



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

FOURTH SECTION

CASE OF ȚÎMBAL v. MOLDOVA

(Application no. 22970/02)

JUDGMENT

STRASBOURG

14 September 2004

FINAL

14/12/2004

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 Timbal 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. PAVLOVSKI,

Mr J. BORREGO BORREGO,

Mrs E. FURA-SANDSTRÖM,

Mrs L. MIJOVIĆ, *judges*,

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

Having deliberated in private on 24 August 2004,

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

PROCEDURE

1. The case originated in an application (no. 22970/02) 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 a Moldovan national, Mr Alexandru Timbal ("the applicant"), on 31 May 2002.

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

3. The applicant complained that the failure to enforce the judgment of 16 September 1999 violated his right to have his civil rights determined by a court guaranteed by Article 6 of the Convention and his right to peaceful enjoyment of his possessions guaranteed by Article 1 of Protocol 1 to the convention.

4. The application was allocated to the Fourth Section of the Court. On 4 February 2003 a Chamber of that Section decided to communicate the application 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Mr Alexandru Țîmbal, is a Moldovan national, who was born in 1944 and lives in Chișinău, Moldova.

6. The applicant was an employee of the Ministry of the Interior from 1963. In December 1994 he retired. In 1999 he lodged with the Chișinău District Court a civil action against the Ministry of the Interior seeking the difference between the pension he had received and the amount to which he was entitled (calculated pursuant to the Law of 23 June 1993 fixing the pensions for servicemen and military personnel of the Ministry of the Interior).

7. On 16 September 1999 the District Court awarded the applicant compensation in the amount of 8,394.40 Moldovan lei (MDL) (the equivalent of 737.37 euros (EUR) at the time). No appeal was lodged and the judgment became final.

8. On 1 October 1999 the District Court issued an enforcement warrant and sent it to the State Treasury for enforcement. However, enforcement was refused because of a lack of funds on the account of the Ministry of the Interior.

9. In November 1999 the applicant lodged an administrative action with the Court of Appeal seeking to compel the Ministry of Justice to enforce the judgment. On 24 November 2000 the Court of Appeal dismissed the action finding that jurisdiction in the matter lay with the competent district court.

10. The applicant lodged an appeal with the Supreme Court against this decision. On 27 December 2000 the Supreme Court dismissed the appeal and upheld the decision of the Court of Appeal.

11. Throughout 2001 the applicant complained about the failure to enforce the judgment to the bailiff assigned to the case, but to no avail. He also complained to various judicial and executive authorities including the Chișinău District Court, the Ministry of Finance, the Parliament, the State Chancellery, the Office of the President of Moldova, the Ministry of the Interior, the Office of the Prosecutor General and the Ministry of Justice. In a letter of 30 January 2002 the Ministry of Justice informed the applicant that the judgment of 16 September 1999 could not be enforced due to the lack of funds on the bank account of the Ministry of the Interior.

12. The judgment was enforced on 25 April 2003, following communication of this application to the Government by this Court in February 2003.

II. RELEVANT DOMESTIC LAW

13. 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

14. The applicant complained that his right to have his civil rights determined by a court was violated by the authorities’ failure to enforce the judgment of 16 September 1999. He 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”

15. The applicant further complained under Article 1 of Protocol 1 that, because of the non-enforcement of the judgment, his right to peaceful enjoyment of his possessions was 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

16. The Court considers that the applicant’s 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

17. The applicant maintained that the failure of the authorities to execute the judgment of 16 September 1999 violated Article 6 § 1 of the Convention. The Government did not dispute this.

18. 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).

19. 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 applicant should not have been prevented from benefiting from the success of the litigation, which concerned the payment of compensation.

20. The Court notes that the judgment favourable to the applicant remained unenforced for a period of three years and a half (until after the case had been communicated to the Government by the Court, on 4 February 2003).

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

22. 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

23. The applicant maintained that the failure of the authorities to execute the judgment of 16 September 1999 violated Article 1 of Protocol 1 to the Convention. The Government did not dispute this.

24. 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).

25. The Court notes that the applicant had an enforceable claim deriving from the judgment of 16 September 1999. It follows that the impossibility for the applicant to obtain the execution of the judgment until 25 April 2003, constituted an interference with his right to peaceful enjoyment of his possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 to the Convention.

26. By failing to comply with the final judgment the national authorities prevented the applicant from having his compensation paid and from enjoying the possession of his 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).

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant claimed MDL 8,631 (the equivalent of EUR 523 at the time) for the pecuniary damage suffered as a result of the failure of the authorities to enforce the judgment. He maintained that had the amount been deposited in a commercial bank in Moldova, it would have generated the above-mentioned revenue.

30. The Government considered excessive the amount claimed and left the appreciation of the pecuniary damage to the Court’s discretion.

31. The Court considers that the applicant must have suffered pecuniary damage as a result of the non-execution of the judgment of 16 September 1999. Bearing in mind the fragile position of the commercial banks in Moldova, the Court considers it more appropriate to use as a reference point the average interest rate as indicated by the National Bank of Moldova for the period in question. The Court thus awards the applicant EUR 370 in this respect, plus any tax that may be chargeable.

B. Non-pecuniary damage

32. The applicant also claimed EUR 43,000 for non-pecuniary damage suffered as a result of the failure of the authorities to enforce the judgment.

33. The Government disagreed with the amount claimed by the applicant, arguing that it was 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.

34. In making awards for non-pecuniary damage, the Court takes into consideration such factors as the applicant’s age, personal income, the period during which the judgment was not enforced and other relevant aspects.

35. The Court considers that the applicant must have been caused a certain amount of stress and frustration as a result of the non-enforcement of the judgment, particularly given the fact that his only income was the state pension. It awards the applicant EUR 800 under this heading, plus any tax that may be chargeable.

C. Costs and expenses

36. The applicant claimed EUR 1,000 in legal fees. He relied on a contract concluded with his lawyer according to which the fees would be paid only in case of success.

37. The Government did not agree with the amount claimed, stating that it was excessive and that the applicant had failed to prove the alleged legal expenses.

38. The Court recalls that in order for costs and expenses to be reimbursed 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).

39. 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.

40. 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 applicant did not submit such information, the Court decides not to make any award for costs and expenses.

D. Default interest

41. 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 application 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, EUR 370 for pecuniary damage and EUR 800 for non-pecuniary damage, to 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;

(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;

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

Done in English, and notified in writing on 14 September 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President