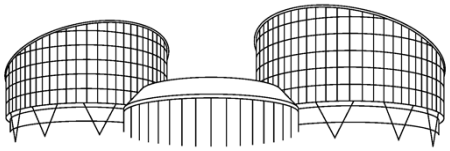

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF SOBCO AND GHENT v. THE REPUBLIC OF MOLDOVA AND RUSSIA

(Applications nos. 3060/07 and 45533/09)

JUDGMENT

STRASBOURG

18 June 2019

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

In the case of Sobco and Ghent 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 two applications (nos. 3060/07 and 45533/09) 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 and a Russian national, Mr Serghei Sobco and Mr Serghei Ghent ("the applicants"), on 15 December 2006 and 19 August 2009 respectively.

2. The applicants were represented by Mr P. Postică and Mr A. Postică, lawyers practising in Chişinău. The Moldovan Government were represented by their Agent at the time, 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 applicants complained that they had been denied a fair trial by a court which had not qualified as a tribunal within the meaning of Article 6 § 1 of the Contention.

4. On 6 and 20 June 2014 notice of the complaints concerning fairness of civil proceedings was given to the Government and the remainder of application no. 45533/09 was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

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 applicants were born in 1969 and 1955 and live in Slobozia and Tiraspol, respectively.

7. In 2005 they were both dismissed from employment. They initiated reinstatement proceedings against their employers before the courts of the self-proclaimed "Moldovan Republic of Transdniestria" ("MRT").

8. The proceedings ended with the final judgments of the Supreme Court of the "MRT" of 15 June 2006 and 19 February 2009 by which the applicants' actions were dismissed.

II. RELEVANT NON-CONVENTION MATERIAL

9. 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. JOINDER OF APPLICATIONS

10. The Court notes that the subject matter of the applications (nos. 3060/07 and 45533/09) is similar. It is therefore appropriate to join the cases, in application of Rule 42 of the Rules of Court.

II. JURISDICTION

11. The Court must first determine whether the applicants 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

12. The applicants and the Moldovan Government submitted that both respondent Governments had jurisdiction.

13. For their part, the Russian Government argued that the applicants did not come within their jurisdiction and that, consequently, the applications should be declared inadmissible *ratione personae* and *ratione loci* in respect

of the Russian Federation. As they did in *Mozer*, cited above, no. 11138/10, §§ 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); *Ivanţoc and Others v. Moldova and Russia* (no. 23687/05, 15 November 2011) and *Catan and Others v. the Republic of Moldova and Russia* ([GC], nos. 43370/04 and 2 others, ECHR 2012 (extracts)) was wrong and at variance with public international law.

B. The Court's assessment

14. 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).

15. 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).

16. 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).

17. 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).

18. The Court sees no grounds on which to distinguish the present cases from *Ilaşcu and Others*, *Ivanţoc and Others*, *Catan and Others*, and *Mozer* (all cited above).

19. It follows that the applicants in the present cases 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*.

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

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

21. The applicants complained that there had been a violation of Article 6 § 1 since their cases had been determined by courts that could not qualify as "independent tribunals established by law" and that moreover those tribunals had not afforded them a fair trial. The relevant parts of Article 6 of the Convention read as follows:

Article 6

"1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

22. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other ground. The Court therefore declares it admissible.

B. Merits

23. The applicants argued that the "MRT" courts that had decided their cases could not be considered as "independent tribunals established by law"

within the meaning of Article 6 § 1. The second applicant also argued that one of the judges of the Supreme Court examined his appeal on points of law three times following repeated quashing and re-examinations by the lower courts. He also submitted that he could not have access to the materials of the case-file.

24. The Moldovan Government submitted that the "MRT" courts could not be considered "tribunals established by law" for the purposes of Article 6 of the Convention and that, therefore there had been a breach of the applicants' rights guaranteed by the aforementioned provision. However, that breach was not attributable to the Republic of Moldova.

25. The Russian Government did not make any submissions on the merits of this complaint.

26. The Court reiterates that in certain circumstances, a court belonging to the judicial system of an entity not recognised under international law may be regarded as a "tribunal established by law" provided that it forms part of a judicial system operating on a "constitutional and legal basis" reflecting a judicial tradition compatible with the Convention, in order to enable individuals to enjoy the Convention guarantees (see *Ilaşcu and Others*, cited above, § 460). It further recalls that in *Mozer* it held that the judicial system of the "MRT" was not a system reflecting a judicial tradition compatible with the Convention (see *Mozer*, cited above, §§ 148-49).

27. In the absence of any new and pertinent information proving the contrary, the Court considers that the conclusion reached in *Mozer* is valid in the present case too and that the "MRT" courts could not qualify as a "tribunal established by law" for the purposes of Article 6 § 1 of the Convention (see *Vardanean v. the Republic of Moldova and Russia*, no. 22200/10, § 39, 30 May 2017 and *Apcov v. the Republic of Moldova and Russia*, no. 13463/07, § 57, 30 May 2017). The Court therefore considers that there has been a breach of Article 6 § 1 of the Convention in the present case.

28. The Court must next determine whether the Republic of Moldova fulfilled its positive obligation to take appropriate and sufficient measures to secure the applicants' rights (see paragraph 15 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).

29. As regards the first aspect of Moldova's obligation, 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 cases took place before the latter date, the Court sees no reason to reach a different conclusion (*ibid.*).

30. Turning to the second part of the positive obligations, namely to ensure respect for the applicants' rights, the Court notes that the applicants adduced no evidence to the effect that they had informed the Moldovan authorities of their problem. In such circumstances, the non-involvement of the Moldovan authorities in the respective cases of the applicants cannot be held against them.

31. 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 applicants. There has therefore been no violation of Article 6 § 1 of the Convention by the Republic of Moldova.

32. 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 17-18 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 applicants' rights.

33. In conclusion, and after having found that the applicants' rights guaranteed by Article 6 § 1 have been breached (see paragraph 27 above), the Court holds that there has been a violation of that provision by the Russian Federation.

34. In view of the above, the Court does not consider it necessary to examine separately any other issues under Article 6 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 6 OF THE CONVENTION

35. The first applicant also complained that he had no effective remedy in respect of his complaint under Article 6 of the Convention.

36. Having regard to its findings under Article 6 § 1 of the Convention (see paragraphs 31 and 33 above), the Court considers that it is not necessary to examine whether there has been a violation of Article 13 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicants claimed 4,000 euros (EUR) and EUR 8,000, respectively, in respect of non-pecuniary damage.

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

40. 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.

41. Having regard to its finding of a violation by the Russian Federation of the applicants' rights, 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 each applicant.

B. Costs and expenses

42. The applicants also claimed EUR 1,200 and EUR 3,120, respectively, for the costs and expenses incurred by them.

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

44. 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.

45. 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 1,200 to each applicant for costs and expenses, to be paid by the Russian Federation.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the application admissible in respect of the Republic of Moldova;

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

4. *Holds* that there has been no violation of Article 6 § 1 of the Convention by the Republic of Moldova;

5. *Holds* that there has been a violation of Article 6 § 1 of the Convention by the Russian Federation;

6. *Holds* that it is not necessary to examine separately the first applicant's complaint under Article 13 of the Convention;

7. *Holds*
(a) that the Russian Federation is to pay the applicants, within three months, the following amounts:
(i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to each applicant;
(ii) EUR 1,200 (one thousand two hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to each applicant;
(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 applicants' 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