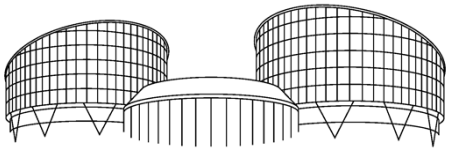

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF DELI v. THE REPUBLIC OF MOLDOVA

(Application no. 42010/06)

JUDGMENT

Art 6 § 1 • Impartial tribunal • Applicant fined for contempt of court by the same judge before whom the contempt had taken place • Domestic courts' failure to examine allegations of bias • Fair hearing • Failure to properly summon the applicant to court hearing

STRASBOURG

22 October 2019

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 Deli v. the Republic of Moldova,

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

Robert Spano, *President,*
Marko Bošnjak,
Valeriu Griţco,
Egidijus Kūris,
Ivana Jelić,
Arnfinn Bårdsen,
Darian Pavli, *judges,*

and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 17 September 2019,

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

PROCEDURE

1. The case originated in an application (no. 42010/06) 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 Teodor Deli ("the applicant"), on 29 August 2006.

2. The Moldovan Government ("the Government") were represented by their Agent at the relevant time, Mr V. Grosu.

3. The applicant alleged, in particular, that the judge who had convicted him of contempt of court had lacked impartiality. He also complained that the Chișinău Court of Appeal had not properly summoned him.

4. On 8 December 2008 notice of the application was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1960 and lives in Chișinău.

6. The applicant represented a party (X.) in civil court proceedings before the Ciocana District Court against another party (Y.). The hearing of 15 June 2006 was held before a single judge, B. According to the applicant, at a certain point during the hearing he objected to the judge acting in an intimidating manner towards X. In response, the judge threatened to have the applicant thrown out of court or even jailed.

7. When, allegedly as a result of this behaviour, the applicant requested the recusal of the judge (*recuzare*), the judge dictated the following text to the court assistant, which was recorded in the minutes of the hearing:

"During the examination of the claimant, his representative [the applicant] was cautioned for inappropriate behaviour at the hearing, manifested as disrespectful remarks addressed to the defendant's representative, M.

Repeatedly during the examination of the claimant, his representative [the applicant] was cautioned for inappropriate behaviour at the hearing, manifested as disturbing order in the court by using unacceptable words and failing to heed warnings by the President of the Court.

Taking into account the above the court decides:

Under Article 200/7 of the Code of Administrative Proceedings of the Republic of Moldova, [the applicant] is fined the amount of ten conventional units, which represent 200 [Moldovan] lei [MDL, the equivalent of 12 euros at the time] for showing disrespect towards the court by disturbing order in the court hearing, by using expressions unacceptable in court proceedings, by shouting and by failing to heed warnings issued by the President of the Court.

A cassation appeal against this decision may be lodged with the Chişinău Court of Appeal within 10 days, through the Ciocana District Court in Chişinău."

8. According to the applicant, he had persisted in challenging the judge, following which the proceedings had been suspended and the matter had been put before another judge. It had been alleged in the request for recusal that after Y. had asked X. the same question five times, X. had noted that he had already answered the question. The judge had then insisted, in a raised voice, that X. answer the question. In reaction to this, the applicant had objected to his client being harassed. The judge had responded that X. was not being harassed, but the applicant was being warned against misbehaving in court. Thereafter Y. had asked the same question again and the judge had shouted at X. for not answering. In response, the applicant had requested the recusal of the judge, and had asked that the complaint be reflected in the minutes of the hearing. The judge had then decided to sanction the applicant for contempt of court. The applicant had added in his request, which was supported by his client, that Judge B. had shown a biased and hostile attitude towards both of them, while favouring Y.

9. On 15 June 2006 the judge examining the applicant's request for the recusal of Judge B. rejected it, finding that the grounds relied on did not correspond to any grounds for challenging a judge under Article 50 of the Code of Civil Procedure ("the CCP", see paragraph 16 below). Thereafter, the proceedings in the civil case continued.

10. According to the Government, following the applicant's repeated improper behaviour in court by using offensive language towards the other party's representative, the applicant had been warned by the judge and then found in contempt of court, with the decision taken having been noted in the minutes of the hearing (see paragraph 7 above).

