



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

THIRD SECTION

CASE OF VARTIC AND OTHERS v. MOLDOVA

(Applications nos. 12674/07, 13012/07, 13339/07, 13355/07 and 13368/07)

JUDGMENT

STRASBOURG

20 September 2011

FINAL

20/12/2011

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

In the case of Vartic and Others v. Moldova,

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

Josep Casadevall, *President*,

Corneliu Bîrsan,

Alvina Gyulumyan,

Ján Šikuta,

Luis López Guerra,

Nona Tsotsoria,

Mihai Poalelungi, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 30 August 2011,

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

PROCEDURE

1. The case originated in five applications (nos. 12674/07, 13012/07, 13339/07, 13355/07 and 13368/07) against the Republic of Moldova and Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by five Moldovan nationals, Mr Vasile Vartic, Mr Ion Țurcan, Mr Ion Tudoreanu, Mrs Elena Cernetchi and Mrs Elena Luniov (“the applicants”), on 3 and 15 January 2007, and on 1 March 2007.

2. The applicants were represented by Mr A. Bîzgu. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicants alleged, in particular, that their right of access to a court and their right to peaceful enjoyment of possessions as guaranteed by Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention had been violated by a failure to enforce the final judgments in their favour.

4. By a partial decision on admissibility of 10 November 2009 the Court decided to give notice of the applications to the Moldovan Government, along the lines of the pilot judgment *Olaru and Others v. Moldova*, nos. 476/07, 22539/05, 17911/08 and 13136/07, 28 July 2009, with regard to the alleged violations of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention. On the same date the Court decided to dismiss the remainder of the complaints, in so far as they were brought against Russian Federation, as inadmissible.

5. On 12 November 2010 and 20 March 2011 respectively the Government and the applicants submitted observations on admissibility and merits.

6. Thus, the Court decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants were born in 1970, 1961, 1959, 1965 and 1966 respectively and live in Chişinău.

8. As with the applicants in the pilot judgment of *Olaru and others*, cited above, the applicants in the instant cases complained of a breach of their rights guaranteed under Article 6 of the Convention and under Article 1 of Protocol No. 1 as a result of the authorities' failure to comply with final judicial decisions delivered by domestic courts in their favour.

A. Application no. 12674/07

9. By a final judgment of 27 December 2006 the Supreme Court of Justice ruled in favour of Mr Vartic and ordered the Moldovan Ministry of Finance, together with the Ministry of Economy and Trade and the Chişinău local authorities, to provide him with accommodation. On 24 December 2007, the Chişinău local council adopted a decision to provide Mr Vartic with an apartment situated in Chişinău. Thus, the final judgment in favour of Mr Vartic was enforced.

B. Applications nos. 13012/07 and 13339/07

10. By final judgments of 2 August 2006 the Supreme Court of Justice ruled in favour of Mr Țurcan and Mr Tudoreanu and ordered the Moldovan Ministry of Finance, together with the Ministry of Economy and Trade and the Chişinău local authorities, to provide them with accommodation. On 24 December 2007, the Chişinău local council adopted a decision to provide Mr Tudoreanu with an apartment situated in Chişinău. On 21 February 2008, the Chişinău local council adopted a decision to provide Mr Țurcan with an apartment situated in Chişinău. Thus, the final judgments in favour of Mr Țurcan and Mr Tudoreanu were enforced.

C. Applications nos. 13355/07 and 13368/07

11. By final judgments of 11 October 2006 the Supreme Court of Justice ruled in favour of Mrs Cernetchi and Mrs Luniov and ordered the Moldovan

Ministry of Finance, together with the Ministry of Economy and Trade and the Chişinău local authorities, to provide them with accommodation. On 21 February 2008, the Chişinău local council adopted a decision to provide Mrs Cernetchi and Mrs Luniiov each with an apartment situated in Chişinău. Thus, the final judgments in favour of Mrs Cernetchi and Mrs Luniiov were enforced.

II. RELEVANT DOMESTIC LAW

12. The relevant domestic law has been summarised in *Prodan v. Moldova*, no. 49806/99, § 31, ECHR 2004-III (extracts) and in *Olaru and Others v. Moldova*, cited above.

THE LAW

I. JOINDER OF THE APPLICATIONS

13. The Court considers at the outset that, in the interests of the proper administration of justice, the applications registered under the numbers 12674/07, 13012/07, 13339/07, 13355/07 and 13368/07 should be joined in accordance with Rule 42 § 1 of the Rules of Court, as there is common ground between the facts giving rise to the two cases. As the legislative framework and the administrative practices are similar, the Court is of the view that they can best be analysed by joining the applications.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

14. The applicants complained that the authorities' failure to comply with the binding and enforceable judgments of 27 December 2006, 2 August 2006 and 11 October 2006 had violated their right to a court under Article 6 of the Convention and their right to the peaceful enjoyment of their possessions under Article 1 of Protocol No. 1, which, in so far as relevant, read as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by [a] ... tribunal...”

