which it eventually lost. Moreover, no court judgment annulled the privatisation of M., which included at the relevant time its subsidiary H. Even though the quashing of the 1992 judgment did not result in a direct expropriation, the effects were the same (see *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52). The applicant also submits that both *de jure* and *de facto* H. was a part of its company and that it had been directly and significantly affected by the quashing.

The Court reiterates that the word "victim" in Article 34 refers to the person directly affected by the act or omission at issue; and the existence of a violation is conceivable even in the absence of prejudice, prejudice being relevant only for the purposes of Article 41 (see, *inter alia*, *Walston v. Norway*, no. 37372/97, § 58, 3 June 2003; *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, § 66).

It is true that the applicant was not a party to the 1992 proceedings. Moreover, it contends that it was not allowed to participate in the 2002 proceedings. However, between 1992 and 2001 it lawfully obtained the ownership of M. from the State, including the subsidiary H. and its property. Hence, the quashing of the 1992 judgment directly affected its pecuniary interests.

The Court recalls that in its previous case-law concerning the issue of quashing of a final judgment it has established that the new owner of an asset concerned by the quashing, and not any previous owner, can claim all the rights, including procedural ones, which could be claimed by the party

in whose favour the original judgment had been adopted (see *Anghelescu v. Romania*, no. 29411/95, §§ 49 et seq. and §§ 66 et seq., 9 April 2002; *Mihailescu v. Romania* (dec.), no. 32913/96, 22 June 2004). This approach underlines the continuing validity and finality of the original judgment, which is at the heart of the Court's jurisprudence concerning the quashing of final judgments.

It follows that the applicant in the present case, which was the lawful owner of subsidiary H. when the 1992 judgment was quashed, can claim to be a victim of that quashing.

B. The merits of the complaint

1. *Quashing of a final judgment (Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention)*

The applicant complains about the quashing of a final judgment pursuant to the Prosecutor General's request for annulment. It relies 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 ...."

The applicant further complains under Article 1 of Protocol No. 1 to the Convention that, because of the quashing of the judgment, its right to the peaceful enjoyment of its possessions was 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."

The Government submit that the quashing of the 1992 judgment did not violate any of the applicant's rights. They recognise that, in light of the Court's case-law (notably the *Brumărescu v. Romania* case cited above), such a quashing might breach the principle of legal certainty. However, the manner of applying the relevant legislation in the present case distinguished it from the above case-law. The purpose of the quashing procedure in Moldovan law was to protect the parties to proceedings, especially the weak parties, from the "pure power relationships" resulting from the re-distribution of assets inherited from the old regime in the early 1990s.

According to the Government, it was for the domestic authorities to choose the particular mechanisms for compliance with the aims of Article 6 and such authorities enjoyed a certain margin of appreciation in this respect.

Moreover, in the present case it was not the Prosecutor General's wish, but rather a request by one of the parties to the proceedings, which had served as a basis for the re-opening.

The Government further stress that the 1992 judgment was adopted in violation of the law in force at the time and that Article 6 "cannot be interpreted as preventing any interference by the authorities with pending legal proceedings to which they are a party" (see *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, judgment of 23 October 1997, *Reports of Judgments and Decisions* 1997-VII, § 112). Following the re-opening of proceedings, the parties had equal rights and both parties (H. and the Ministry) could have requested the Prosecutor General to initiate the re-opening.

Finally, the Government submit that there was no clear connection between the quashing of the 1992 judgment and any indirect effects on the applicant, since that judgment did not create any property right for M. but rather allowed the Ministry to order the transfer of H. back to M. without payment.

Relying on the principle of legal certainty as established in the *Brumărescu v. Romania* case cited above, the applicant argues that the 1992 judgment was lawful and analyses a number of legal provisions in force at the relevant time to confirm that view. The fact that the Prosecutor General initially withdrew its request for the quashing of the 1992 judgment, a refusal which was confirmed by the Supreme Court of Justice, only underlined for the applicant the lack of any need to re-open the proceedings. The existence of such a need was all the more strange ten years after the adoption of the 1992 judgment and was impossible to substantiate after the case file had been destroyed.

In the light of the parties' observations, the Court considers that this complaint raises serious questions of fact and law which are of such complexity that their determination should depend on an examination on the merits. It cannot, therefore, be considered manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and no other ground for declaring it inadmissible has been established.

2. Fair trial and access to court (Article 6 § 1 of the Convention)

The applicant complains, under Article 6 § 1 of the Convention cited above, about the refusal of the domestic courts to allow it to intervene as a party to the proceedings regarding the quashing of the 1992 judgment and the resulting further proceedings. It also complains about the refusal of the Supreme Court of Justice, without any reasons, to revise its judgment of 24 April 2003 and about the reversal of the 1992 judgment despite the fact that the case file had been destroyed years earlier.

