



SECOND SECTION

**CASE OF CANȚER v. THE REPUBLIC OF MOLDOVA**

*(Application no. 46578/09)*

JUDGMENT

STRASBOURG

28 September 2021

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



**In the case of Canțer v. the Republic of Moldova,**

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

Carlo Ranzoni, *President*,

Valeriu Grițco,

Marko Bošnjak, *judges*,

and Hasan Bakırcı, *Deputy Section Registrar*,

Having regard to:

the application (no. 46578/09) 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 Eudochia Canțer and Mr Ion Canțer (“the applicants”), on 17 August 2009;

the decision to give notice to the Moldovan Government (“the Government”) of the complaints concerning Article 1 of Protocol No. 1 and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 7 September 2021,

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

## INTRODUCTION

1. The case concerns alleged breach of the applicants’ right to property under Article 1 of Protocol No. 1 as a result of an administrative act by which a part of their land was transferred into the ownership of a third party.

## THE FACTS

2. The applicants, who are mother and son, born in 1952 and 1973, respectively, live in Voroteț. They were represented by Mr V. Enachi, a lawyer practising in Chișinău.

3. The Government were represented by their Agent, Mr L. Apostol.

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

5. Under the 1990s land reform, the applicants acquired provisional ownership titles to 2.82 ha of arable land, which they have regularly exploited as from 1996.

6. On an unspecified date a neighbour occupied a part of their land because the local council mistakenly allotted approximately one hectare of the applicants’ land to him. The applicants initiated proceedings against the Chiperceni local council and S. seeking, *inter alia*, the correction of the errors in the ownership titles. In the course of the court proceedings, they learned that the dispute originated from the local council’s decision of 22 February 2000 which decreased their parcel of land because they

allegedly were not legally entitled to the entire surface of the plot. The applicants amended their claims and sought the annulment of the decision of 22 February 2000 and the award of 28,552 Moldovan lei (MDL) (equivalent to 1,927 euros (EUR)) in compensation for pecuniary damage, MDL 15,000 (equivalent to EUR 1,012) for non-pecuniary damage resulted from the deprivation of property since 2001, and MDL 1,388 (equivalent to EUR 94) for costs and expenses. For the calculation of the pecuniary damage, the applicants relied on the Government's official statistical data about the average harvest obtained on similar arable land in the same area for the crops they would grow in the relevant period of time.

7. On 6 June 2007 the Orhei District Court upheld the applicants' claims, annulled the local council's 2000 decision, acknowledged the applicants' ownership to the disputed one hectare of land and awarded them MDL 28,552 in compensation for lost profits and MDL 1,388 for costs and expenses. The court accepted the applicants' calculation of pecuniary damage for 2002-2006 (see paragraph 6 above). The court dismissed the applicants' claims for non-pecuniary damage, concluding that the applicants had failed to substantiate it. The local council and the applicants appealed.

8. On 14 May 2008 the Chișinău Court of Appeal quashed the judgment of 6 June 2007 and adopted a new judgment dismissing the applicants' claims as ill-founded. The applicants appealed and raised their claims for pecuniary damage to MDL 31,341 to include also the years 2007 and 2008 and for costs and expenses to MDL 5,000.

9. On 18 February 2009 the Supreme Court of Justice upheld the applicants' appeal on points of law, quashed the judgment of 14 May 2008 and delivered a new judgment. The court annulled the local council's decision of 22 February 2000 for being unlawful and acknowledged the applicants' ownership of the disputed one hectare of land. The court dismissed the applicants' claims for pecuniary damage considering that they had failed to provide sufficient evidence on their loss and disagreed their method of calculation. It held that, instead of relying on official statistical data, the applicants should have presented information on their income from the previous harvests on the very disputed plot of land. The court concluded that the acknowledgement of the applicants' ownership rights constituted just satisfaction in itself and did not make an award for non-pecuniary damage. The judgment was final.

## RELEVANT LEGAL FRAMEWORK

10. Under Article 97 of the Land Code, all damages resulting from the unlawful withdrawal of arable land shall be compensated for (including loss of profits).

## THE LAW

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

11. The applicants complained that their right guaranteed by Article 1 of Protocol No. 1 had been breached as a result of the Chiperzeni Local Council's unlawful decision of 22 February 2000.

Article 1 of Protocol No. 1 to the Convention 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.”

#### A. Admissibility

12. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

#### B. Merits

13. The applicants argued that due to the Chiperzeni Local Council's decision, which was found to be unlawful by a final judgment of the Supreme Court of Justice, they could not use one hectare of their land for some eight years and that they had not been compensated for the damage they had sustained.

14. The Government submitted that this was a fourth-instance type of complaint because the applicants were merely discontent with the solution given by the Supreme Court in respect of their just satisfaction claims. They have failed to properly substantiate their claims, and this was their own fault. Therefore, the interference was not disproportionate, and the complaint under Article 1 of Protocol No. 1 to the Convention was manifestly ill-founded.

15. The Court reiterates that a decision or measure favourable to an applicant is not in principle sufficient to deprive him or her of victim status unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III).

16. The Court notes that the Supreme Court found that the local council's decision of 22 February 2000 amounted to an unlawful interference with the applicants' right to property. The Court sees no reason to depart from the conclusion of the Supreme Court of Justice and it does not consider it necessary to re-examine the merits of this complaint.

17. Given the fact that the Supreme Court did not award any compensation to the applicants, and dismissed the applicant's method of calculation of pecuniary damage without providing sufficient and relevant reasons, the Court finds that its judgment of 18 February 2009 did not make the applicants lose their victim status and that there has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. 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**

19. The applicants claimed 2,235 euros (EUR) in respect of pecuniary damage. Relying on the information provided by the Ministry of Agriculture, they claimed that one hectare of land could bring an average profit of EUR 280 per year. They multiplied that amount by the number of years during which they did not have access to their land and obtained the amount claimed before the Court. The applicants also claimed EUR 10,000 for non-pecuniary damage.

20. The Government objected and argued that the amounts claimed were excessive.

21. The Court notes that the applicants made use of official data from the Ministry of Agriculture and does not consider unreasonable the method employed by them to calculate the pecuniary damage. Therefore, it awards the entire amount sought by the applicants for pecuniary damage. The Court also considers that the applicants must have suffered a certain amount of stress and frustration as a result of the breach of their rights. Making its assessment on an equitable basis, it awards the applicants EUR 3,000 for non-pecuniary damage.

### **B. Costs and expenses**

22. The applicants also claimed EUR 1,129 for the costs and expenses incurred before the Court.

23. The Government objected and argued that the amount claimed was excessive.

24. Regard being had to the circumstances of the case and to the documents submitted by the applicants, the Court considers it reasonable to award them the entire amount claimed for costs and expenses.

### **C. Default interest**

25. 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds*
  - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
    - (i) EUR 2,235 (two thousand two hundred and thirty-five euros), plus any tax that may be chargeable, in respect of pecuniary damage;
    - (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (iii) EUR 1,129 (one thousand one hundred and twenty-nine euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
  - (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;
4. *Dismisses*, the remainder of the applicants' claim for just satisfaction.

CANȚER v. THE REPUBLIC OF MOLDOVA JUDGMENT

Done in English, and notified in writing on 28 September 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı  
Deputy Registrar

Carlo Ranzoni  
President