11. On 19 June 2006 the applicant asked for a copy of the minutes of the hearing. On 23 June 2006 he submitted his objections to the minutes of the hearing to the Ciocana District Court. He noted the absence of any record in the minutes of his request that the judge not shout at his client and not

intimidate him, since his client had already answered the other party's question, which had been asked five times in a row. Instead, the minutes noted that the applicant had initially been cautioned, which had not happened in reality. The minutes had not recorded the applicant's repeated request for the recusal of the judge as a result of the latter's further intimidation of the applicant's client, or the resulting threats made to the applicant by the judge. Finally, he objected that the decision to fine him, as noted in the minutes, had never been delivered publicly, but had simply been dictated to the court assistant as a response to legitimate complaints made by him. The applicant's client subscribed to these objections.

12. The applicant submitted that he had never received a reply to these objections and had not seen any decision by the court in that respect.

13. Also on 23 June 2006 the applicant lodged a cassation appeal with the Ciocana District Court, which the court forwarded to the Chişinău Court of Appeal, in accordance with the law. According to the applicant, the court did not annex his objections to the minutes of the hearing, or any response thereto, to the case file, as required by law. In his appeal the applicant noted that he had not received a copy of the decision sanctioning him on 15 June 2006. He argued, *inter alia*, that the decision had breached the provisions of Article 265[1] of the Code of Administrative Offences and of Article 6 of the Convention.

14. On 6 July 2006 the Chişinău Court of Appeal rejected the applicant's cassation appeal. In its judgment, the court reiterated the content of the lower court's decision and noted that the applicant had been summoned to the hearing. Without giving any other details, the court decided to uphold the lower court's decision. That decision was final.

15. On 11 October 2006, while the civil case between X. and Y. in which the applicant was representing X. (see paragraph 6 above) was still pending before the Ciocana District Court, the parties concluded an agreement settling the case. The court confirmed the settlement on 25 December 2006.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. The relevant provisions of the Code of Civil Procedure, as in force at the relevant time, read:

Article 50. Grounds for requesting recusal of a judge

"1. The judge in charge of the case shall be recused if:

(a) at an earlier examination of the case he or she participated as a witness, expert, specialist, interpreter, court assistant or bailiff;

(b) he or she is a relative ... of one of the parties or other participants in the proceedings;

(c) the judge, his or her spouse or relatives up to the third degree are a party to proceedings similar to the one under examination or to proceedings in the same court in which one of the parties is a judge;

(d) he or she is the tutor, guardian or adoptive parent of one of the parties;

(e) he or she has already expressed an opinion regarding the case under examination;

(f) there has been a criminal case between him or her and one of the parties in the five years before the recusal;

(g) he or she has a personal interest, direct or indirect, in the outcome of the case or there are other circumstances which give rise to doubts as to his or her objectivity and impartiality.

..."

Article 196. Measures to be taken against persons disturbing order during a court hearing

"1. A person who disturbs order during a court hearing shall be cautioned, in the name of the court, by the judge presiding at the hearing.

2. If a participant in the proceedings or his or her representative repeatedly disturbs order during a court hearing, having already been cautioned, he or she, or his or her representative, may be removed from the courtroom by a court decision either for the entire period of the hearing or for a part thereof. In the latter case, after such persons return to the courtroom, the presiding judge shall inform them of the procedural acts that have taken place in their absence.

3. For a second disturbance of order during a court hearing, a person who is present at the hearing shall be removed from the courtroom by a decision of the presiding judge. The court shall also have the power to impose a fine of up to 10 conventional units on a person found guilty of disturbing order during a court hearing.

4. If the actions of a person who disturbs order during a court hearing include the elements of a crime, the court shall forward the relevant materials to the relevant prosecutor to enable criminal proceedings to be initiated.

..."

Article 274. Contents of the minutes of the court hearing

"...

2. The minutes of the court hearing shall include:

...

(f) decisions by the president of the hearing and any decisions of the court delivered without retiring to the deliberations room;

(g) declarations, requests and explanations of the participants in the hearing and of their representatives;

...

(k) the content of oral submissions;

...

(m) the court's explanation to the participants in the hearing of their right to read the contents of the minutes of the court hearing and to comment on the minutes;

..."

