



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

FOURTH SECTION

CASE OF PASTELI AND OTHERS v. MOLDOVA

(Applications nos. 9898/02, 9863/02, 6255/02, and 10425/02)

JUDGMENT

STRASBOURG

15 June 2004

FINAL

15/09/2004

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 Pasteli and others v. Moldova,

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mr J. CASADEVALL,

Mr S. PAVLOVSCHI,

Mr J. BORREGO BORREGO,

Mrs E. FURA-SANDSTRÖM,

Ms L. MIJOVIĆ, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 25 May 2004,

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

PROCEDURE

1. The case originated in four applications (nos. 9898/02, 10425/02, 6255/02, and 9863/02) 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 four Moldovan nationals, Ms Sofia Pasteli, Ms Nadejda Cernicov, Mr Pavel Caretchi and Ms Maria Caretchi ("the applicants"), on 24 December 2001, 12 December 2001, 10 January 2002 and 10 January 2002 respectively.

2. The applicants were represented by Mr Victor Constantinov, acting on behalf of the "Lawyers for Human Rights", a non-governmental organisation based in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr Vitalie Pârlog.

3. The applicants complained under Article 6 § 1 of the Convention that, because of the non-enforcement of the judgments of 25 August 2000, 29 September 2000, 6 December 2000, 25 August 2001 and 25 August 2001, their right to have their civil rights determined by a court had been violated and that they had been unable to enjoy their possessions, and thus their right to protection of property under Article 1 of Protocol No. 1 to the Convention was violated.

4. The applications were allocated to the Fourth Section. On 4 February 2003 a Chamber of that Section decided to communicate the applications to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. On 25 May 2004 the Chamber decided to join the applications in accordance with Rule 42 (1) of the Rules of the Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants, all of whom are Moldovan citizens, live in the Republic of Moldova. They were born in 1920, 1927, 1925 and 1928 respectively.

7. On 29 July 1994 and on 16 February 1995 the Government and the Parliament passed two decisions according to which the deposits of certain categories of persons at the Savings Bank have to be index-linked. According to the decisions, the Ministry of Finance was supposed to allocate the necessary funds to the Savings Bank. However it failed to do so and the Savings Bank could not carry out the decisions of the Parliament and of the Government.

8. In 2000 and 2001 the applicants lodged with the Râșcani District Court civil actions against the Ministry of Finance in which they sought compensation.

9. By judgments of 25 August 2000 and 29 September 2000 the court awarded Ms Sofia Pasteli compensation of MDL 734¹ and MDL 1,466² respectively. No appeal was lodged and the judgments became final.

10. By judgment of 6 December 2000 the court awarded Ms Nadejda Cernicov compensation of MDL 4,398³. No appeal was lodged and the judgment became final.

11. By judgment of 25 August 2001 the court awarded Mr Pavel Carețchi compensation of MDL 2,904⁴. No appeal was lodged and the judgment became final.

12. By judgment of 25 August 2001 the court awarded Ms Maria Carețchi compensation of MDL 5,876⁵. No appeal was lodged and the judgment became final.

13. On unspecified dates the applicants lodged complaints about the non-enforcement of the judgments with the Ministry of Justice and the Enforcement Authority. In its replies, the Ministry of Justice and the Enforcement Authority informed them that the judgments could not be

¹ EUR 65

² EUR 135

³ EUR 403

⁴ EUR 248

⁵ EUR 501

enforced, as no funds had been provided for the enforcement of judgments by the relevant legislation within the annual State budget.

14. On 22 April 2003, after the cases were communicated to the Government, the judgments were executed by the Ministry of Finance.

II. RELEVANT DOMESTIC LAW

15. The relevant provisions of the Code of Civil Procedure, in force at the material time, stated:

Article 336. The decisions of the courts and other authorities susceptible to enforcement

The following are the acts which have to be enforced in accordance with the provisions of the present Code: 1) Civil law judgments, orders and decisions adopted by the courts...

