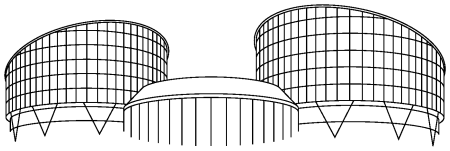

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF OTGON v. THE REPUBLIC OF MOLDOVA

(Application no. 22743/07)

JUDGMENT

STRASBOURG

25 October 2016

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 Otgon v. the Republic of Moldova,

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

Işıl Karakaş, *President,*
Nebojša Vučinić,
Paul Lemmens,
Valeriu Griţco,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström,
Georges Ravarani, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 13 September 2016,

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

PROCEDURE

1. The case originated in an application (no. 22743/07) 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, Ms Svetlana Otgon ("the applicant"), on 20 April 2007.

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

3. The applicant alleged, in particular, that she had received insufficient compensation for an established violation of her rights under Article 8 of the Convention.

4. On 30 November 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1963 and lives in Călăraşi.

6. On 26 October 2005 the applicant and her daughter drank water from taps in their apartment and shortly thereafter they felt unwell. On 29 October 2005 the applicant's daughter, who was twelve at the time, was admitted to hospital with a diagnosis of "serious acute dysentery". The applicant was admitted to hospital with the same diagnosis on 31 October

2005. She was released from hospital on 13 November 2005, a day later than her daughter.

7. The applicant lodged a court action against the local utilities provider ("the provider"), a State-owned company, claiming 100,000 Moldovan lei ("MDL", approximately 6,700 euros (EUR) at the time) in compensation for the harm caused to her health and for the related inconveniences, including subsequent investigations and disinfection.

8. On 1 March 2006 the Călăraşi District Court found in her favour. It found that various sanitary, medical and technical reports had established that in the vicinity of the applicant's apartment block the sewage pipe was situated above the drinking water pipe and was leaking. The water pipe had cracked on 26 October 2005 and sewage water had infiltrated the drinking water pipe. The court also established that the pipes had been used since 1977 and that their expected lifespan was fifteen years. A total of five people, all of whom had drunk water from taps connected to the same water pipe, had been admitted to hospital with the same diagnosis at approximately the same time as the applicant. Taking into consideration such elements as the amount of physical and mental suffering caused to the applicant and her daughter, the court awarded her MDL 10,000 (approximately EUR 648 at the time).

9. The parties appealed. On 26 April 2006 the Chişinău Court of Appeal rejected the applicant's appeal and partly accepted the provider's appeal. It reduced the award to MDL 5,000 (EUR 310) because it found exaggerated "both the sum claimed by [the applicant] and that awarded to [her]".

10. The parties appealed. On 25 October 2006 the Supreme Court of Justice upheld the judgment of 26 April 2006. It found that the lower court had taken into consideration the nature and seriousness of the mental suffering caused to the applicant, as well as the degree of guilt of the defendant. That judgment was final.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

11. The applicant complained that her health had been endangered as a result of having drunk contaminated water. She considered that there had been a violation of Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the

country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

12. The Court notes that the application 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. The parties' submissions

13. The applicant submitted that although the domestic courts had found a violation of her rights, the award made in her favour had been too small to compensate for the physical and mental suffering caused to her and her family. Moreover, she submitted documents confirming that she had continued to have health problems after the events of 2005, such as an acute ulcer, chronic cholecystitis, uncompensated hypothyroidism and a metabolic disorder. She had been regularly treated since then for these conditions.

14. The Government submitted that the domestic courts had in essence established a violation of the applicant's rights under Article 8 of the Convention. Moreover, they had decided the amount of compensation based on their direct knowledge of the case and on the basis of the parties' arguments and evidence. The applicant had been awarded compensation in respect of this breach of Article 8 and consequently no longer had victim status. The award made by the domestic courts had been reasonable in the light of the relatively short period of the applicant's in-patient treatment and the lack of evidence of any long-lasting effects on the applicant.