Article 276. Examination of the comments on the minutes of the court hearing

"The judge who signed the minutes of the court hearing shall examine any comments on them within five days of receiving such comments. If the judge agrees with the comments, he or she shall confirm them by noting 'I agree' and signing. If not, the judge shall deliver a reasoned decision rejecting the comments as a whole or in part. In all cases the comments on the minutes of the court hearing shall be annexed to the file."

Article 398. The persons who have the right to lodge an appeal in cassation

"The following shall have the right to lodge an appeal in cassation:

(a) The parties and other participants in the proceedings;

(b) witnesses, experts, specialists, interpreters and representatives, in respect of compensation for legal costs owed to them."

17. The relevant provisions of the Code of Administrative Offences, as in force at the relevant time, read:

Article 200[7]. Contempt of the court *(Manifestarea lipsei de respect faţă de judecată)*

"Lack of consideration for the court, expressed in the form of any person committing acts that show clear disrespect for the court or the rules established by the court shall be punished by a fine of up to twenty five conventional units [MDL 250] or by administrative detention of up to fifteen days."

Article 209. The courts

"...

2. Cases concerning administrative offences under Articles 2007 and 2008 of the present code shall be examined by the court against which the offences were committed ..."

Article 265[1]. Recusal of the court

"... The official or the judge in charge of the case cannot take part in the examination of the case and shall be recused (recuzați) if:

...

3. circumstances have been put forward in relation to him or her which give rise to doubts as to his or her impartiality.

..."

Article 282[7]. Decisions of appellate courts in respect of administrative offence cases

"After examination of a case concerning an administrative offence, the appellate court shall deliver a decision. The decision does not have to include the court's reasoning, which means that it may be drafted in the form of a resolution."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

18. The applicant complained of a violation of Article 6 § 1 of the Convention because the judge who convicted him had not been impartial and because the Chișinău Court of Appeal had not properly summoned him or given sufficient reasons for its decision.

The relevant part of Article 6 reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Preliminary issue and admissibility

1. *The Government's objection as to representation*

19. The Government submitted that the present application did not meet, either in form or in content, the requirements set out in Rule 47 (1) of the Rules of Court. In particular, the complaints had not been made on an application form provided by the Registry. Moreover, they had not specified the applicant's date of birth, sex and occupation or whether he was pursuing his complaints through another procedure of international investigation or settlement.

20. The Court notes that in accordance with the Practice Direction on the Institution of Proceedings, appended to Rules 45 and 47 of the Rules of Court, and issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 1 November 2003, as in force on the date that the present application was lodged, an applicant may be required to submit a duly completed form if his or her application has not been submitted on the official form.

21. It notes that having received the complaints and annexed documents from the applicant, the Registry did not send him an application form accompanied by an explanatory note, or set a time-limit for submitting such a form. Accordingly, it cannot be said that the applicant failed to comply with the Registry's instructions (compare *Kemevuako v. the Netherlands* (dec.), no. 65938/09, § 22, 1 June 2010; *Valchev v. Bulgaria* (dec.), nos. 47450/11 and 2 others, § 56, 21 January 2014; and *Kazakov and others v. Russia* [Committee], no. 4649/08 and 7 others, § 15, 4 May 2017). Moreover, unlike in *T. and A. v. Turkey* (no. 47146/11, § 49, 21 October 2014), the applicant was not warned about the possible outcome of a failure to provide an application form in addition to the documents already submitted.

22. The Court further notes that the applicant's sex and date of birth were clearly identifiable from the documents which he had annexed to his complaints. Moreover, at no stage did any of the parties suggest that the

applicant had made use of any alternative procedure of international investigation or settlement, and the Court has no reason to believe that such an alternative procedure has been sought or is currently being pursued by the applicant. On the contrary, in his initial complaint the applicant declared that he had observed the requirements of Article 35 of the Convention, which suggests that he had not made use of any alternative procedure of international investigation or settlement in respect of the facts giving rise to the application brought before this Court. Therefore, the Court finds that it is not prevented from examining the applicant's complaint on the ground that the applicant, as the Government assert, has not provided it with all the relevant information necessary to examine the case.

23. In the light of the above, the Court finds that in the exceptional circumstances of this case the applicant cannot be faulted for not submitting a formal application form or any additional information. The Government's objection is thus to be rejected.

2. *The Government's objection concerning exhaustion of domestic remedies*

24. The Government argued that the applicant had failed to exhaust available domestic remedies by not raising the issue of Judge B.'s alleged lack of impartiality before the domestic courts, at least in substance.

