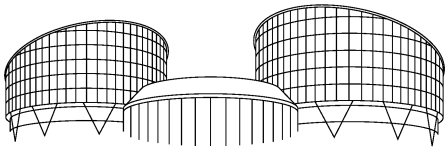

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF TIRAMAVIA S.R.L. AND OTHERS v. THE REPUBLIC OF MOLDOVA

(Applications nos. 54115/09, 55707/09 and 55770/09)

JUDGMENT

STRASBOURG

4 September 2018

FINAL

04/12/2018

In the case of Tiramavia S.R.L. and Others v. the Republic of Moldova,

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

Robert Spano, *President,*
Paul Lemmens,
Ledi Bianku,
Nebojša Vučinić,
Valeriu Griţco,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 3 July 2018,

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

PROCEDURE

1. The case originated in three applications (nos. 54115/09, 55707/09 and 55770/09) 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 three companies incorporated in Moldova, namely Tiramavia S.R.L., Valan International Cargo Charter S.R.L. and Grixona S.R.L. (the "applicant companies"), on 2 October 2009.

2. The applicant companies were represented by Mr I. Păduraru, a lawyer practising in Chişinău. The Moldovan Government ("the Government") were represented by their Agent at the time, Mr L. Apostol.

3. The applicant companies alleged, in particular, that their air operator certificates had been withdrawn in breach of their right guaranteed by Article 1 of Protocol No. 1 to the Convention.

4. On 12 July 2012 the applications were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants, Tiramavia S.R.L., Valan International Cargo Charter S.R.L. and Grixona S.R.L. are companies specialising in air transportation.

6. Each of the companies had a valid air operator certificate (an "AOC")[1] issued by the Moldovan Civil Aviation State Authority (the "CASA").

7. On 1 June 2007 the CASA issued an order banning all flights of aircraft registered in Moldova to Iraq and Afghanistan, with effect from 15 July 2007.

8. Between 4 and 8 June 2007, all Moldovan aviation companies were subjected to a check by the European Union Safety Committee. As a result, some irregularities concerning compliance with the European norms in the field of aviation safety were detected. The European Union Safety Committee also found that some aviation companies did not comply with the rule according to which the companies have to have their principal place of business in the state of registration. One of the conclusions set down in the visit report drawn up by the European Union Safety Committee was that the CASA failed to demonstrate the ability adequately to enforce and implement the relevant safety standards. According to the report, the CASA had undertaken to remedy the situation within three months.

9. In a letter addressed to the CASA by the European Commission on 8 June 2007, the former was asked to require all the companies concerned to present their response to the findings in the report by 22 June 2007 at the latest. The CASA was also informed that the companies concerned would have the possibility of presenting their views orally during the Air Safety Committee meeting of 25 June 2007 in Brussels, at which a decision was to be taken on whether or not to ban those companies from entering European Union airspace.

10. On 14 June 2007 the CASA sent the applicant companies the EU Safety Committee's report and informed them that they had until 22 June 2007 to present their comments.

11. On 18 June 2007 the CASA sent the applicant companies aviation instruction no. 2584 and asked them to present by 21 June 2007 a plan for remedying the irregularities found by the EU Safety Committee. The

[1] A document allowing the use of aircraft for commercial purposes.

corresponding plan was sent by the applicant companies to the CASA on 21 June 2007.

12. Also on 18 June 2007 the CASA sent the applicant companies aviation instruction no. 2585 requesting them to undertake measures with a view to remedying some of the irregularities before 20 July 2007 and other irregularities before 20 September 2007.

13. On 21 June 2007 the CASA issued order no. 102/GEN withdrawing the applicant companies' AOCs, and thereby terminating their activity.

14. In respect of the first applicant company and three other companies which are not applicants in the present case, the reason relied upon by the CASA was that the airport authorities of several European countries had discovered irregularities with their aircraft, some of which had a recurring nature, and that those irregularities had a negative impact on flight security. The CASA did not specify which irregularities it referred to.

15. As to the second and third companies, the CASA relied on the fact that they flew to destinations such as Iraq, Afghanistan, Congo, Sudan, Sierra Leone, Kosovo, New Zealand and United Arab Emirates. The CASA argued that those destinations involved security risks and that it had no resources to ensure flight security in those territories.

16. On 22 June 2007 the applicant companies wrote to the CASA and asked it to reverse its decision on the grounds that it had not explained exactly what irregularities formed the basis for the withdrawal of the AOCs and that the CASA had not afforded them enough time to remedy the alleged irregularities.

