



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

FOURTH SECTION

CASE OF BOCANCEA AND OTHERS v. MOLDOVA

*(Applications nos. 18872/02, 20490/02, 18745/02, 6241/02, 6236/02,
21937/02, 18842/02, 18880/02, and 18875/02)*

JUDGMENT

STRASBOURG

6 July 2004

FINAL

06/10/2004

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 Bocancea 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 R. MARUSTE,

Mr S. PAVLOVSKI,

Mr J. BORRERO BORRERO,

Mrs E. FURA-SANDSTRÖM, *judges*,

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

Having deliberated in private on 15 June 2004,

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

PROCEDURE

1. The case originated in nine applications (nos. 18872/02, 20490/02, 18745/02, 6241/02, 6236/02, 21937/02, 18842/02, 18880/02, and 18875/02) 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 nine Moldovan nationals, Mr Ghenadie Bocancea, Ms Angela Ciugureanu, Ms Zoia Juravlev, Ms Maria Melicenco, Mr Boris Levițchi, Ms Maria Pronin, Ms Nadejda Stavilov, Ms Ana Crivceanschi and Ms Olga Cotov ("the applicants"), on 5 February 2002, 11 March 2002, 4 February 2002, 1 February 2002, 1 February 2002, 25 February 2002, 5 February 2002, 6 February 2002 and 4 February 2002 respectively.

2. The applicants were represented by Mr Vladislav Gribincea, acting on behalf of the "Lawyers for Human Rights", a non-governmental organisation based in Chișinău. 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 18 December 2000, 21 December 2000, 20 December 2000, 22 December 2000, 25 September 2000, 31 October 2000, 6 November 2000, 28 November 2000, 25 August 2000 and 16 November 2000, 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 15 June 2004 a Chamber of the Fourth Section 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, 1967, 1920, 1965, 1925, 1927, 1932, 1925 and 1924 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 had 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 the applicants lodged with the Râșcani District Court civil actions against the Ministry of Finance in which they sought compensation.

9. By judgment of 18 December 2000 the court awarded Mr Ghenadie Bocancea compensation of 3,877 Moldovan lei (MDL) (the equivalent of EUR 349 at the time). No appeal was lodged and the judgment became final.

10. By judgment of 21 December 2000 the court awarded Ms Angela Ciugureanu's father compensation of MDL 2,200.50 (the equivalent of EUR 197 at the time). No appeal was lodged and the judgment became final.

11. By judgment of 20 December 2000 the court awarded Ms Zoia Juravlev compensation of MDL 2,798.5 (the equivalent of EUR 254 at the time). No appeal was lodged and the judgment became final. Following her father's death on 13 April 2001 she inherited his estate.

12. By judgment of 22 December 2000 the court awarded Ms Maria Melicenco compensation of MDL 3,667 (the equivalent of EUR 324 at the time). No appeal was lodged and the judgment became final.

13. By judgment of 25 September 2000 the court awarded Mr Boris Levițchi compensation of MDL 2,932 (the equivalent of EUR 277 at the time). No appeal was lodged and the judgment became final.

14. By judgments of 31 October 2000 and 6 November 2000 the court awarded Ms Maria Pronin compensation of MDL 2,052.18 (the equivalent

of EUR 196 at the time) and MDL 733 (the equivalent of EUR 68 at the time) respectively. No appeal was lodged and the judgments became final.

15. By judgment of 28 November 2000 the court awarded Ms Nadejda Stavilov compensation of MDL 3,466 (the equivalent of EUR 335 at the time). No appeal was lodged and the judgment became final.

16. By judgment of 25 August 2000 the court awarded Ms Ana Crivcianschi compensation of MDL 1,469 (the equivalent of EUR 132 at the time). No appeal was lodged and the judgment became final.

17. By judgment of 16 November 2000 the court awarded Ms Olga Cotov compensation of MDL 2,200.50 (the equivalent of EUR 208 at the time). No appeal was lodged and the judgment became final.

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

19. 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

20. 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

21. 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 18 December 2000, 21 December 2000, 20 December 2000, 22 December 2000, 25 September 2000, 31 October 2000, 6 November 2000, 28 November 2000, 25 August 2000, and 16 November 2000. 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 ...”

22. 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.”

23. The applicants complained that they had been discriminated against as compared to another person – N. They argued that N. had obtained a favourable judgment which was enforced rapidly, while their judgments have not been enforced for long periods of time.

Article 14 of the Convention reads as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

I. ADMISSIBILITY OF THE COMPLAINTS

A. Alleged violation of Article 14 of the Convention, taken in conjunction with Article 6 and Article 1 of Protocol No. 1 to the Convention

24. The Court recalls that Article 14 does not forbid every difference in treatment in the exercise of the rights and freedoms recognised by the Convention (see the *Belgian linguistic case* (merits), judgment of 23 July 1968, Series A no. 6, p. 34, § 10). It safeguards persons (including legal persons) who are “placed in analogous situations” against discriminatory differences of treatment; and, for the purposes of Article 14, a difference of treatment is discriminatory if it “has no objective and reasonable justification”, that is, if it does not pursue a “legitimate aim” or if there is not a “reasonable relationship of proportionality between the means employed and the aim sought to be realised” (see, amongst many authorities, the *Rasmussen v. Denmark*, judgment of 28 November 1984, Series A no. 87, § 35 and § 38). Furthermore, the Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law; the scope of this margin will vary according to the circumstances, the subject-matter and its background (*ibid.*, § 40).

