



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

FOURTH SECTION

CASE OF GUSAN v. MOLDOVA

(Application no. 22539/05)

JUDGMENT
(just satisfaction)

STRASBOURG

28 September 2010

FINAL

28/12/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Gusan v. Moldova,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

David Thór Björgvinsson,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 7 September 2010,

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

PROCEDURE

1. The case originated in an application (no. 22539/05) 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 Vera Gusan (“the applicant”), on 31 May 2005. The application was dealt with simultaneously with applications nos. 476/07, 17911/08 and 13136/07 and formed part of the overall case of *Olaru and Others v. Moldova* (nos. 476/07, 22539/05, 17911/08 and 13136/07, 28 July 2009).

2. The applicant was represented by Mr F. Nagacevschi, a lawyer practising in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicant complained under Article 6 § 1 and under Article 1 of Protocol No. 1 to the Convention about the non-enforcement of a final judgment in her favour.

4. In a judgment delivered on 28 July 2009 (“the principal judgment”), the Court held that there had been a violation of the applicant's rights provided for by Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention as a result of the non-enforcement of a final judgment (see *Olaru and Others v. Moldova*, cited above).

5. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant to submit, within three months, their written observations on that issue.

THE FACTS

6. The applicant, Ms Vera Gusan, is a Moldovan national who was born in 1955 and lives in Chişinău.

7. Together with her three children and a nephew, the applicant lived in a rented apartment measuring sixteen square metres, which was part of a bigger house.

8. On an unspecified date, a third party instituted proceedings against the Chişinău Municipal Council for the restitution of the house in which the applicant's apartment was located, in accordance with Law No. 1225-XII “on the rehabilitation of the victims of the political repression committed by the totalitarian communist occupying regime”.

9. On 22 July 1998 the Centru District Court found in favour of the third party and ordered the eviction of the applicant from her apartment. At the same time, in accordance with the provisions of the same law, the court ordered the Municipal Council to provide the applicant with alternative rented accommodation in accordance with the provisions of the Housing Code. According to the latter provisions, each member of the applicant's family had the right to rented accommodation of at least nine square metres.

10. The judgment of 22 July 1998 has not been enforced to date.

11. On 28 July 2009 the Court examined the merits of the present case within the framework of *Olaru and Others v. Moldova* (cited above) and found a violation of Article 6 and Article 1 of Protocol No. 1 to the Convention.

THE LAW

12. 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. Pecuniary damage

13. The applicant did not make any pecuniary claim under the head of pecuniary damage, but asked the Court to oblige the Government to enforce the judgment in her favour within six months.

14. The Government submitted that they were aware of their obligation to enforce the judgment in favour of the applicant and that they were doing their best to have it enforced as soon as possible. However, they expressed doubt as to the time-limit proposed by the applicant and explained that in

the current situation it could be difficult to provide the applicant with rented accommodation in such a short period of time.

15. The Court sees no reason to doubt that the Government will put an end to the violation found above. In this respect the Court points out that under Article 46 of the Convention the High Contracting Parties have undertaken to abide by the final judgments of the Court in any case to which they were parties, execution being supervised by the Committee of Ministers. It follows, among other things, that a judgment in which the Court finds a breach imposes on the respondent State, *inter alia*, to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects (see, by analogy, *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII). The Court therefore leaves it to the Committee of Ministers to ensure that the Moldovan Government, in accordance with their obligations under the Convention, adopts the necessary measures consistent with the Court's conclusions in the principal judgment.

B. Non-pecuniary damage

16. The applicant claimed 9,000 euros (EUR) for non-pecuniary damage.

17. The Government submitted that the amount was excessive in view of the Court's case-law in cases concerning non-enforcement of final judgments.

18. The Court considers that the applicant must have been caused a certain amount of stress and frustration as a result of the violations found in the principal judgment. Deciding on an equitable basis, the Court awards the applicant EUR 3,000 for non-pecuniary damage.

C. Costs and expenses

19. The applicant also claimed EUR 585 for the costs and expenses incurred before the Court.

20. The Government contested the amount and argued that it was excessive.

21. The Court awards the amount claimed in full.

D. Default interest

22. The Court considers it appropriate that the default interest 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. 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, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage and EUR 585 (five hundred and eighty-five euros) in respect of costs and expenses, plus any tax that may be chargeable, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

2. Dismisses the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President