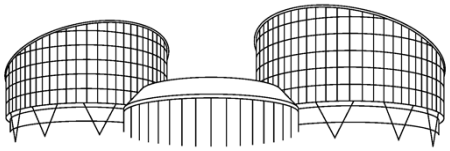

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF COŢOFAN v. THE REPUBLIC OF MOLDOVA AND RUSSIA

(Application no. 5659/07)

JUDGMENT

STRASBOURG

18 June 2019

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

In the case of Coţofan v. the Republic of Moldova and Russia,

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

Julia Laffranque, *President,*
Ivana Jelić,
Arnfinn Bårdsen, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 28 May 2019,

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

PROCEDURE

1. The case originated in an application (no. 5659/07) 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 Iurie Coţofan ("the applicant"), on 16 January 2007.

2. The applicant was represented by Mr I. Manole, a lawyer practising in Chişinău. The Moldovan Government ("the Government") were represented by their Agent at the time, Mr M. Gurin, 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 14 September 2015 the complaints under Article 13 and under Article 1 of Protocol No. 1 to the Convention were communicated to the respondent Governments and the remainder of the application was declared inadmissible.

5. The Russian Government objected to the examination of the application by a Committee. After having considered the objection, the Court rejects it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1961 and lives in Corjova.

7. He had his car registered with the authorities of the Republic of Moldova and had Moldovan registration plates installed on it.

8. On 16 December 2006 a customs officer of the self-proclaimed "Moldovan Republic of Transdniestria" ("MRT") stopped the applicant at a check-point and seized his car on the ground that upon entry on the territory of Transdniestria he had failed to stop at the border. He was later obliged to pay a fine of 58 United States dollars in order to recover the car.

9. On 19 December 2006 the applicant's driving licence was seized on the ground that he had failed to comply with traffic rules. His car was also seized, on the ground of his failure to comply with customs regulations, but the seizure report was destroyed and he was able to recover his car five hours later after the intervention of a group of Russian peacekeepers. His driving licence was not returned and he was issued a temporary driving licence.

10. According to the applicant, he complained to the authorities of Moldova, but they informed him that there was nothing they could help him with. The Moldovan Government disputed the fact that the applicant had informed them about the circumstances of the present case.

II. RELEVANT NON-CONVENTION MATERIAL

11. 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, 23 February 2016).

THE LAW

I. JURISDICTION

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

A. 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 expressed the view that the approach to the issue of jurisdiction taken by the Court in *Ilaşcu and Others v. Moldova and Russia*

([GC], no. 48787/99, ECHR 2004-VII), *Catan and Others v. the Republic of Moldova and Russia* ([GC], nos. 43370/04, 8252/05 and 18454/06, ECHR 2012, and *Ivanţoc and Others v. Moldova and Russia* (no. 23687/05, 15 November 2011) was wrong and at variance with public international law.

B. The Court's assessment

15. The Court recalls that the general principles concerning the issue 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, *Mozer* (cited above, §§ 97-98).

16. In so far as the Republic of Moldova is concerned, the Court notes that in *Ilaşcu and Others, Catan and Others* 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 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 *Ivanţoc 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 sees no grounds on which to distinguish the present case from *Ilaşcu and Others*, *Ivanţoc and Others, Catan and Others* and *Mozer* (all cited above).

20. It follows that the applicant in the present case fell 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).

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

22. The applicant complained that the seizure of his car and the imposition of a fine on him had 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."

A. Admissibility

23. The Court 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.

B. Merits

24. The applicant complained that the seizure of his car 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.

25. 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.

26. 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.

27. The Court notes that the parties did not dispute the fact that the applicant's car constituted a possession for the purposes of Article 1 of Protocol No. 1 to the Convention. It further notes that it is similarly undisputed that the car was seized by the "MRT" authorities on 16 December 2006 and that the applicant was forced to pay a fine in order to recover it. 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 to the Convention. 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; *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).

28. 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 (see *Turturica and Casian v. the Republic of Moldova and Russia*, nos. 28648/06 and 18832/07, § 49, 30 August 2016; and *Paduret v. the Republic of Moldova and Russia*, no. 26626/11, § 29, 9 May 2017).

29. 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.

30. 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).

31. As regards the first aspect of Moldova's obligations, to re-establish control, the Court found in *Mozer* that, from the onset of the hostilities in 1991-1992 until July 2010 Moldova had taken all the measures in its power (see *Mozer*, cited above, § 152). Since the events complained of in the present case took place before the latter date, the Court sees no reason to reach a different conclusion (*ibidem*).

32. Turning to the second part of the positive obligations, namely to ensure respect for the applicant's rights, the Court notes that the applicant adduced no evidence to the effect that he had informed the Moldovan authorities of his problem. In such circumstances, the non-involvement of the Moldovan authorities in the case of the applicant cannot be held against them.