2. The Court's assessment

15. As the Court has had previous occasion to remark, the concept of "private life" is a broad term not susceptible to exhaustive definition. It covers, inter alia, the physical and psychological integrity of a person (see, for instance, *X and Y v. the Netherlands*, 26 March 1985, § 22, Series A no. 91, *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III and *G.B. and R.B. v. the Republic of Moldova*, no. 16761/09, § 29, 18 December 2012). It has also found that "there is no explicit right in the Convention to a clean and quiet environment, but where an individual is directly and seriously affected by noise or other pollution, an issue may arise under Article 8" (see, for instance, *Powell and Rayner v. the United Kingdom*, 21 February 1990, § 40, Series A no. 172, *López Ostra v. Spain*, 9 December 1994, § 51, Series A no. 303-C, *Guerra and Others v. Italy*,

19 February 1998, § 57, *Reports of Judgments and Decisions* 1998-I and *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 96, ECHR 2003-VIII). Moreover, "Article 8 may apply in environmental cases whether the pollution is directly caused by the State or whether State responsibility arises from the failure to regulate private industry properly. Whether the case is analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicants' rights under paragraph 1 of Article 8 or in terms of an interference by a public authority to be justified in accordance with paragraph 2, the applicable principles are broadly similar" (*Hatton and Others*, cited above, § 98).

16. The Court recalls that it falls first to the national authorities to redress any alleged violation of the Convention. The question whether a person may still claim to be the victim of an alleged violation of the Convention essentially entails on the part of the Court an *ex post facto* examination of his or her situation. A decision or measure of the domestic authorities favourable to the applicant is not in principle sufficient to deprive her of her status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, for instance, *Ciorap v. Moldova* (no. 2), no. 7481/06, § 18, 20 July 2010). The question whether the victim of a violation of the Convention has received reparation for the damage caused – comparable to just satisfaction as provided for under Article 41 of the Convention – is an important issue. It is the Court's settled case-law that where the national authorities have found a violation and their decision constitutes appropriate and sufficient redress, the party concerned can no longer claim to be a victim within the meaning of Article 34 of the Convention (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 179-181, ECHR 2006-V).

17. In the present case, the Court notes that the parties did not dispute the domestic courts' findings concerning the violation of the applicant's rights by the State-owned company. Considering the materials in the file, the Court finds that an interference with the applicant's rights protected under Article 8 of the Convention has taken place since her physical integrity has been affected by an unhealthy environment (see paragraph 15 above). In assessing whether the Moldovan authorities discharged their positive obligation under that provision, the Court notes that the domestic courts provided a remedy in the form of establishing the company's responsibility and awarding compensation. Without expressly relying on the Convention but referring to the in-hospital treatment and the physical and mental suffering caused to the applicant (see paragraph 8 above), those courts' judgments could be interpreted as finding in fact a breach of the applicant's Article 8 rights, as also argued by the Government (see paragraph 14 above). The Court sees no reason to depart from those findings in this respect.

18. The only issue which remains to be determined is the amount of compensation. The first-instance court awarded the applicant the equivalent of EUR 648 in respect of non-pecuniary damage, referring to such criteria as the amount of physical and mental suffering caused (see paragraph 8 above). While confirming the findings of the first-instance court, the higher court halved the award made and the Supreme Court of Justice upheld that reduced award. The higher courts relied on the same elements (degree of harm), but arrived at a different conclusion concerning the amount to be awarded. No specific reasons were given for this reduction, except a reference to the degree of responsibility of the defendant.

19. The Court takes into account the Government's argument concerning the relatively short period of in-patient treatment and the absence of evidence of long-term effects on the applicant. Nevertheless, she was kept in hospital for two weeks, which implies that she sustained a certain degree of mental and physical suffering. Moreover, it considers that the sum awarded by the domestic courts is considerably below the minimum generally awarded by the Court in cases in which it has found a violation of Article 8 in respect of the Republic of Moldova, even taking into account the differences between these decisions.

20. In the light of the foregoing, the Court considers that the applicant can still claim to be a victim of a violation of Article 8 of the Convention. Furthermore, in the light of the conclusions of the domestic courts, it finds that there has been a violation of Article 8.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicant claimed EUR 50,000 in respect of non-pecuniary damage.

23. The Government disagreed, arguing that this amount was unfounded and that the claim should thus be dismissed.

24. Having regard to the violation found above and the award made in the applicant's favour by the domestic courts, the Court considers that an award of compensation for non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards the applicant EUR 4,000.