17. The CASA refused to reverse its decision, and on 28 June 2007 the applicant companies challenged it in the Chişinău Court of Appeal. The applicants submitted, *inter alia*, that according to section 23 of the Law on Civil Aviation, the CASA was entitled to suspend or withdraw the AOCs only if the companies failed to remedy the irregularities found by the CASA within the prescribed time-limit. They also made reference to section RACAOC 0170 from the Regulations in the Field of Civil Aviation according to which an AOC could be revoked only after being initially suspended. Since the CASA had not observed those legal provisions, its actions were unlawful.

18. On 3 December 2008 the Chişinău Court of Appeal rejected the applicant companies' action, finding that the CASA had been entitled to withdraw the applicant companies' AOCs because serious irregularities threatening the safety of the flights had been found in respect of the first applicant company and three other companies, which are not applicants in the present case, and because those companies had failed to remedy those irregularities. The Court of Appeal did not indicate the irregularities to

which it referred. The court also found that the other companies had failed to comply with the CASA's order of 1 June 2007 prohibiting flights to Iraq and Afghanistan as of 15 July 2007. The court did not give an answer to the applicants' argument concerning the CASA's failure to observe the provisions of section 23 the Law on Civil Aviation and those of the Regulations in the Field of Civil Aviation. It only stated that the legal basis for the CASA's decision was section 5 of the Law on Civil Aviation and paragraph (c) of RAC-AOC 0170 from the Regulations in the Field of Civil Aviation. The applicant companies challenged the decision before the Supreme Court of Justice, reiterating *inter alia* their position concerning the unlawfulness of the challenged decision.

19. On 29 April 2009 the Supreme Court of Justice dismissed the applicant companies' appeal and upheld the judgment of the Court of Appeal after finding that the CASA was entitled to revoke the AOCs since the second and third applicant companies had failed to comply with its instructions concerning the ban on all flights of aircraft registered in Moldova to Iraq and Afghanistan, with effect from 15 July 2007. As to the first applicant company, the Supreme Court confirmed the finding of the inferior court that serious irregularities threatening the safety of the flights had been found in respect of it and other companies which are not applicants in the present case and that they had failed to remedy those irregularities. The Supreme Court did not specify which irregularities it referred to and did not address the issue of the unlawfulness of the CASA's decision.

II. RELEVANT DOMESTIC LAW

20. According to Section 5(m) of the Law on Civil Aviation No. 1237, as in force at the material time, the CASA is the authority empowered with the right to issue, suspend and revoke air operator certificates.

21. Section 23 of the Law on Civil Aviation entitled „Breaches" *(Contravenţii)* reads as follows:

> "(1) The following shall be considered a breach in the field of civil aviation:
>
> a) absence on the board of the airplane of documents provided for by the regulations in force;
>
> b) breach of regulations concerning the use of the airplane...;
>
> c) breach of regulations concerning the maintenance of the airplane;
>
> d) exercise of duties by the airplane's personnel without a valid authorisation or with an expired authorisation or with an authorisation which was not validated by the administration...;
>
> e) failure to keep track of the working time, flight time and rest time of the crew;

f) transportation of dangerous cargo without proper authorisation from the administration;

g) failure to observe the load limitations applicable for take-off and taxi-ing of the airplane...;

h) refusal to present documents to persons authorised by the administration and refusal to allow them to carry out an inspection;

i) operation of aircraft without the proper insurance for passengers, luggage and crew...;

j) failure to inform the administration about incidents and accidents involving the airplane.

(2) The breaches enumerated at para. (1) shall be sanctioned in accordance with the Code of Administrative Offences.

(3) The sanctioning of the breaches enumerated in para. 1 shall not relieve those responsible from the duty to fix the discovered breaches. Breaches shall be fixed within one month, unless the administration provided another time limit, and the administration shall be informed accordingly.

(4) If the breaches found were not fixed within the allocated time limit or if they have a recurring *(sistematic)* character, the administration is entitled to suspend or revoke the authorisation documents."

22. On the basis of the Law on Civil Aviation, the CASA issued in 2005 Regulations in the Field of Civil Aviation. They served the purpose of regulating the procedure of issuing AOCs. According to section RAC-AOC 0160, the CASA may suspend an AOC in the following cases:

"(a) the aviation company concerned is not complying with the conditions and requirements of the AOC;

(b) the aviation company fails to observe the laws and regulations in force;

(c) the aviation company refuses to present documents to persons authorised by the CASA...."