25. The Court notes that the applicants have not submitted any evidence to show that they have been treated differently on any prohibited ground compared to persons in analogous position. Therefore, this head of claim must be declared inadmissible as being manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Other complaints

26. 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

27. 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 18 December 2000, 21 December 2000, 20 December 2000, 22 December 2000, 25 September 2000, 31 October 2000,

6 November 2000, 28 November 2000, 25 August 2000, and 16 November 2000.

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

29. 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 of Judgments and Decisions* 1997-II, p. 510, § 40).

30. 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.

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

32. 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.

33. 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

34. 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.

35. 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.

36. 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).

37. The Court notes that the applicants had enforceable claims deriving from the judgments of the Râșcani District Court of 18 December 2000, 21 December 2000, 20 December 2000, 22 December 2000, 25 September 2000, 31 October 2000, 6 November 2000, 28 November 2000, 25 August 2000, and 16 November 2000. 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.

38. 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).

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicants claimed the following amounts for the pecuniary damage suffered as a result of the failure of the authorities to enforce the

judgments: Mr Ghenadie Bocancea – EUR 120, Ms Angela Ciugureanu – EUR 75, Ms Zoia Juravlev – EUR 88, Ms Maria Melicenco – EUR 115, Mr Boris Levițchi – EUR 105, Ms Maria Pronin – EUR 87, Ms Nadejda Stavilov – EUR 111, Ms Ana Crivceanschi – EUR 55 and Ms Olga Cotov – EUR 77.

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

43. The Court considers that the applicants must have suffered pecuniary damage as a result of the non-execution of the said judgments. The Court awards to the applicants the respective sums claimed by them in respect of pecuniary damage.

B. Non-pecuniary damage

44. 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: Mr Ghenadie Bocancea – EUR 45,000, Ms Angela Ciugureanu – EUR 44,000, Ms Zoia Juravlev – EUR 37,000, Ms Maria Melicenco – EUR 38,000, Mr Boris Levițchi – EUR 53,000, Ms Maria Pronin – EUR 44,000, Ms Nadejda Stavilov – EUR 37,000, Ms Ana Crivceanschi – EUR 37,000 and Ms Olga Cotov – EUR 63,000.

45. 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.

46. 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 Mr Ghenadie Bocancea – EUR 1,000, Ms Angela Ciugureanu – EUR 800, Ms Zoia Juravlev – EUR 1,000, Ms Maria Melicenco – EUR 800, Mr Boris Levițchi – EUR 900, Ms Maria Pronin – EUR 900, Ms Nadejda Stavilov – EUR 900, Ms Ana Crivceanschi – EUR 1000 and Ms Olga Cotov – EUR 900.

C. Costs and expenses

47. The applicants also claimed EUR 50 each for the costs and expenses incurred before the Court.

48. The Government considered excessive the amounts claimed, stating that the applicants had failed to prove the alleged expenses.

49. The Court notes that it has granted the applicants legal aid under the Court's legal-aid scheme for the submission of their observations and secretarial expenses. Accordingly, the Court makes no award under this head.

C. Default interest

50. 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. *Decides* to join the applications;
2. *Declares* inadmissible, the applicants' complaint concerning Article 14 of the Convention;
3. *Declares* admissible the rest of the application;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
5. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
6. *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 Mr Ghenadie Bocancea – EUR 120 (one hundred and twenty euros) for pecuniary damage and EUR 1,000 (one thousand euros) for non-pecuniary damage,
 - to Ms Angela Ciugureanu – EUR 75 (seventy-five euros) for pecuniary damage and EUR 800 (eight hundred euros) for non-pecuniary damage,
 - to Ms Zoia Juravlev – EUR 88 (eighty-eight euros) for pecuniary damage and EUR 1,000 (one thousand euros) for non-pecuniary damage,

- to Ms Maria Melicenco – EUR 115 (one hundred and fifteen euros) for pecuniary damage and EUR 800 (eight hundred euros) for non-pecuniary damage,
 - to Mr Boris Levițchi – EUR 105 (one hundred and five euros) for pecuniary damage and EUR 900 (nine hundred euros) for non-pecuniary damage,
 - to Ms Maria Pronin – EUR 87 (eighty-seven euros) for pecuniary damage and EUR 900 (nine hundred euros) for non-pecuniary damage,
 - to Ms Nadejda Stavilov – EUR 111 (one hundred and eleven euros) for pecuniary damage and EUR 900 (nine hundred euros) for non-pecuniary damage,
 - to Ms Ana Crivceanschi – EUR 55 (fifty-five euros) for pecuniary damage and EUR 1,000 (one thousand euros) for non-pecuniary damage,
 - to Ms Olga Cotov – EUR 77 (seventy-seven euros) for pecuniary damage and EUR 900 (nine hundred euros) 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 6 July 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President