25. The Court observes that in his appeal the applicant expressly noted that, in spite of clear legal provisions, he had not received a copy of the decision he was appealing (see paragraph 13 above). In the absence of a copy of the detailed decision convicting him, the applicant cannot be blamed for lodging a succinct appeal in order not to miss the time-limit for doing so. Even in such circumstances, in his appeal to the Chişinău Court of Appeal the applicant noted that a number of legal provisions had been breached by Judge B. when adopting his decision. In particular, he referred to an alleged breach of Article 265^1 of the Code of Administrative Offences ("the CAO" – see paragraphs 13 and 17 above) and of Article 6 of the Convention. The Court also notes that Article 265^1 of the CAO expressly provides, at paragraph 3, that a judge can be recused when there are circumstances raising doubts as to his or her impartiality. Moreover, under Article 276 of the CCP (see paragraph 16 above) the applicant's objections to the minutes of the hearing had to be annexed to the file that was sent to the Chişinău Court of Appeal. Given the fact that the applicant was accused of contempt of court, the minutes of the hearing during which the alleged contempt happened – and thus also the applicant's objections to those minutes and his request for the recusal of Judge B. mentioned in those minutes – must have been the primary documents considered by the Court of Appeal before deciding on the applicant's appeal. The applicant's objections to those minutes and his request for the recusal of the judge

expressly alleged a lack of impartiality on the part of Judge B. and provided the specific grounds on which that allegation was based.

26. The Court concludes that the applicant did raise the complaint concerning the impartiality of Judge B. before the domestic courts.

27. The Government also argued that the applicant had not complained before the domestic courts, even in substance, of the alleged failure to summon him to the hearing of 6 July 2006. The Court notes that the allegation of the failure to summon the applicant was expressly related to the actions of the court of last instance. Since the decision taken by that court was final, the applicant did not have any ordinary means of appeal in which he could have raised that complaint.

28. The Government's final submission was that the applicant could have appealed against the decision to reject his request for the recusal of Judge B. as part of an appeal against the judgment on the merits of the civil case between X. and Y. The Court notes that X. and Y. had settled the civil case between them and that none of them appealed the decision confirming that settlement. The Government did not explain how the applicant – who was a representative, but not a party to the proceedings between X. and Y. – could have appealed that decision, in view of the provisions of Article 398 of the Code of Civil Procedure which limits a representative's right of appeal to the issue of legal costs (see paragraph 16 above). The Government did not submit any examples of case-law confirming such a possibility. In addition, the Ciocana District Court's decision approving the settlement was not adopted until 25 December 2006, after the applicant's conviction for contempt of court had become final on 6 July 2006 (see paragraphs 14 and 15 above). Therefore, at that point any attempt by the applicant to lodge an appeal against his conviction would have been rejected owing to the principle of *res judicata*.

29. Accordingly, the Government's objection is dismissed.

3. *Applicability of Article 6*

30. The Court also finds that, for the reasons given in *Ziliberberg v. Moldova* (no. 61821/00, §§ 29-36, 1 February 2005) and in view of the fact that the offence of contempt of court (Article 200^7 of the CAO) provided an alternative sanction of deprivation of liberty for up to fifteen days (see paragraph 17 above), the "charge" against the applicant belongs to the criminal sphere for the purposes of Article 6 § 1. Therefore, that Article is applicable to the present case.

31. The Court notes that this complaint 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

1. *Complaint concerning the alleged lack of impartiality*

(a) The parties' submissions

32. The applicant complained of the lack of impartiality of Judge B. He argued, in particular, that having provoked a disturbance in court by pressuring a party to the proceedings and threatening the applicant, the judge had then convicted the applicant of contempt of court. In doing so, Judge B. had acted simultaneously as a party with a particular interest in the case (since he had started the dispute with the applicant), as the authority establishing the facts, as the authority pressing the criminal charges and as the judge ultimately deciding on the outcome of those charges.