23. Section RAC-AOC 0170 provides that an AOC can be revoked in the following cases:

"(a) the aviation company concerned fails to fix within the allocated time-limit the irregularities which led to the suspension of its AOC;

(b) the aviation company carried out commercial air transportation operations or unauthorised flights during the period of suspension of its AOC;

(c) in other cases provided for by the regulation in force;"

THE LAW

I. JOINDER OF APPLICATIONS

24. The Court notes that the subject matter of the applications (nos. 54115/09, 55707/09 and 55770/09) is similar. It is therefore appropriate to join the cases, in application of Rule 42 of the Rules of Court.

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

25. The applicant companies complained that the withdrawal of their AOCs had had the effect of infringing their right to peaceful enjoyment of their possessions as secured by Article 1 of Protocol No. 1 to the Convention which, in so far as relevant, provides:

> "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...."

A. Admissibility

26. The Court notes that the complaint under Article 1 of Protocol No. 1 to the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that the application is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

27. The applicant companies argued that their AOCs constituted a possession for the purposes of Article 1 of Protocol No. 1 to the Convention. Their revocation by the CASA constituted an interference with their right to the peaceful enjoyment of that possession. They also submitted that the interference was not lawful under domestic law and that it was not proportionate to the aim pursued.

28. The Government agreed with the applicant companies in that their AOCs constituted a possession whose revocation amounted to an interference with their right under Article 1 of Protocol No. 1 to the Convention. In their observations, the Government argued that the European inspectors had found that the applicant companies had failed to comply with the European standard that their place of principal activity be in the State

that had delivered the AOC. According to the Government, the interference had a basis in domestic law, namely under Section 5 of the Law on Civil Aviation (see paragraph 20 above) and was proportionate to the aim pursued.

29. It is undisputed between the parties that the applicant companies' AOCs constituted a possession for the purposes of Article 1 of Protocol No. 1 to the Convention and that their withdrawal constituted an interference with the applicant companies' right to the peaceful enjoyment of their possessions. The Court reiterates that, according to its case-law, the termination of a valid licence to run a business amounts to an interference with the right to the peaceful enjoyment of possessions guaranteed by Article 1 of the Protocol No. 1 to the Convention (*Tre Traktörer AB v. Sweden* judgment of 7 July 1989, Series A no. 159, § 55, and *Rosenzweig and Bonded Warehouses Ltd. v. Poland*, no. 51728/99, § 48, 28 July 2005).

30. Consistent with the Court's case-law referred to in the preceding paragraph, such interference constitutes a measure of control of the use of property which falls to be examined under the second paragraph of Article 1 of Protocol No. 1 to the Convention.

31. In order 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) and "for the general interest". The measure must also be proportionate to the aim pursued.

32. The Court recalls that Article 1 of Protocol No. 1 to the Convention contains no explicit procedural requirements and the absence of judicial review does not amount, in itself, to a violation of that provision (see *Capital Bank AD v. Bulgaria*, no. 49429/99, § 134, ECHR 2005XII (extracts)). Nevertheless, it implies that any interference with the peaceful enjoyment of possessions must be accompanied by procedural guarantees affording to the individual or entity concerned a reasonable opportunity of presenting their case to the responsible authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision. In ascertaining whether this condition has been satisfied, a comprehensive view must be taken of the applicable judicial and administrative procedures (see *Capital Bank AD*, ibid; *Hentrich v. France*, judgment of 22 September 1994, Series A no. 296A, p. 21, § 49; and *Jokela v. Finland*, no. 28856/95, § 45, ECHR 2002IV).

33. The Government's position is that the interference in question was lawful under domestic law, namely under section 5 of the Law on Civil Aviation. Furthermore, and to the extent that the Governments' argument as set out in paragraph 28 can be understood as also supporting the lawfulness of the interference, it suffices to note that this argument did not form the

basis of the impugned decisions, either by the CASA or the domestic courts. Therefore, the Court does not consider it necessary to examine it further.

34. The Court notes that section 5 of the Law on Civil Aviation establishes in general terms the right of the CASA to revoke flight authorisations. It is, however, section 23 of the same law that enumerates the breaches for which an aviation company may be sanctioned and the procedure to be followed by the CASA. Paragraphs (3) and (4) of that section provide that an AOC can be suspended or revoked only if and when the company concerned has failed to remedy the irregularities signalled by the CASA within the time-limit allowed or if the irregularities prove to be of a recurring nature.

35. The Regulations in the Field of Civil Aviation issued by the CASA on the basis of the Law on Civil Aviation, provide in section RAC-AOC 0170 paragraphs (a) and (b) that an AOC can be revoked in certain circumstances after being initially suspended. They also provide for a third possibility under paragraph (c), namely "in other cases provided for by the regulation in force". The Court was not, however, informed of such other regulations in force.