33. In the light of the foregoing, the Court concludes that the Republic of Moldova did not fail to fulfil its positive obligations in respect of the applicant. There has therefore been no violation of Article 1 of Protocol No. 1 to the Convention by the Republic of Moldova.

34. In so far as the responsibility of the Russian Federation is concerned, 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 its case-law, it is not necessary to determine whether or not Russia exercised 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.

35. 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 29 above), the Court holds that there has been a violation of that provision by the Russian Federation.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

36. The applicant furthermore complained that he had no effective remedy in respect of his complaint under Article 1 of Protocol No. 1 to the

Convention. He relied on Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

37. The Court notes that the complaint under Article 13 of the Convention, taken in conjunction with Article 1 of Protocol No. 1 to the Convention, is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

38. The applicant submitted that he had had no means of asserting his rights in the face of the actions of the "MRT" authorities.

39. The respondent Governments did not make any submissions on the merits of this complaint.

40. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy by which to complain of a breach of the Convention rights and freedoms. Therefore, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision, there must be a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief. The scope of the obligation under Article 13 of the Convention varies depending on the nature of the applicant's complaint under the Convention, but the remedy must in any event be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the State (*Mozer*, cited above, § 207; and *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 268, 15 December 2016; and *De Tommaso v. Italy* [GC], no. 43395/09, § 179, 23 February 2017). However, Article 13 of the Convention requires that a remedy be available in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (*Mozer*, cited above, § 207; and *De Tommaso*, cited above, § 180).

41. The Court observes that the applicant's complaint under Article 1 of Protocol No.1 to the Convention was arguable.

42. In so far as the applicant complained against Moldova, the Court notes that the Moldovan Government did not point to the existence of any effective remedy under Moldovan domestic law.

43. In so far as the applicant complained against Russia, the Court also notes that there is no indication in the file, and the Russian Government have not claimed, that any effective remedies were available to the applicant in the "MRT" in respect of the above-mentioned complaints.

44. The Court therefore concludes that the applicant did not have an effective remedy in respect of his complaint under Article 1 of Protocol No. 1 to the Convention. Consequently, the Court must decide whether any violation of Article 13 of the Convention can be attributed to either of the respondent States.

45. In so far as the responsibility of Moldova is concerned, the Court recalls that it found that the "remedies" which this State must offer to applicants consisted of enabling them to inform the Moldovan authorities of the details of their situation and to be kept informed of the various legal and diplomatic actions taken by these authorities (*Mozer*, cited above, § 214). In *Mozer*, it concluded among other things that Moldova had made procedures available to the applicant commensurate with its limited ability to protect the applicant's rights and that it had thus fulfilled its positive obligations (*ibid.*, § 216). In the present case, the Court sees no reason to reach a different conclusion (see *Mangîr and Others v. the Republic of Moldova and Russia*, no. 50157/06, § 71, 17 July 2018). Accordingly, it finds that there has been no violation of Article 13 of the Convention by Moldova.

46. In so far as the responsibility of the Russian Federation is concerned, for the same reasons as those given in respect of the complaint under Article 1 of Protocol No. 1 to the Convention (see paragraph 35 above) and in the absence of any submission by the Russian Government as to any remedies available to the applicants, the Court concludes that there has been a violation by the Russian Federation of Article 13 of the Convention, taken in conjunction with Article 1 of Protocol No. 1 to the Convention (see *Mozer*, cited above, § 218; and *Mangîr and Others*, cited above, § 72).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant claimed 44 euros (EUR) in respect of pecuniary damage, representing the fine paid to the "MRT" authorities.

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

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

51. The Court further notes that the Russian Government did not challenge the value of the fine paid by the applicant. The Court therefore considers it reasonable to award the applicant's claim in full.

B. Non-pecuniary damage

52. The applicant also claimed EUR 4,000 in respect of non-pecuniary damage.

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

54. For the reasons given above (see paragraph 50), no award is to be made with regard to the Republic of Moldova.

55. Having regard to its finding of a violation of the applicant's rights by the Russian Federation, 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.

C. Costs and expenses

56. The applicant also claimed EUR 3,000 for costs and expenses.

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

58. 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.

59. 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

60. 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 in respect of the Republic of Moldova;

2. *Declares* the application admissible in respect of the Russian Federation;

3. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention by the Republic of Moldova;

4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention by the Russian Federation;

5. *Holds* that there has been no violation of Article 13 of the Convention by the Republic of Moldova;

6. *Holds* that there has been a violation of Article 13 of the Convention by the Russian Federation;

7. *Holds*
   (a) that the Russian Federation is to pay the applicant, within three months, the following amounts:
      (i) EUR 44 (forty-four 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;

8. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 June 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Julia Laffranque
Deputy Registrar	President