Article 338. The issuance of the enforcement warrant

The enforcement warrant is issued by the court to the creditor, after the judgment has become final, except for cases of immediate enforcement, when the enforcement warrant is issued immediately after the delivery of the judgment.

Article 343. The request to start the enforcement procedure

The bailiff starts the enforcement procedure at the request of the persons enumerated in Article 5 of the present Code. In cases provided for in the second paragraph of this article, the bailiff starts the enforcement procedure following the judge's order.

Article 349. The supervision of enforcement of judgments

The supervision of the correct and prompt enforcement of judgments is conducted by the Department of Judgment Enforcement of the Ministry of Justice.

THE LAW

16. The applicants complained that their right to have their civil rights determined by a court had been violated by the authorities' failure to enforce the judgments of 25 August 2000, 29 September 2000, 6 December 2000, 25 August 2001 and 25 August 2001. They relied on Article 6 § 1 of the Convention, which in so far as relevant, reads as follows:

“1. In the determination of his civil rights and obligations ... everyone is entitled to a fair hearing ... by a tribunal”

17. The applicants further complained that because of the non-enforcement of the judgments in their favour they were unable to enjoy their possessions, and thus that their right to protection of property under Article 1 of Protocol No. 1 to the Convention had been violated. Article 1 of Protocol No. 1 reads as follows:

“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.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

I. ADMISSIBILITY OF THE COMPLAINTS

18. The Court considers that the applicants' complaints under Articles 6 § 1 and under Article 1 of Protocol No. 1 to the Convention raise questions of law which are sufficiently serious that their determination should depend on an examination of the merits, and no other grounds for declaring them inadmissible have been established. The Court therefore declares these complaints admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider the merits of these complaints.

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

19. Under Article 6 § 1 of the Convention, the applicants complained about the failure of the authorities to execute the judgments of the Râșcani District Court of 25 August 2000, 29 September 2000, 6 December 2000, 25 August 2001 and 25 August 2001.

20. The Government did not deny that the failure to enforce the judgments constituted a breach of Article 6 § 1 of the Convention.

21. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal; in this way it embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail

procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6 (see the *Hornsby v. Greece* judgment of 19 March 1997, *Reports* 1997-II, p. 510, § 40).

22. It is not open to a State authority to cite lack of funds as an excuse for not honouring a judgment. Admittedly, a delay in the execution of a judgment may be justified in particular circumstances. But the delay may not be such as to impair the essence of the right protected under Article 6 § 1 of the Convention (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74, ECHR 1999-V). In the instant case, the applicants should not have been prevented from benefiting from the success of the litigation, which concerned the payment of compensation.

23. The Court notes that the Râșcani District Court’s judgments remained unenforced for periods varying between thirty two and twenty months (until after the cases had been communicated to the Government by the Court, on 22 April 2003).

24. By failing for many months to take the necessary measures to comply with the final judgments in the instant case, the Moldovan authorities deprived the provisions of Article 6 § 1 of the Convention of all useful effect.

25. There has accordingly been a violation of Article 6 § 1 of the Convention.

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

26. The applicants further complained that because of the non-enforcement of the judgments in their favour they were unable to enjoy their possessions, and thus their right to protection of property under Article 1 of Protocol No. 1 to the Convention was violated.

27. The Government did not deny that the failure to enforce the judgments constituted a breach of Article 1 of Protocol No. 1 to the Convention.

28. The Court reiterates that a “claim” can constitute a “possession” within the meaning of Article 1 of Protocol No. 1 to the Convention if it is sufficiently established to be enforceable (see the *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, § 59).

29. The Court notes that the applicants had enforceable claims deriving from the judgments of the Râșcani District Court of 25 August 2000, 29 September 2000, 6 December 2000, 25 August 2001 and 25 August 2001. It follows that the impossibility for the applicants to obtain the execution of the judgments until 22 April 2003, constituted an interference with their right to peaceful enjoyment of their possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 to the Convention.