B. Costs and expenses

25. The applicant made no claim in this respect.

C. Default interest

26. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares*, by a majority, the application admissible;

2. *Holds*, by six votes to one, that there has been a violation of Article 8 of the Convention;

3. *Holds*, by six votes to one
   (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 sum of EUR 4,000 (four thousand euros), to be converted into Moldovan lei at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 25 October 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Işıl Karakaş
Registrar	President

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

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

DISSENTING OPINION OF JUDGE LEMMENS

1. To my regret, I am unable to agree with the majority's finding that there has been a violation of Article 8 of the Convention in the present case. In my opinion, Article 8 is not applicable and the complaint should have been declared incompatible *ratione materiae* with the Convention.

2. The case concerns the effects caused on the applicant's health by drinking contaminated water from the tap. The domestic courts found that the water distributing company had committed a wrongful act and ordered it to pay damages. The applicant is not satisfied with the amount awarded.

In her appeal to the Supreme Court of Justice, she invoked the constitutional right to a healthy environment in order to challenge the amount of the compensation awarded. It does not seem that at the domestic level she ever complained about an infringement of the right to respect for her private life.

This is therefore essentially a case about the right to compensation for a civil tort.

3. The majority considers that Article 8 of the Convention comes into play because the applicant's "physical integrity has been affected by an unhealthy environment" (see paragraph 17 of the judgment).

It is true that the concept of private life covers the physical –and psychological- integrity of a person (see paragraph 15 of the judgment; see further, by way of example, *X and Y v. the Netherlands*, 26 March 1985, § 22, Series A no. 91; *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III; *A, B and C v. Ireland* [GC], no. 25579/05, § 212, ECHR 2010; and *Nada v. Switzerland* [GC], no. 10593/08, § 151, ECHR 2012). However, I do not think that this means that any damage to a person's health attracts the applicability of Article 8. For that provision to be applicable, I tend to believe that there should be repercussions on the affected person's private life. It seems to me that in the present case no such repercussions have been put forward (compare, for example, *Fadeyeva v. Russia*, no. 55723/00, § 88, ECHR 2005-IV, where the applicant's health had deteriorated as a result of her prolonged exposure to an unhealthy situation, thus making her vulnerable to certain health problems).

It is also true that "where an individual is directly and seriously affected by noise or other pollution, an issue may arise under Article 8" (paragraph 15 of the judgment; see further, by way of example, *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 96, ECHR 2003-VIII; *Zammit*

Maempel v. Malta, no. 24202/10, § 36, 22 November 2011; *Bor v. Hungary*, no. 50474/08, § 24, 18 June 2013; and *Udovičić v. Croatia*, no. 27310/09, § 137, 24 April 2014). Again, in my opinion, not every damage that relates to the environment attracts the applicability of Article 8. For that provision to be applicable, there should be a situation of nuisance which affects the person in his or her private life (see *Powell and Rayner v. the United Kingdom*, 21 February 1990, § 40, Series A no. 172; *López Ostra v. Spain*, 9 December 1994, § 51, Series A no. 303-C; and *Taşkın and Others v. Turkey*, no. 46117/99, § 113, ECHR 2004-X; see also *Kyrtatos v. Greece*, no. 41666/98, § 52, ECHR 2003-VI (extracts); and *Ivan Atanasov v. Bulgaria*, no. 12853/03, § 66, 2 December 2010). Moreover, the nuisance must attain a certain minimum level (*Mileva and Others v. Bulgaria*, nos. 43449/02 and 21475/04, § 90, 25 November 2010; *Zammit Maempel*, cited above, § 37; *Hardy and Maile v. the United Kingdom*, no. 31965/07, § 188, 14 February 2012; and *Dzemyuk v. Ukraine*, no. 42488/02, § 77, 4 September 2014). In the present case there has been only one incident, and it has not been demonstrated that the illness has affected the applicant in the quality of her private life, except for the period spent in the hospital (see paragraph 19 of the judgment). While I do not question that the applicant has been seriously ill, I do not see the effects on her private life.

4. To conclude, thanks to a very generous interpretation of the notion of private life, this case has been "upgraded" from an ordinary torts case to a case raising an issue under Article 8.

While I have sympathy for the applicant, from a purely legal point of view I would have preferred a more restrained approach to the scope of application of Article 8.