



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

SECOND SECTION

**CASE OF PADURET v. THE REPUBLIC OF MOLDOVA AND  
RUSSIA**

*(Application no. 26626/11)*

JUDGMENT

*This version was rectified on 18 May 2017  
under Rule 81 of the Rules of Court.*

STRASBOURG

9 May 2017

*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 Paduret v. the Republic of Moldova and Russia,**

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

Işıl Karakaş, *President*,

Julia Laffranque,

Paul Lemmens,

Valeriu Griţco,

Ksenija Turković,

Dmitry Dedov,

Jon Fridrik Kjølbro, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 28 March 2017,

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

## PROCEDURE

1. The case originated in an application (no. 26626/11) against the Republic of Moldova and the Russian Federation 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 Dumitru Paduret (“the applicant”), on 6 April 2011.

2. The Moldovan Government were represented by their Agent, Mr L. Apostol, and the Russian Government were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, a breach of his right to the peaceful enjoyment of his possessions.

4. On 13 June 2014 the complaint under Article 1 of Protocol No. 1 to the Convention was communicated to the respondent Governments and the remainder of the application was declared inadmissible.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1983 and lives in Cocieri.

6. The background to the case, including the Transdnistrian armed conflict of 1991-1992 and the subsequent events, is set out in *Ilaşcu and Others v. Moldova and Russia* ([GC], no. 48787/99, §§ 28-185,

ECHR 2004-VII) and *Catan and Others v. the Republic of Moldova and Russia* ([GC], 43370/04 and 2 others, §§ 8-42, ECHR 2012 (extracts)).

7. On 22 August 2010 the applicant, who is an entrepreneur, was transporting merchandise to an agricultural market in the town of Dubasari in the self-proclaimed “Moldovan Republic of Transdnistria” (the “MRT”). He was stopped by two persons presenting themselves as customs officers of the “MRT” who seized his van and the merchandise contained therein on account of his having allegedly failed to register the vehicle. On 7 October 2010 the “MRT” customs authority issued a decision obliging the applicant to pay a fine of some 1,320 euros (EUR) in return for being able to recover his van and merchandise. The applicant paid the fine.

8. In the meantime the applicant complained to the authorities of the Republic of Moldova about the seizure of his van and merchandise. On 9 September 2010 the Dubasari prosecutor’s office initiated a criminal investigation into the facts of the case and several suspects were declared wanted. However, the investigation was suspended in 2014.

## II. RELEVANT NON-CONVENTION MATERIAL

9. On 21 July 1992 the Presidents of the Russian Federation and the Republic of Moldova signed an agreement in Moscow to put an end to the military conflict in the Transdnistrian region of Moldova. Under the agreement, a security zone was created between the conflicting parties and a Joint Control Commission (hereinafter “the JCC”) was set up to monitor the implementation of the agreement in the security zone. The JCC is composed of representatives of Russia, the Republic of Moldova, and the “MRT”. Any decisions made by the JCC must have the consent of all the parties (for more details, see *Ilaşcu and Others* (cited above, §§ 87-91).

10. Reports by inter-governmental and non-governmental organisations, the relevant domestic law and practice of the Republic of Moldova, and other pertinent documents were summarised in *Mozer v. the Republic of Moldova and Russia* ([GC], no. 11138/10, §§ 61-77, ECHR 2016).

## THE LAW

11. The applicant complained that the seizure of his van and merchandise and the imposition of a fine constituted an unlawful interference with his right to property, which is guaranteed by Article 1 of Protocol No. 1 to the Convention. Article 1 of Protocol No. 1 reads as follows:

**Article 1 of Protocol No. 1**

“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.”

**I. ADMISSIBILITY****A. Jurisdiction**

12. The Court must first determine whether the applicant falls within the jurisdiction of the respondent States for the purposes of the matters complained of, within the meaning of Article 1 of the Convention.