33. The Government submitted that judges were to be presumed to be impartial and that Moldovan law provided guarantees in that respect. In the case in question, there had been no reasons to doubt the impartiality of Judge B. in accordance with either the subjective or the objective test, in view of the contents of the minutes of the hearing and of the restraint that he had shown, particularly in view of the reasonable amount of the fine imposed (less than half the maximum provided by law). Moldovan law expressly provided that charges of contempt of court were to be examined by the court against which such contempt had taken place (Article 209 of the CAO – see paragraph 17 above). Moreover, Council of Europe experts had reviewed the CAO and had not found a problem with the examination of contempt of court charges being carried out by the court against which such contempt had taken place.

34. The applicant had not appealed against the decision rejecting his recusal of Judge B., even though he could have lodged such an appeal together with an appeal regarding the merits of the civil case in which he had been acting as a representative. He therefore should have appealed the decision of 25 December 2006 (see paragraph 15 above), whereby the civil case in which he had been representing a party had been discontinued following the settlement reached between the parties. As he had not done so, the applicant had accordingly been satisfied with the domestic courts' findings and had not had any further doubts concerning the impartiality of Judge B. Moreover, in the appeal against his conviction lodged with the Chișinău Court of Appeal he had not invoked, even in essence, the impartiality of the Ciocana District Court.

(b) The Court's analysis

35. The Court recalls that it is of fundamental importance in a democratic society that the courts inspire confidence in the public and above all, as far as criminal proceedings are concerned, in the accused (see *Kyprianou v. Cyprus* [GC], no. 73797/01, § 118, ECHR 2005-XIII). To that

end Article 6 requires a tribunal falling within its scope to be impartial. The Court has distinguished between a subjective approach, that is endeavouring to ascertain the personal conviction or interest of a given judge in a particular case, and an objective approach, that is determining whether he or she offered sufficient guarantees to exclude any legitimate doubt in this respect (see *Grieves v. the United Kingdom* [GC], no. 57067/00, § 69, ECHR 2003-XII (extracts); Kyprianou, cited above, § 118; *Morice v. France* [GC], no. 29369/10, § 73, ECHR 2015, with further references; and *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], no. 55391/13 and 2 others, § 145, 6 November 2018).

36. In this connection even appearances may be of a certain importance or, in other words, "justice must not only be done, it must also be seen to be done" (see *De Cubber v. Belgium*, 26 October 1984, § 26, Series A no. 86, and *Ramos Nunes de Carvalho e Sá*, cited above, § 147). Thus, any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw (see *Castillo Algar v. Spain*, 28 October 1998, § 45, Reports of Judgments and Decisions 1998-VIII, and *Micallef v. Malta* [GC], no. 17056/06, § 98, ECHR 2009).

37. In the present case, the Court notes that the applicant alleged a lack of impartiality on the part of Judge B. from both a subjective (as a party to the dispute with the applicant) and an objective standpoint (in the light of his role as a person pressing charges and the judge deciding on the outcome of those charges).

(i) Subjective impartiality

38. The Court notes that, as formulated by the applicant, the present case relates to contempt of court, aimed at Judge B., the judge being directly criticised as to the manner in which he had conducted the proceedings (see *Kyprianou*, cited above, § 127). Therefore, the Court will examine the applicant's complaint on the basis of the test of subjective impartiality (see paragraph 36 above). In this respect, the Court takes into account the fact that the applicant was not fined on the basis of Article 196 of the Code of Civil Procedure for disturbing order during a court hearing, but rather under Article 200^7 of the Code of Administrative Offences for contempt of court, which allows for administrative detention of up to 15 days.

39. In respect of the alleged lack of subjective impartiality, it is noted that the file contains nothing in direct support of the applicant's assertions. In particular, the decision convicting him and the minutes of the hearing during which that decision was taken do not reflect any personal bias of Judge B. At the same time, it was the applicant's contention that the judge had ordered the court assistant not to reflect the dispute between himself and the applicant in the two documents, but rather to indicate that the applicant had insulted the representative of the other party present at the hearing (see paragraphs 6 and 7 above).

40. It is further noted that the domestic law allowed the applicant several ways of raising Judge B.'s alleged bias: by challenging him, by formulating and filing objections to the minutes of the hearing and by raising the issue in the appeal against the decision to apply the sanction. The applicant used all of those means. However, despite the specific allegations made, it appears that none of the domestic courts analysed these arguments or responded to them in any manner other than by rejecting them as a whole. In particular, in rejecting the applicant's recusal of Judge B. because of his alleged bias, another judge found that the specific grounds relied on were not among the grounds set out in Article 50 of the CCP (see paragraph 9 above). This conclusion is difficult to reconcile with paragraph 1 (g) of that Article, which expressly provides for a judge to be recused if "there are other circumstances which give rise to doubts as to his or her objectiveness and impartiality" (see paragraph 16 above). The decision did not include any finding of fact contradicting the applicant's account of events, or any comment on the applicant's allegations of Judge B.'s bias.