Article 1 of Protocol No. 1

“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

15. In the Government’s view, the applicants had acted *mala fides* in that they had failed to inform the Court about the enforcement of the judgments of 27 December 2006, 2 August 2006 and 11 October 2006. They also contended that by failing to lodge new complaints concerning the delay in enforcement within six months from the respective dates on which the final judgments had been enforced, the applicants’ complaints were out of time and should be declared inadmissible for failure to comply with the six-month rule along the lines of *Şumila and others v. Moldova (dec.)*, nos. 41556/05, 42308/05, 33566/06, 33567/06, 33568/06 and 33570/06, 26 January 2010.

16. The applicants’ representative failed to submit any comments in respect of this matter.

17. The Court recalls that according to Rule 47 § 6 of the Rules of Court applicants shall keep the Court informed of all circumstances relevant to the application. It further recalls that an application may be rejected as abusive under Article 35 § 3 of the Convention, among other reasons, if it was knowingly based on untrue facts (see *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X; *Popov v. Moldova (no. 1)*, no. 74153/01, § 48, 18 January 2005; *Řehák v. Czech Republic (dec.)*, no. 67208/01, 18 May 2004; and *Kérétychachvili v. Georgia (dec.)*, no. 5667/02, 2 May 2006).

18. Incomplete and therefore misleading information may also amount to an abuse of the right of individual petition especially if the information concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information (see *Hadrabova v. the Czech Republic (dec.)*, nos. 42165/02 and 466/03). The Court points out that, according to Rule 47 § 6 of the Rules of Court, applicants must keep the Court informed of all circumstances relevant to the application and that, in the present case, they should have given notice about the enforcement of the final judgments in their favour. However, despite the failure to comply with this requirement, in the circumstances of the present cases, the Court does not consider that the applicants acted contrary to the purpose of the right of individual petition, as provided for in Article 34 of the Convention.

19. As for the Government’s argument that the applicants should have raised new complaints concerning late enforcement of the final judgments in their favour within six months from the date on which the judgments had

been enforced, the Court notes that compliance with the six-month rule has to be assessed at the moment when the applications were lodged with the Court. In the present case, unlike in *Şumila* (cited above), the applications have been lodged with the Court when the enforcement proceedings were still pending. Thus, the Court rejects the Government's argument.

20. Further, the Court notes that the applications are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

21. The applicants complained that the non-enforcement of the judgments in their favour had violated their rights under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention.

22. The Government submitted that the period of enforcement had been reasonable, in the light of the fact that in order to provide the applicants with accommodation the apartments had to be built in the first place.

23. The Court notes that the judgments in favour of the applicants remained unenforced for periods varying between twelve and nineteen months. The Court has found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention in numerous cases concerning delays in enforcing final judgments (see, among other authorities, *Prodan v. Moldova*, cited above, and *Luntre and Others v. Moldova*, nos. 2916/02, 21960/02, 21951/02, 21941/02, 21933/02, 20491/02, 2676/02, 23594/02, 21956/02, 21953/02, 21943/02, 21947/02 and 21945/02, 15 June 2004).

24. Having examined the materials submitted to it, the Court considers that there is nothing in the files which would allow it to reach a different conclusion in the present cases. Accordingly, the Court finds that the failure to enforce the judgments in favour of the applicants within a reasonable time constitutes a violation of Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicants’ representative claimed 50,000 euros (EUR) in respect of non-pecuniary damage suffered by all the applicants.

27. The Government disagreed with the amount claimed by the applicants, arguing that it was excessive in light of the case-law of the Court.

28. The Court considers that the applicants must have been caused a certain amount of stress and frustration as a result of the non-enforcement of the judgments. It awards Mr Vasile Vartic – EUR 800, Mr Ion Țurcan – EUR 1,200, Mr Ion Tudoreanu – EUR 1,200, Mrs Elena Cernetchi – EUR 800 and Mrs Elena Luniov – EUR 800.

B. Costs and expenses

29. The applicants also claimed EUR 1,080 for the costs and expenses incurred by each of them before the Court.

30. The Government considered the claimed amount as excessive.

31. 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 considers it reasonable to award each applicant the sum of EUR 100 covering costs for the proceedings before the Court.

C. Default interest

32. 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. *Joins* the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1 to the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention,
 - to Mr Vasile Vartic – EUR 800 (eight hundred euros) for non-pecuniary damage,
 - to Mr Ion Țurcan - EUR 1,200 (one thousand two hundred euros), for non-pecuniary damage,
 - to Mr Ion Tudoreanu – EUR 1,200 (one thousand two hundred euros), for non-pecuniary damage,
 - to Mrs Elena Cernetchi – EUR 800 (eight hundred euros), for non-pecuniary damage,
 - to Mrs Elena Luniov – EUR 800 (eight hundred euros), for non-pecuniary damage,
 - (b) to each applicant, EUR 100 (one hundred euros) for costs and expenses incurred before the Court,
 - (c) that the above amounts shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable,
 - (d) 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;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 20 September 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President