*1. The parties' submissions*

13. The applicant and the Moldovan Government submitted that both respondent Governments had jurisdiction.

14. For their part, the Russian Government argued that the applicant did not come within their jurisdiction and that, consequently, the application should be declared inadmissible *ratione personae* and *ratione loci* in respect of the Russian Federation. As they did in *Mozer* (cited above, §§ 92-94), the Russian Government express the view that the approach to the issue of jurisdiction taken by the Court in *Ilaşcu and Others* (cited above), *Ivanțoc and Others v. Moldova and Russia* (no. 23687/05, 15 November 2011), and *Catan and Others* (cited above) was wrong and at variance with public international law.

*2. The Court's assessment*

15. The Court observes that the general principles concerning the problem of jurisdiction under Article 1 of the Convention in respect of acts and facts occurring in the Transdniestrian region of Moldova were set out in *Ilaşcu and Others* (cited above, §§ 311-19), *Catan and Others* (cited above, §§ 103-07) and, more recently, in *Mozer* (cited above, §§ 97-98).

16. In so far as the Republic of Moldova is concerned, the Court notes that in *Ilaşcu*, *Catan* and *Mozer* it found that although Moldova had no effective control over the Transdniestrian region, it followed from the fact that Moldova was the territorial State that persons within that territory fell within its jurisdiction. However, its obligation, under Article 1 of the Convention, to secure to everyone within its jurisdiction the rights and freedoms defined in the Convention, was limited to that of taking the

diplomatic, economic, judicial and other measures that were both in its power and in accordance with international law (see *Ilaşcu and Others*, cited above, § 333; *Catan and Others*, cited above, § 109; and *Mozer*, cited above § 100). Moldova's obligations under Article 1 of the Convention were found to be positive obligations (see *Ilaşcu and Others*, cited above, §§ 322 and 330-31; *Catan and Others*, cited above, §§ 109-10; and *Mozer*, cited above, § 99).

17. The Court sees no reason to distinguish the present case from the above-mentioned cases. Besides, it notes that the Moldovan Government do not object to applying a similar approach in the present case. Therefore, it finds that Moldova has jurisdiction for the purposes of Article 1 of the Convention, but that its responsibility for the acts complained of is to be assessed in the light of the above-mentioned positive obligations (see *Ilaşcu and Others*, cited above, § 335).

18. In so far as the Russian Federation is concerned, the Court notes that in *Ilaşcu and Others* it has already found that the Russian Federation contributed both militarily and politically to the creation of a separatist regime in the region of Transdniestria in 1991-1992 (see *Ilaşcu and Others*, cited above, § 382). The Court also found in subsequent cases concerning the Transdniestrian region that up until July 2010, the "MRT" was only able to continue to exist, and to resist Moldovan and international efforts to resolve the conflict and bring democracy and the rule of law to the region, because of Russian military, economic and political support (see *Ivanțoc and Others*, cited above, §§ 116-20; *Catan and Others*, cited above, §§ 121-22; and *Mozer*, cited above, §§ 108 and 110). The Court concluded in *Mozer* that the "MRT"'s high level of dependency on Russian support provided a strong indication that the Russian Federation continued to exercise effective control and a decisive influence over the Transdniestrian authorities and that, therefore, the applicant fell within that State's jurisdiction under Article 1 of the Convention (see *Mozer*, cited above, §§ 110-11).

19. The Court considers, given the absence of any new information to the contrary, that this conclusion continues to be valid for the period under consideration, namely until 5 May 2011. The Court therefore sees no grounds on which to distinguish the present case from *Ilaşcu and Others*, *Ivanțoc and Others*, *Catan and Others*, and *Mozer* (all cited above).

20. It follows that the applicant in the present case falls within the jurisdiction of the Russian Federation under Article 1 of the Convention. Consequently, the Court dismisses the Russian Government's objections *ratione personae* and *ratione loci*.

21. The Court will hereafter determine whether there has been any violation of the applicant's rights under the Convention such as to engage the responsibility of either respondent State (see *Mozer*, cited above, § 112).