41. Similarly, after Judge B. allegedly failed to give a reasoned decision in response to the applicant's objection to the minutes of the hearing, as he was required to do under Article 276 of the CCP (see paragraphs 12 and 16 above), the Chișinău Court of Appeal made no comment at all on the request for the recusal, on the objections or on any decision taken by Judge B., assuming that one had in fact been taken in response to those objections. After recapitulating, in a single phrase, the decision taken by the lower court and finding that the applicant had been summoned to the hearing, the court upheld the decision, without giving any further details concerning Judge B.'s alleged bias (see paragraph 14 above).

42. The Court concludes that, of all the mechanisms put at the disposal of a person alleging the lack of impartiality of the judge in charge of his or her case, none functioned in the present case, in the sense that no court undertook any real verification of the facts. While this makes it impossible to accurately determine whether Judge B. was indeed biased, the situation can be seen as giving rise, in the eyes of an independent observer, to legitimate concerns about the possibility of such bias. The fact that the applicant and his client made these allegations during the hearing in question by challenging the judge, and not as an afterthought, gives this complaint further credibility.

(ii) Objective impartiality

43. The Court has examined the question of compliance with the principle of impartiality in a number of cases of contempt in the face of the court, where the same judge then took the decision to prosecute, tried the issues arising from the applicant's conduct, determined his guilt and imposed the sanction. The Court has emphasized that in such a situation the confusion of roles between complainant, witness, prosecutor and judge

could self-evidently prompt objectively justified fears as to the conformity of the proceedings with the time-honoured principle that no one should be a judge in his or her own cause and, consequently, as to the impartiality of the bench (see *Demicoli v. Malta*, judgment of 27 August 1991, Series A no. 210, pp. 18-19, §§ 41-42, *Kyprianou*, cited above, §§126-128, and *Mikhaylova v. Ukraine*, no. 10644/08, §§ 58-60, 6 March 2018 with further references).

44. In the present case, the applicant submitted that Judge B. could not have been impartial because he had simultaneously pressed charges against him and decided on the outcome of those charges. The Government argued that this had been in accordance with Article 209 of the CAO (see paragraph 17 above).

45. The Court notes that in the proceedings against the applicant, no one had the procedural role of an accuser. In such circumstances the Court considers that Judge B. had no alternative but to undertake the task of presenting – and, what is more pertinent, to carry the burden of supporting – the accusation during the hearing. The fact that the case was subsequently reviewed by the Chişinău Court of Appeal did not remedy the lack of impartiality of the court which convicted the applicant. That court did not quash the applicant's conviction on the grounds that the Ciocana District Court had not been impartial, but upheld the decision without giving any reasons (ibid., § 66).

(iii) Conclusion as to impartiality

46. In view of the not entirely unfounded doubts which the applicant could have had about Judge B.'s subjective impartiality and the procedural shortcomings that resulted in the lack of objective impartiality on the part of the Ciocana District Court in the case, the Court concludes that there has been a violation of Article 6 § 1 of the Convention in respect of the impartiality requirement.

47. For the same reasons as those given in paragraph 28 above, the Court finds that its conclusion in the previous paragraph is not affected by the applicant's failure to appeal the decision rejecting his recusal of Judge B.

2. *Complaints concerning the fairness of the proceedings before the Chişinău Court of Appeal*

48. The applicant also complained under Article 6 § 1 of the Convention that he had not been properly summoned before the Chişinău Court of Appeal for the hearing of 6 July 2006 and that the court had adopted an insufficiently reasoned decision.

49. The Government submitted a copy of the Ciocana District Court's register of outgoing mail, which indicated that the applicant had been

summoned to the hearing before the Chişinău Court of Appeal by a letter sent on 27 June 2006. Moreover, his failure to appeal the decision confirming the settlement of the case underlined that he himself did not find the proceedings unfair. They also noted that under Article 282^7 of the CAO (see paragraph 17 above) an appellate court had been able to adopt a decision in the form of a resolution and had not been required to give further reasons.