The Government submit that according to the Court's case-law the right of access to court is not absolute and that the domestic authorities have a certain margin of appreciation in determining the limits of that right (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18). They further submit that the refusal to examine the applicant's request for annulment of the Supreme Court's judgment of 24 April 2003 was the result of the replacement of the old Code of Civil Procedure with a new one, which did not provide for the relevant annulment procedure.

The applicant submits that it made several attempts to intervene in the proceedings. It first requested to be recognised as a party to the proceedings before the Supreme Court regarding the quashing of the 1992 judgment, which request was refused despite the fact that the law obliged the court to summon the applicant, *ex officio* if necessary, since its property was potentially affected by the quashing. After the quashing, it made another request for the annulment of the Supreme Court's judgment, which was rejected because of the replacement of the Code of Civil Procedure. Later, it unsuccessfully attempted another procedure provided in the new Code, which was also rejected by the Supreme Court.

In the light of the parties' observations, the Court considers that this complaint is closely connected with the issue concerning the quashing of the 1992 judgment and should also be declared admissible.

3. Independent and impartial tribunal (Article 6 § 1 of the Convention)

The applicant complains, under Article 6 § 1 of the Convention cited above, that the Supreme Court of Justice was not independent from the executive or impartial in dealing with its case.

The Government submit that there is no reason whatsoever to doubt the independence and impartiality of the Supreme Court of Justice and its judges. It considers this case to be distinguishable from that in the judgment of *Sovtransavto Holding v. Ukraine* (no. 48553/99, ECHR 2002-VII) in that the letters on which the applicant relies did not come from any State authority but rather from a foreign authority and from a member of Parliament who had no influence on the proceedings before the Supreme Court of Justice and who only expressed his personal views.

Unlike in the *Sovtransavto Holding* case cited above, the Moldovan authorities have not addressed the Supreme Court with any requests regarding the proceedings in the present case. According to the Government, even the existence of any general remarks would not in any case lead to a violation of Article 6 in light of the Court's treatment of the Romanian President's statement in the case of *Curutiu v. Romania* (no. 29769/96, 22 October 2002).

As for the participation of judge N. on several occasions in the proceedings regarding the applicant, the Government stress that her

participation was limited to preliminary matters which did not require her to take a stance on the substance of the case.

The Government submit that according to the Court's case-law the profound knowledge of a case by a judge does not in itself raise an issue under Article 6 (*De Cubber v. Belgium*, judgment of 26 October 1984, Series A no. 86) and that the obligation to change the composition of the court each time an appeal is examined would unnecessarily prolong proceedings (*Thomann v. Switzerland*, judgment of 10 June 1996, *Reports* 1996-III).

The applicant emphasises that two of the judges of the Supreme Court (N. and S.) participated on several occasions at various stages of proceedings in the present case. It stresses that the participation of these two judges was not limited to preliminary matters but that they had to take a stance on the merits of the case.

The Court considers that the applicant has not substantiated its claim that the Supreme Court was not independent and impartial. The only evidence in support of that claim were the letters addressed to the Executive by foreign authorities and by Mr Doronin, a Member of Parliament. However, these letters were neither written by nor addressed to any judge of the Supreme Court of Justice or to the court as a whole.

While the lack of reaction by the President of Moldova to Mr Doronin's letter and a certain endorsement by the Minister of Justice of the other letter by countersigning it may, in view of the contents of those letters, give rise to doubts on the part of the applicant, there is no evidence of any influence being brought to bear by the Executive on the Supreme Court in the present case.

The Court also finds that the participation of judge N. on several occasions in the present case does not raise an issue under Article 6 § 1 of the Convention.

In all but one of the instances where she was involved the decisions taken were of a procedural nature, not requiring the judges to take a stance on the substance of the case: the freezing of property pending a decision of the court (9 April 2003), the quashing of the decision of the Supreme Court to accept the withdrawal of the annulment request made by the Prosecutor General (21 April 2003), as well as the rejection of the request for revision of the Supreme Court judgment (10 July 2003). Only the judgment of 23 April 2003 dealt with the substance of the case and those proceedings were the only ones in which judge N. expressed an opinion on the merits of the case.

It follows that this complaint must be rejected as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court

Declares admissible, by a majority, without prejudging the merits, the applicant's complaint under Article 6 § 1 and Article 1 of Protocol 1 to the Convention about the annulment of the judgment of 22-23 October 1992;

Declares inadmissible, unanimously, the applicant's complaint regarding the independence and impartiality of the Supreme Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President