### **B. Exhaustion of domestic remedies**

22. The Moldovan Government submitted that the applicant had not exhausted the remedies available to him in Moldova.

23. The Court notes that the same objection was raised by the Moldovan Government and dismissed by the Court in *Mozer* (cited above, §§ 115-21). It sees no grounds on which to distinguish the present case from *Mozer* and therefore rejects the Moldovan Government's objection of non-exhaustion of domestic remedies on the same grounds as in that case.

### **C. Conclusion on admissibility**

24. The Court finally notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, and that it is not inadmissible on any other ground. The Court therefore declares it admissible.

## **II. MERITS**

25. The applicant complained that the seizure of his van and merchandise and the imposition of a fine on him had violated his right to the peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 to the Convention.

26. The Moldovan Government submitted that the interference with the applicant's rights had not been lawful because it had not been provided for by the domestic laws of the Republic of Moldova.

27. The Russian Government did not submit any specific observations in this regard. Their position was that they did not have "jurisdiction" in the territory of the "MRT" and that they were therefore not in a position to make any observations on the merits of the case.

28. The Court notes that the parties did not dispute the fact that the applicant's van and merchandise constituted possessions for the purposes of Article 1 of Protocol No. 1 to the Convention. It further notes that it is similarly undisputed that the van and merchandise were seized by the "MRT" authorities and that the applicant was forced to pay a fine in order to recover them. In these circumstances, the Court finds that there was a clear interference with the applicant's right to the peaceful enjoyment of his possessions for the purposes of Article 1 of Protocol No. 1. According to the Court's case-law (see among other authorities, *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 142, ECHR 2005-VI), such interference constitutes a measure of control of the use of property which falls to be examined under the second paragraph of that Article. For a measure constituting control of use to be justified, it must be lawful (see *Katsaros v. Greece*, no. 51473/99, § 43, 6 June 2002;

*Herrmann v. Germany* [GC], no. 9300/07, § 74, 26 June 2012; and *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 187, ECHR 2012) and “in accordance with the general interest”. The measure must also be proportionate to the aim pursued; however, it is only necessary to examine the proportionality of an interference once its lawfulness has been established (see *Katsaros*, cited above, § 43).

29. In so far as the lawfulness of the interference is concerned, no elements in the present case allow the Court to consider that there was a legal basis for interfering with the rights of the applicant guaranteed by Article 1 of Protocol No. 1 to the Convention.

30. In those circumstances, the Court concludes that the interference was not lawful under domestic law. Accordingly, there has been a violation of Article 1 of Protocol No. 1 to the Convention.

31. The Court must next determine whether the Republic of Moldova fulfilled its positive obligation to take appropriate and sufficient measures to secure the applicant’s rights (see paragraph 16 above). In *Mozer*, the Court held that Moldova’s positive obligations related both to measures needed to re-establish its control over the Transdniestrian territory, as an expression of its jurisdiction, and to measures to ensure respect for individual applicants’ rights (see *Mozer*, cited above, § 151).

32. As regards the first aspect of Moldova’s obligations, to re-establish control over the Transdniestrian territory, the Court found in *Mozer* that Moldova had taken all measures in its power from the onset of the hostilities in 1991-1992 until July 2010 (see *Mozer*, cited above, § 152). In the present case, the parties did not submit any argument which would indicate that the Moldovan Government had changed their position in respect of Transdniestria in the few months that followed until the decision of the “MRT” customs authority of 7 October 2010. The Court therefore sees no reason to reach a different conclusion in the present case (*ibidem*).

33. Turning to the second part of the positive obligations, namely to ensure respect for the applicant’s rights, the Court notes that the Moldovan authorities made efforts to secure these rights. In particular, a criminal investigation was initiated in respect of the seizure of the applicant’s van and merchandise (see paragraph 8 above).

34. In the light of the foregoing, the Court concludes that the Republic of Moldova fulfilled its positive obligations in respect of the applicant and finds that there has been no violation of Article 1 of Protocol No. 1 to the Convention by the Republic of Moldova.