36. In their pleadings before the domestic courts, the applicant companies submitted *inter alia* that the revocation of their AOCs was contrary to the procedure prescribed by section 23 of the Law on Civil Aviation and RAC-AOC 0170 of the Regulations in the Field of Civil Aviation. The first applicant company also submitted that the order of 21 June 2007 did not specify the irregularities for which its AOC had been withdrawn. The Court cannot but agree that the absence of such information in the order of 21 June 2007 limited the first applicant's ability to effectively challenge the revocation before the domestic courts and notes that the domestic courts did not give any satisfactory answer to the above arguments raised by the applicants.

37. The Court further notes that in its aviation instructions of 18 June 2007 the CASA indicated that there were irregularities in respect of the first applicant company and allowed it one and three months to remedy them. From the above the Court considers that the first applicant company could reasonably expect that it would not suffer any adverse consequences if it complied with the instructions within the allocated time-limit. However, despite the instructions given and the clear time-limits, the CASA revoked the first applicant company's AOC on 21 June 2007, i.e. before it had a chance to comply.

38. The Court notes next that in its order of 1 June 2007 the CASA informed the second and third applicant companies that all flights to Iraq and Afghanistan were to be banned with effect from 15 July 2007. On

21 June 2007, i.e. more than three weeks before the ban was to become effective, the CASA withdrew the AOCs from the two applicant companies on the ground that they flew to various destinations involving security risks, including Iraq and Afghanistan (see paragraph 15). Not only were the second and third applicant companies not given a chance to be heard by the CASA before the revocation of their AOCs but also the domestic courts did not explain on what basis they found that the companies had failed to comply with the ban, in circumstances in which the ban was not yet in force at the time of revocation (see paragraphs 18 and 19).

39. In the light of the foregoing, the Court comes to the conclusion that the interference with the applicants' possessions in the form of their AOCs was not surrounded by sufficient guarantees against arbitrariness and was thus not lawful within the meaning of Article 1 of Protocol No. 1 to the Convention (see, *mutatis mutandis*, *Capital Bank AD*, cited above, § 139). This conclusion makes it unnecessary to ascertain whether the other requirements of that provision have been complied with. The Court thus expresses no opinion on the issue of whether they struck a fair balance between the applicants' rights and the demands of the general interest.

40. There has therefore been a violation of Article 1 of Protocol No. 1 to the Convention.

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

41. The applicant companies also complained under Article 6 § 1 of the Convention that the court proceedings had not been fair and had been excessively long.

42. However, taking into account the facts of the case, the submissions of the parties and the above findings under Article 1 of Protocol No. 1 to the Convention, the Court considers that it has examined the main legal questions raised in the present application and that there is no need to give a separate ruling on the remaining complaints (see, among other authorities, *Kamil Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007, and *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant companies claimed 1,869,776 euros (EUR), EUR 931,960 and EUR 301,644, respectively, in respect of pecuniary damage suffered as a result of the breach of their Convention rights. They also claimed EUR 25,000 each in respect of non-pecuniary damage.

45. The Government disagreed with the amounts claimed by the applicant companies and asked the Court to dismiss their claims.

46. While the withdrawal of the certificates might well have had adverse financial consequences for the applicant companies, the Court cannot speculate as to what the eventual result might have been if they had been able to challenge the imposition of those measures in administrative or judicial proceedings which fulfilled the necessary procedural guarantees required by Article 1 of Protocol No. 1 to the Convention. It also notes that it is open to the applicant companies under the domestic law in force to seek the re-opening of the proceedings. No award can therefore be made under this head.

47. In so far as the non-pecuniary damage is concerned, making its assessment on an equitable basis, the Court awards each applicant EUR 3,000.

B. Costs and expenses

48. The applicants also claimed EUR 3,000, EUR 6,860 and EUR 3,000 respectively, for the costs and expenses incurred before the Court.

49. The Government argued that the amounts were excessive and asked the Court to dismiss the claims.

50. The Court reiterates that in order for costs and expenses to be made 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, *Amihalachioaie v. Moldova*, no. 60115/00, § 47, ECHR 2004III).

51. In the present case, regard being had to the documents in its possession, the Court considers it reasonable to award each applicant EUR 2,500 for costs and expenses.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the complaint under Article 1 of Protocol No. 1 to the Convention admissible;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds* that it is not necessary to examine the admissibility and merits of the complaints under Article 6 § 1 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay to each of the applicants, 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 the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iv) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicants, 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 4 September 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Robert Spano
Deputy Registrar	President