50. The Court notes that the appeal lodged by the applicant concerned his conviction for contempt of court on the basis of his alleged behaviour during a court hearing. It considers that the nature of the offence of which he had been convicted and the allegations made against Judge B. required that the appellate court hear him in person (see, *mutatis mutandis*, *Russu v. Moldova*, no. 7413/05, § 27, 13 November 2008).

51. The Court has already examined similar complaints concerning alleged failures to summon applicants to hearings in previous cases concerning the Republic of Moldova (see, for instance, *Russu*, cited above, §§ 19-28; *Godorozea v. Moldova*, no. 17023/05, § 31, 6 October 2009; and *Rassohin v. Moldova*, no. 11373/05, § 34, 18 October 2011). In all those cases it found, referring also to the interpretation of the domestic law made by the Plenary Supreme Court of Justice of the Republic of Moldova (see *Godorozea*, cited above § 24), that "in practice the domestic courts do not accept as sufficient evidence the sending of a letter by a court and require proof of delivery".

52. In the present case, the Government argued that the applicant had been sent the summons, as confirmed by the excerpt from the court's register. The applicant contested having received such a summons. The Court notes that, like in the cases mentioned in the preceding paragraph, there is no evidence in the file that the applicant actually received the summons, as required under the domestic case-law. The Court therefore sees no reason to come to a different conclusion from that reached in the cases mentioned above. In this connection the Court rejects, for the same reasons as those set out in in paragraph 28 above, the Government's argument (see paragraph 34 above) that the applicant's failure to appeal against the decision of 25 December 2006 reflected his view that the proceedings had been fair.

53. There has, accordingly, been a violation of Article 6 § 1 of the Convention in respect of the failure to properly summon the applicant to the hearing before the Chişinău Court of Appeal on 6 July 2006.

54. In view of its findings concerning the impartiality of the Ciocana District Court (see paragraph 46 above), including the failure of the Chişinău Court of Appeal to give any reasons in reply to the applicant's complaint of Judge B.'s bias, the Court considers that the complaint that insufficient reasons were given by the domestic courts for convicting him does not raise a separate issue.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

55. The applicant complained under Article 4 of Protocol No. 7 to the Convention that he had been punished twice for the same alleged contempt of court, once by being cautioned and then by a fine. The Court notes that the fine imposed on the applicant was the result of his alleged repeated misbehaviour in court. He was given a warning for the first incident and fined for the second one. Therefore, he was not sanctioned twice for the same offence.

56. The applicant also complained, without giving any details, of breaches of Articles 1, 7, 13 and 14 of the Convention.

Having regard to all the material in its possession and in so far as these complaints fall within the Court's competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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

58. The applicant claimed 200 Moldovan lei (MDL – approximately 12 euros (EUR) at the relevant time) in respect of pecuniary damage, representing the amount of the fine which he had had to pay. He also claimed MDL 28,000 (approximately EUR 1,556) for the non-pecuniary damage caused.

59. The Government submitted that the sums claimed were unsubstantiated and that the applicant had failed to show a causal link between the violations alleged and the damage caused.

60. The Court cannot speculate as to the outcome of the proceedings for contempt of court had they taken place before an impartial tribunal. It will therefore not make an award in respect of the pecuniary damage claimed. However, it awards the applicant EUR 1,500 in respect of non-pecuniary damage.

B. Costs and expenses

61. The applicant also claimed MDL 300 (approximately EUR 17) for the costs and expenses incurred.

62. The Government submitted that, although the sum claimed was not excessive, it was not substantiated in any manner.

63. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court accepts the applicant's claim for costs and expenses in full.

C. Default interest

64. 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 complaints under Article 6 § 1 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the lack of impartiality of the Ciocana District Court;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the failure to properly summon the applicant to the hearing before the Chișinău Court of Appeal;

4. *Holds* that no separate issue arises under Article 6 § 1 of the Convention in respect of the allegedly insufficient reasons given by the Chișinău Court of Appeal;

5. *Holds*
   (a) that the respondent State 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, the following amounts, to be converted into Moldovan lei at the rate applicable at the date of settlement:
      (i) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 17 (seventeen 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 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* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Robert Spano
President