35. In so far as the responsibility of the Russian Federation is concerned, the Court notes that there is no evidence that persons acting on behalf of the Russian Federation directly participated in the measures taken against the applicant.

36. Nevertheless, the Court has established that Russia exercised effective control over the “MRT” during the period in question (see

paragraphs 18-19 above). In the light of this conclusion, and in accordance with the Court's case-law, it is not necessary to determine whether or not Russia exercises detailed control over the policies and actions of the subordinate local administration (see *Mozer*, cited above, § 157). By virtue of its continued military, economic and political support for the "MRT", which could not otherwise survive, Russia's responsibility under the Convention is engaged as regards the violation of the applicant's rights.

37. In conclusion, and after having found that the applicant's rights guaranteed by Article 1 of Protocol No. 1 to the Convention have been breached (see paragraph 30 above), the Court holds that there has been a violation of that provision by the Russian Federation.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicant claimed 1,320 euros (EUR) in respect of pecuniary damage, representing the fine paid in order to recover his van and merchandise.

40. The Governments asked the Court to dismiss the applicant's claims.

41. The Court notes that it has not found any violation of the Convention by the Republic of Moldova in the present case. Accordingly, no award of compensation is to be made with regard to this respondent State.

42. The Court further notes that the Russian Government did not challenge the fact of the seizure or the value of the fine paid by the applicant in order to recover his van and merchandise. The Court therefore considers it reasonable to award the applicant's claim in full.

#### B. Non-pecuniary damage

43. The applicant also claimed EUR 8,000 in respect of non-pecuniary damage.

44. The Governments contended that the claims were excessive and asked the Court to dismiss them.

45. For the reasons given above (see paragraph 41), no award is to be made with regard to the Republic of Moldova.

46. Having regard to the violation by the Russian Federation found above, the Court considers that an award in respect of non-pecuniary

damage is justified in this case. Making its assessment on an equitable basis, the Court awards EUR 3,000 to the applicant, to be paid by the Russian Federation.

### **C. Costs and expenses**

47. The applicant also claimed EUR 3,600 for costs and expenses.

48. The respondent Governments considered that the sums claimed were excessive.

49. The Court notes that it has found that Moldova, having fulfilled its positive obligations, was not responsible for any violation of the Convention in the present case. Accordingly, no award of compensation for costs and expenses is to be made with regard to this respondent State.

50. The Court reiterates that in order for costs and expenses to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Mozer*, cited above, § 240). Having regard to all the relevant factors and to Rule 60 § 2 of the Rules of Court, the Court awards EUR 2,000 to the applicant for costs and expenses, to be paid by the Russian Federation.

### **D. Default interest**

51. 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*, unanimously, the application admissible in respect of the Republic of Moldova;
2. *Declares*, by a majority, the application admissible in respect of the Russian Federation;
3. *Holds*, unanimously, that there has been no violation of Article 1 of Protocol No. 1 to the Convention by the Republic of Moldova;
4. *Holds*, by six votes to one, that there has been a violation of Article 1 of Protocol No. 1 to the Convention by the Russian Federation;
5. *Holds*, by six votes to one,

(a) that the Russian Federation is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention<sup>1</sup>, the following amounts:

(i) EUR 1,320 (one thousand three hundred and twenty 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 2,000 (two thousand euros), plus any tax that may be chargeable, 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;

6. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 May 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith  
Registrar

Işıl Karakaş  
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Dedov is annexed to this judgment.

A.I.K.  
S.H.N.

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1. Rectified on 18 May 2017: the text was “(a) that the Russian Federation is to pay the applicant, within three months [...]”

## DISSENTING OPINION OF JUDGE DEDOV

My vote in the present case was based on my previous dissenting opinion in the case of *Mozer v. the Republic of Moldova and Russia* ([GC], no. 11138/10, ECHR 2016) on the issue of the Russian Federation's effective control over Transdnistria.