



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

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14 May 2009

FOURTH SECTION

Application no. 12875/04
by Gheorghe GRUȘCĂ
against Moldova
lodged on 26 November 2003

STATEMENT OF FACTS

THE FACTS

The applicant, Mr Gheorghe Grușcă, is a Moldovan national who was born in 1942 and lives in Cimișeni. He is represented before the Court by Mr I. Manole, a lawyer practising in Chișinău.

A. The circumstances of the case

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

On 25 December 1996 the Criuleni District Court imposed on the applicant a fine of ten times the minimum monthly wage (180 Moldovan lei (MDL)). The reason was that while transporting twelve passengers he failed to display a “licence card” (“*fișa de licență*”) (an annex to the general business licence, the possession of which, according to paragraphs 5 and 6 of the Transport Industry Branch Regulation of 5 March 1996 (“the Regulation”), was compulsory for carrier services). The failure to show the licence card at roadside checks by State authorities was subject to fines according to the Code of Administrative Offences.

In 1997 the applicant set up a private company providing bus passenger services.

On 30 September 1997 the Transport Inspectorate of the Ministry of Transport and Road Administration (“the Inspectorate”) drew up a report

concerning alleged irregularities in the services offered by the applicant. It subsequently withdrew the applicant's licence card for an undetermined period, although it appears that such a sanction was not provided by the national legislation at the material time. The applicant unsuccessfully challenged that decision before the Ministry of Transport, the hierarchically superior authority of the Inspectorate.

1) The proceedings concerning the lawfulness of the licence card withdrawal and the proceedings instituted by the Prosecutor's Office seeking the annulment of paragraphs 5 and 6 of the Transport Industry Branch Regulation of 5 March 1996

On 14 April 1998 the applicant instituted court proceedings against the Inspectorate, seeking the annulment of the report of 30 September 1997 as well as of the withdrawal of his licence. He complained to the Prosecutor's Office.

On 31 July 1998 the Prosecutor's Office instituted court proceedings at the applicant's request seeking the annulment of the above-mentioned paragraphs 5 and 6 of the Regulation.

On 18 September 1998 the Economic Court of the Republic of Moldova declared those provisions null and void as being contrary to several provisions of the national legislation. This judgment was upheld by the Cassation Appeal Chamber of the Economic Court of the Republic of Moldova on 9 February 1999.

On 8 October 1998 the Chişinău Economic Court declared null and void the report of 30 September 1997, ordered the Inspectorate to return the licence card to the applicant and to extend the validity of the applicant's general business licence by seven months and seventeen days from the date of the delivery of the judgment.

On 9 February 1999 the Inspectorate lodged an appeal against this judgment.

On 13 April 1999 the Cassation Appeal Chamber of the Economic Court of the Republic of Moldova upheld the part of the judgment declaring the report of 30 September 1997 null and void. However, finding that the condition requiring a licence card to be obtained in addition to the general business licence was unlawful (as it ruled on 9 February 1999), it annulled the part of the judgment which ordered the return of the licence card to the applicant. It found that the Inspectorate had not withdrawn the general business licence and that therefore there were no reasons for the extension of the validity of the applicant's general licence.

2) The proceedings concerning the award of pecuniary damages

a) Before the annulment of the judgment of 7 December 1998

On 5 November 1998 the applicant instituted court proceedings against the Inspectorate, claiming compensation for pecuniary damage on account of the period of involuntary inactivity during which he had been unlawfully deprived of his licence card.

On 7 December 1998 the Chişinău District Economic Court awarded the applicant MDL 97,200 (7,632 euros (EUR) at the time). This decision

became final on 22 December 1998 and an enforcement warrant was issued on the same date.

On 28 December 1998 the Inspectorate asked for the annulment of that judgment (“*contestația in anulare*”), relying on the fact that it had not been properly summoned to the hearing on 7 December 1998. On 29 December 1998 the President of the Chișinău District Economic Court suspended the enforcement of the warrant issued on 22 December 1998.

On 16 January 1999 the Inspectorate lodged an ordinary appeal against the judgment of 7 December 1998.

On 3 February 1999 the District Economic Court rejected the Inspectorate’s request for annulment, finding that the Inspectorate had been properly summoned to the hearing held on 7 December 1998. The stay in the enforcement ordered on 29 December 1998 was lifted and the sum of MDL 97,200 was transferred to the applicant’s bank account on 10 March 1999.

On 2 March 1999 the Court of Appeal left the Inspectorate’s appeal unexamined, since the latter had failed to observe the formal requirements and to pay court fees.

On 9 March 1999 the Inspectorate again lodged an appeal without paying court fees. It also asked for the attachment of the applicant’s bank account. On 11 March 1999, the Appeal Chamber of the Economic Court ordered the attachment of the applicant’s bank account.

On 26 March 1999 the Appeals Chamber of the Economic Court forwarded the request for annulment lodged on 28 December 1998 to the Cassation Appeal Chamber of the Economic Court.

