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Meeting: 1259 meeting (7-9 June 2016) (DH)

Item reference: Action report (09/03/2016)

Communication from the Republic of Moldova concerning the case of Ciubotaru against Republic of Moldova (Application No. 27138/04)

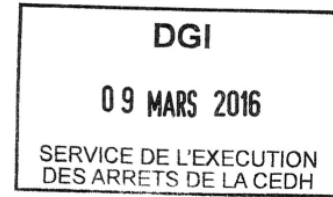
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Réunion : 1259 réunion (7-9 juin 2016) (DH)

Référence du point : Bilan d'action

Communication de la République de Moldova concernant l'affaire Ciubotaru contre République de Moldova (Requête n° 27138/04) (**anglais uniquement**)



THE GOVERNMENT OF THE REPUBLIC OF MOLDOVA

Agent for the Government

Chişinău, 9 March 2016

ACTION REPORT

in the case of Ciubotaru v. Moldova, No. 27138/04

The Government of the Republic of Moldova ("the Government") hereby submits:

CASE SUMMARY

The applicant was born in 1952 and had his parents recorded as ethnic Moldovans in his birth certificate. On his Soviet identity card he was indicated as an ethnic Moldovan. In 2002 the applicant applied to the authorities to have his old Soviet identity card replaced by a Moldovan identity card. On the application form he wrote "Romanian" under ethnicity, however he was explained that his application would not be accepted unless Moldovan ethnicity was indicated on it. Later he requested the civil registration authority that his ethnicity be changed from Moldovan to Romanian. He was refused on the grounds that his parents were not recorded as ethnic Romanians in their birth and marriage certificates, therefore, he could not claim such an ethnic identity. All applicant's appeals before the domestic courts were dismissed.

The European Court noted that the applicant appears to have been confronted with a legal requirement which made it impossible for him to adduce any evidence in support of his claim, precisely because Article 68 on the Law on civil documents and the practice of recording ethnic identity created insurmountable barriers for someone wishing to have recorded an ethnic identity different from that recorded in respect of his or her parents by the Soviet authorities. According to this Article the applicant could change his ethnic identity only if he could show that one of his parents had been recorded as being of Romanian ethnicity in the official records, which represented a disproportionate burden in view of the historical realities of the Republic of Moldova. The Court concluded that the authorities failed to comply with their positive obligation under Article 8 on account of the inability for the applicant to have examined his claim to belong to a certain ethnic group in the light of the objectively verifiable evidence adduced in support of his claim.

INDIVIDUAL MEASURES

Just satisfaction:

The applicant was awarded 1,500 Euros in respect of non-pecuniary damage and 3,500 Euros for costs and expenses. These amounts were paid by the Government on 7 October 2010, evidence of which has been supplied on 11 November 2010.

Other measures:

On 2 August 2010 the applicant requested the reopening of the civil proceedings. On 9 February 2011 the Supreme Court upheld his claims in full, quashed the decision of Chişinău Court of Appeal of 15 December 2004 and the decision of the Rîşcani District Court of 15 November 2004 and ordered the competent civil status registration authority to change the ethnicity entry in his birth certificate from Moldovan to Romanian.¹ Based on this rectification the applicant could change his ethnicity in other identity documents, where applicable. The Government considers that no further individual measures are necessary.

GENERAL MEASURES

Legislative amendments:

The violation in this case stems from the legislation, specifically Article 68 of the Law no. 100 of 26 April 2001 on civil status documents (Law no. 100) which at the time of the events provided that “it shall be impossible to rectify the ethnic identity of one’s parents in their children’s birth certificates, on the basis of identity papers of grandparents or other ascendants, if the parents’ civil status documents do not contain information concerning the requested ethnic identity”.

Following the European Court’s judgment, the authorities assessed the national framework governing civil status documents and initiated the amendment of Law no. 100. On 22 March 2012 Parliament repealed Article 68 from the said law and introduced amendments according to which the ethnicity of a child’s parents can be registered in the child’s birth certificate at their request and on the basis of their own declarations. The law further provides that when a child reaches his/her sixteen’s birthday the ethnicity is registered at his/her request according to his/her own declarations. Information on one’s ethnicity in a birth certificate and other identity and civil status documents, where applicable, can be rectified at the request of the person concerned according to his/her own declarations.

Publication and dissemination:

The judgment has been published on the website of the Ministry of Justice and in Monitorul Oficial of the Republic of Moldova (Official Gazette). It has also been widely disseminated, including to the Supreme Court of Justice, lower courts, the Superior Council of Magistrates, the Prosecutor General’s Office, the Office of Civil Status Documents and the Office of the State Registry of Population.

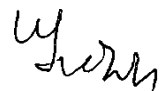
The Government considers that no further general measures are necessary.

CONCLUSION

In light of the above, the Government considers its obligations under Article 46 paragraph 1 of the Convention fulfilled.

Marin GURIN

Agent for the Government *ad interim*



¹ See the decision of the Supreme Court of Justice of 9 February 2011 (in the original language):
http://jurisprudenta.csj.md/search_hot_old.php?id=25492