30. By failing to comply with the judgments of the Râșcani District Court the national authorities prevented the applicants from having their compensation paid and from enjoying the possession of their money. The Government have not advanced any justification for this interference and the Court considers that lack of funds cannot justify such an omission (see, *mutatis mutandis*, *Ambruosi v. Italy*, no. 31227/96, §§ 28-34, 19 October 2000).

31. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicants claimed the following amounts for the pecuniary damage suffered as a result of the failure of the authorities to enforce the judgments: Ms Sofia Pasteli – EUR 76, Ms Nadejda Cernicov – EUR 160, Mr Pavel Carețchi – EUR 50 and Ms Maria Carețchi – EUR 100.

34. The Government considered excessive the amounts claimed and left the appreciation of the pecuniary damage at the Court’s discretion.

35. The Court considers that the applicants must have suffered pecuniary damage as a result of the non-execution of the judgments of 25 August 2000, 29 September 2000, 6 December 2000, 25 August 2001 and 25 August 2001 respectively. The Court awards Ms Sofia Pasteli – EUR 76, Ms Nadejda Cernicov – EUR 160, Mr Pavel Carețchi – EUR 50 and Ms Maria Carețchi – EUR 100.

B. Non-pecuniary damage

36. The applicants claimed the following amounts for the non-pecuniary damage suffered as a result of the failure of the authorities to enforce the judgments: Ms Sofia Pasteli – EUR 27,300, Ms Nadejda Cernicov – EUR 37,720, Mr Pavel Carețchi – EUR 41,300 and Ms Maria Carețchi – EUR 29,500.

37. The Government disagreed with the amounts claimed by the applicants, arguing that they were excessive in light of the case-law of the Court. They stated that in some cases the mere fact of finding a violation was considered to be just satisfaction. The Government further cited the case of *Burdov v. Russia*, no. 59498/00, ECHR 2002-III, where the applicant was awarded EUR 3,000 for non-pecuniary damage.

38. 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, the more so given their advanced age and the fact that their only income was the state pension. In making awards for the non-pecuniary damage suffered by each applicant, the Court takes into consideration such factors as the applicant's age, personal income, the length of the enforcement proceedings and other relevant aspects. It awards Ms Sofia Pasteli – EUR 1,000, Ms Nadejda Cernicov – EUR 900, Mr Pavel Carețchi – EUR 700 and Ms Maria Carețchi – EUR 700.

C. Costs and expenses

39. The applicants also claimed EUR 1,000 each for representation fees. They relied on contracts concluded with their lawyer, according to which the fees would be paid only in case of success.

40. The Government did not agree with the amounts claimed, stating that they were excessive and that the applicants had failed to prove the alleged representation expenses.

41. The Court recalls that in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII).

42. According to Rule 60 § 2 of the Rules of Court, itemised particulars of all claims made, are to be submitted, failing which the Chamber may reject the claim in whole or in part.

43. The Court may take as a basis for its assessment such elements as the number of hours of work together with the hourly rate sought. However, since the applicants did not submit such information, the Court decides not to make any award for costs and expenses (see *Amihalachioaie v. Moldova*, no. 60115/00, § 48).

C. Default interest

44. 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. *Declares* the applications admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention:
 - to Ms Sofia Pasteli – EUR 76 for pecuniary damage and EUR 1000 for non-pecuniary damage,
 - to Ms Nadejda Cernicov – EUR 160 for pecuniary damage and EUR 900 for non-pecuniary damage,
 - to Mr Pavel Carețchi – EUR 50 for pecuniary damage and EUR 700 for non-pecuniary damage,
 - to Ms Maria Carețchi – EUR 100 for pecuniary damage and EUR 700 for non-pecuniary damage;
 - (b) 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
 - (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount[s] at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. Dismisses unanimously the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 15 June 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President