On 13 April 1999 the Cassation Appeal Chamber examined the Inspectorate’s appeal against the decision of 3 February 1999, which rejected its request for annulment, and the applicant’s appeal against the court order of 11 March 1999 concerning the order of attachment of the applicant’s bank account. The Cassation Appeal Chamber quashed the decision of 3 February 1999, holding that the Inspectorate had not been properly summoned and that it could not attend the hearing of 7 December 1998. Thus, the fifteen-day time-limit for lodging an appeal against this decision began to run not from the date of its delivery, but from the date on which a copy of it had been handed to the Inspectorate, which was 28 December 1998. Since the Inspectorate had lodged its request for annulment on 28 December 1998, the request was to be dealt with like an ordinary appeal by the Appeals Chamber of the Economic Court. The court went on to examine the appeal. It partially accepted the applicant’s claim concerning the attachment of his bank account, limiting the scope of that measure to the sum of MDL 97,200.

On 24 May 1999 the Appeals Chamber accepted the ordinary appeal lodged by the Inspectorate and quashed the decision of 7 December 1998, ordering a re-examination of the merits.

b) Proceedings after the annulment of the judgment of 7 December 1998

On 14 July 1999, after a re-examination of the merits, the Economic District Court ruled in the applicant’s favour but reduced the award to MDL 42,730 in damages.

In an additional decision of 15 July 1999, the court ordered the applicant's bank to transfer MDL 54,470, representing the difference between the previous award (MDL 97,200) and the new one to the Inspectorate's bank account.

This judgment was challenged by both parties. The Inspectorate's appeal was returned since it had not paid the court fees. The applicant's appeal was allowed and on 17 March 2000 the Appeals Chamber ordered a second re-examination of the case. In the meantime, the award of 14 July 1999 was fully enforced.

On 14 July 2000 the Economic District Court ruled in the applicant's favour but further reduced the award of damages to MDL 38,064. It did not specify whether the sum had to be deducted from the amount of MDL 42,730, already paid to the applicant, or whether it had to be paid to the applicant in addition to the previous award. An enforcement warrant was issued and enforced. Thus, the applicant received a total amount of MDL 80,764 on the basis of the award of 14 July 1999 and of 14 July 2000. On 29 November 2000 the Appeals Chamber upheld the decision of 14 July 2000.

The Inspectorate appealed. On 28 February 2001 the Supreme Court of Justice quashed the decisions of 29 November 2000 and 14 July 2000 and ordered a third re-examination of the case.

On 11 December 2002 the Economic District Court partly ruled in the applicant's favour, but further reduced the amount of pecuniary damage suffered by the applicant, ordering the Inspectorate to pay the applicant the sum of MDL 30,241. It also ordered the applicant to reimburse the sum of MDL 80,764, which represented the amount already enforced according to the court orders adopted earlier. On 29 May 2003 the Appeals Chamber of the Economic Court of the Republic of Moldova left the applicant's appeal without examination, since he had stated that he could not pay the court fees (MDL 4,680 (EUR 282)).

The applicant did not challenge this decision, since he was undergoing treatment as an in-patient between 12 June and 15 July 2003.

At the Inspectorate's request, on 14 July 2003 the Economic District Court modified the manner of enforcement of the judgment of 11 December 2002, deducting the sum owed to the applicant from the sum owed to the Inspectorate. Accordingly, it ordered the applicant to transfer MDL 50,523 to the Inspectorate's account. An enforcement warrant was issued on the same date.

On 17 July 2003 the applicant lodged an appeal in cassation with the Supreme Court of Justice against the decision of 29 May 2003, referring to his illness as the reason for having missed the time-limit and requesting a waiver of the court fees. He argued that from the money he had received after the enforcement of the judgments in his favour he had to pay approximately MDL 6,000 to cover a judgment debt to his ex-employee, and that he had used the remainder of the money to pay his other debts, as well as for his medical treatment.

On 28 July 2003 the Economic Chamber of the Supreme Court of Justice informed the applicant that his appeal in cassation had been left without examination for failure to pay the court fees required by the Appeals

Chamber. He was not entitled to lodge an appeal in cassation, since the Appeals Chamber had not examined the merits of the case.

The applicant informed the Court on 28 June 2008 that his company had been declared insolvent and that his health was rapidly deteriorating.

COMPLAINTS

1. The applicant complains under Article 6 § 1 of the Convention that the proceedings lasted an excessively long time and that his right of access to justice was violated.
2. He complains that the domestic courts accepted the Inspectorate's appeal of 9 March 1999 against the decision of 3 February 1999, although it was lodged out of time and without paying court fees.
3. The applicant alleges in substance a violation of his right of access to court as guaranteed by Article 6 of the Convention, as a result of the domestic courts' refusal to exempt him from payment of court fees.
4. Finally, he also complains that it was impossible to carry out his business activity over a period of more than six years and alleges a violation of Article 1 of Protocol No.1 to the Convention.

QUESTIONS TO THE PARTIES

1. Was the length of the civil proceedings in the present case in breach of the "reasonable time" requirement of Article 6 § 1 of the Convention?
2. Was the domestic courts' refusal to examine the applicant's appeal on account of his failure the payment of court fees in breach of the requirements of Article 6 § 1 of the Convention?
3. Does the domestic legislation provide for an exemption in favour of the Transport Inspectorate from paying court fees in relation to court proceedings in which it is involved? Did the domestic courts' examination of the case, after it had rejected the Inspectorate's appeal on the ground that it had failed to pay court fees, disclose a violation of Article 6 § 1 of the Convention?
4. Has there been an interference with the applicant's right to peaceful enjoyment of possessions, within the meaning of Article 1 of Protocol No.1? In particular, did the law at the relevant time provide for the withdrawal of a licence card by way of sanction?