



SECOND SECTION

CASE OF PRUTEAN v. THE REPUBLIC OF MOLDOVA

(Application no. 5707/15)

JUDGMENT

STRASBOURG

28 September 2021

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

In the case of Prutean 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. 5707/15) 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 a Moldovan national, Mr Lilian Prutean (“the applicant”), on 14 January 2015;

the decision to give notice to the Moldovan Government (“the Government”) of the complaint concerning Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention;

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 the reversal by the Supreme Court of two judgments in favour of the applicant which were adopted in civil proceedings by two inferior courts. The examination of the appeal on points of law by the Supreme Court of Justice took place without the participation of the parties and the Supreme Court reinterpreted the facts and the law applicable to the case.

THE FACTS

2. The applicant was born in 1975 and lives in Chișinău. He was represented by Mr V. Pelin, a lawyer practising in Chișinău.

3. The Government were represented by their Agent, Mr O. Rotari.

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

5. In 2012 the applicant initiated civil proceedings against his former business partner who had sold an apartment belonging to him allegedly without having the right to do so.

6. On 7 November 2013 the Buiucani District Court upheld the applicant’s action and ordered the annulment of the transaction concerning the sale of the applicant’s apartment. The judgment was upheld on 25 March 2014 by the Chișinău Court of Appeal.

7. On 17 September 2014 the Supreme Court of Justice upheld an appeal on points of law lodged by the defendants and quashed the inferior courts' judgments. It also re-examined the case as a court of first instance but without holding a public hearing and without inviting the parties, and, after reinterpreting the facts of the case and the witness statements, dismissed the applicant's action.

8. After the communication of the present case, the Government Agent introduced a revision request before the Supreme Court of Justice seeking the reversal of its judgment of 17 September 2014.

9. On 30 October 2019 the Supreme Court of Justice upheld the revision request, quashed its own judgment of 17 September 2014 and ordered the re-examination of the case. It also found that the proceedings before it leading to the adoption of its judgment of 17 September 2014 had been unfair and ruled that there had been a breach of the applicant's rights guaranteed by Article 6 § 1 and by Article 1 of Protocol No. 1 to the Convention due to that. The Supreme Court of Justice did not award any compensation to the applicant for the breach of his rights.

10. The re-opened proceedings are pending to date. In the meantime, the applicant's business partner who had sold his apartment in 2012 was found guilty of fraud in criminal proceedings and sentenced to imprisonment.

RELEVANT LEGAL FRAMEWORK

11. The relevant provisions of the Code of Civil Procedure as in force at the material time read as follows:

“Article 26. Adversarial character and procedural equality of participants

(1) Civil legal proceedings shall be conducted in accordance with the principles of adversarial procedure and procedural equality of participants...

...

(3) The court which examines a case shall maintain its impartiality and objectivity and shall create conditions for the parties to the proceedings to be able exercise their rights and for the objective examination of the circumstances of the case...

Article 444. The examination of the appeal on points of law

An appeal on points of law should be examined without the participation of the parties. The panel of five judges may decide to invite some of the parties or their representatives in order to decide on problems of lawfulness invoked in the appeal on points of law application.”.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL NO 1 TO THE CONVENTION

12. The applicant complained that the proceedings before the Supreme Court, which ended with the judgment of 17 September 2014, had not been fair. He relied on Article 6 § 1 of the Convention and on Article 1 of Protocol No. 1, which read as follows:

Article 6 (right to a fair hearing)

“In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing ... by [a] ... tribunal ...”

Article 1 of Protocol No. 1 (protection of property)

“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

13. The Government submitted that the matter had been resolved as a result of the acknowledgement by the Supreme Court of Justice of a breach of the applicant’s rights under Articles 6 § 1 and 1 of Protocol No. 1 to the Convention and that the applicant had therefore lost his victim status. Consequently, they asked the Court to strike the case out of its list of cases.

14. The applicant disagreed and argued that he had not lost his victim status.

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. In the instant case it is true that the Supreme Court of Justice quashed the judgment of 17 September 2014 and held that there had been a violation of the applicant’s rights guaranteed by Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention. However, it

did not award any compensation to the applicant. The Government's objection must therefore be rejected.

17. The Court further notes that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established. They must therefore be declared admissible.

B. Merits

18. The applicant argued that the proceedings before the Supreme Court had been unfair because that court had not invited the parties to participate in the proceedings and had not held a public hearing while at the same time acting as a court of first instance and examining anew the merits of the case.

19. The Government reiterated their position that the applicant had lost his victim status as a result of the adoption of the Supreme Court's judgment of 30 October 2019 and of the acknowledgement therein of the violation of his rights guaranteed by Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

20. The Court notes that the Government agree that the applicant suffered a breach of his rights under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention. Their acknowledgement is based on the finding of violations by the Supreme Court of Justice. In view of its own case-law (see, in particular, *Covalenco v. the Republic of Moldova*, no. 72164/14, 16 June 2020) the Court sees no reason to depart from the conclusion of the Supreme Court of Justice and does not consider it necessary to re-examine the merits of these complaints.

21. Given the fact that the Supreme Court did not award any compensation to the applicant, the Court finds that there has been a violation of Article 6 § 1 and of Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicant claimed 142,330 euros (EUR) in respect of pecuniary damage. He claimed that this amount represented the value of the disputed apartment and lost interest. The applicant also claimed EUR 3,500 for non-pecuniary damage.

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

25. The Court notes that the re-opened proceedings are still pending before the domestic courts. It therefore rejects the applicant's claim for pecuniary damage. However, the Court considers that the applicant must have suffered a certain amount of stress and frustration as a result of the breach of his rights. Making its assessment on an equitable basis, it awards the applicant the entire amount claimed for non-pecuniary damage.

B. Costs and expenses

26. The applicant also claimed EUR 1,500 for the costs and expenses incurred before the Court.

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

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

C. Default interest

29. 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

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 and of Article 1 of Protocol No. 1 to the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, 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 amount at a

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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 applicant's claim for just satisfaction.

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