



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

FOURTH SECTION

CASE OF ROȘCA v. MOLDOVA

(Application no. 6267/02)

JUDGMENT

STRASBOURG

22 March 2005

FINAL

22/06/2005

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr S. PAVLOVSKI,
Mr L. GARLICKI,
Mr J. BORRERO BORRERO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 1 March 2005,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 6267/02) 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 Ion Roșca ("the applicant"), on 21 November 2001.

2. The applicant was represented by Mrs Nina Lozan, a lawyer practising in Chișinău. The Moldovan Government ("the Government") were represented by their Agent, Mr Vitalie Pârlog.

3. The applicant alleged, in particular, that his right to a fair hearing and his right to the peaceful enjoyment of his possessions were breached as a result of the quashing of a final judgment favourable to him.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court).

5. By a decision of 30 November 2004, the Court declared the application admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant, Mr Ion Roșca, is a Moldovan national who was born in 1943 and lives in Chișinău. He was a shareholder in a private bank.

8. In 1999 he had a disagreement with the bank as to the redemption of two thousand shares and consequently he brought an action against the bank, seeking compensation of 163,422 Moldovan Lei (MDL).

9. On 21 September 2000 the Râșcani District Court found in favour of the applicant and awarded him MDL 20,000. Both the applicant and the bank appealed against that judgment.

10. On 14 February 2001 the Chișinău Regional Court dismissed the applicant's appeal but upheld the bank's appeal. By its judgment it rejected the applicant's claim. The applicant lodged an appeal in cassation.

11. On 17 April 2001 the Court of Appeal upheld the appeal in cassation and by its judgment ordered the bank to pay the applicant MDL 102,653 (the equivalent of 8,959 euros (EUR) at the time). The judgment became final and enforceable on the same date.

12. In June 2001 the Prosecutor General's Office filed a request for annulment of the judgment of the Court of Appeal of 17 April 2001, and asked the Supreme Court of Justice to uphold the judgment of the Chișinău Regional Court of 14 February 2001.

13. On 11 July 2001 the Supreme Court of Justice upheld the Prosecutor General's request for annulment and quashed the final judgment of the Court of Appeal of 17 April 2001. The judgment of the Chișinău Regional Court of 14 February 2001 became final.

14. On 22 October 2004, following a request by the Government Agent, the Prosecutor General's Office applied to the Supreme Court of Justice for the revision of its judgment of 11 July 2001. The application was based on Article 449 (j) of the Code of Civil Procedure (see paragraph 17 below).

15. On 15 December 2004, by a final decision, the Supreme Court of Justice admitted the Prosecutor General's revision application and quashed its judgment of 11 July 2001. It found the Prosecutor General's request justified since *inter alia* the quashing of the final judgment of the Court of Appeal of 17 April 2001 constituted a breach of the principle of legal certainty and consequently was in breach of Article 6 § 1 of the Convention. The judgment of 17 April 2001 became final again.

II. RELEVANT DOMESTIC LAW

16. The old Code of Civil Procedure of 1964, repealed on 12 June 2003

Article 332

Upon request from a party to the proceedings, the Prosecutor General and his deputies can file a request for annulment with the Supreme Court of Justice against any final decision of the domestic courts.

Article 333

The request for annulment can be filed in the following cases:

- when the final judgment lacks a legal basis or has been delivered in breach of the law or the law was wrongly applied;
- when the issuing court has exceeded its jurisdiction;
- when offences has been committed by judges in connection with the final decision.

Article 334

There is no time limit for filing a request for annulment.

Article 335

The request for annulment has to be made in written form and has to contain the reasons provided for in Article 333. The request for annulment has to be filed in as many copies as there are participants to the proceedings. The Prosecutor General or his deputies can withdraw the request for annulment at any time before the closure of pleadings in the case, by prior notice, stating the reasons for the withdrawal. In such a case, the parties to the proceedings may request the continuation of the proceedings.

Article 335/1

The proceedings related to the request for annulment shall be governed by the rules set forth in Chapter 35 of the Code of Civil Procedure. The presence of the Prosecutor General at the proceedings is compulsory.

17. The new Code of Civil Procedure, entered into force on 12 June 2003

Article 449

Grounds for revision.

The revision may be requested:

j) When the European Court of Human Rights has started a procedure of friendly settlement in a case where the Government of the Republic of Moldova is a Party, and the Government consider that by a final decision of a court a fundamental right guaranteed by the Constitution of the Republic of Moldova or by the European Convention for the Protection of Human Rights and Fundamental Principles has been breached.

THE LAW

I. WHETHER THE APPLICANT IS STILL A VICTIM

18. When declaring the case admissible, the Court considered the question whether the applicant could claim to be a victim of the alleged breaches of the Convention. As an important event has taken place since then – the decision of the Supreme Court of Justice of 15 December 2004 – the Court must return to this question.

19. It appears from the chronology of events set out above that the State has made efforts to remedy the applicant's situation by reviving the final judgment of the Court of Appeal of 17 April 2001 in the applicant's favour.

20. The Court recalls that a decision or measure favourable to an applicant is not, in principle, sufficient to deprive the individual of his or her status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Amuur v. France*, judgment of 25 June 1995, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36; *Dalban v. Romania*, judgment of 28 September 1999, *Reports* 1999-VI, § 44).

21. Turning to the facts of the present case, the Court notes that the quashing of the final judgment of 17 April 2001 given in the applicant's favour was found unlawful by the Supreme Court of Justice. The Court accepts that, in the instant case, the State authorities have acknowledged the breach of the applicant's rights and reinstated the applicant in his title to the amount awarded, which means that the applicant's substantive rights have been recognised as a matter of domestic law. However, the Court is not persuaded that the applicant can be regarded as having been afforded adequate redress. On this point it observes that the domestic courts did not order payment of any compensation for the pecuniary or non-pecuniary damage sustained by the applicant as a result of the alleged violations.

22. In these circumstances, the Court considers that the applicant continues to have standing as a "victim" to complain that the judgment of the Supreme Court of Justice of 11 July 2001 violated his rights under Article 6 § 1 and under Article 1 of Protocol No. 1 to the Convention.

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

23. The applicant complained that the judgment of the Supreme Court of Justice of 11 July 2001, which set aside a final judgment in his favour, had violated Article 6 § 1 of the Convention.

The relevant part of Article 6 § 1 reads as follows:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...”

24. The Court reiterates that the right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which, in its relevant part, declares the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have finally determined an issue, their ruling should not be called into question (*Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII).

25. Legal certainty presupposes respect for the principle of *res judicata* (ibid., § 62), that is the principle of the finality of judgments. This principle insists that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. Higher courts' power of review should be exercised to correct judicial errors and miscarriages of justice, but not to carry out a fresh examination. The review should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character (*Ryabykh v. Russia*, no. 52854/99, §52, ECHR 2003-IX).

26. In the present case the Court notes that the request for annulment was a procedure by which the Prosecutor General's Office could challenge any final decision upon the request of one of the parties to the proceedings. The procedure was provided for in Article 332 of the former Code of Civil Procedure which was in force until 12 June 2003 (see paragraph 16 above).

27. The Court further notes that, by allowing the request lodged by the Prosecutor General under that power, the Supreme Court of Justice set at naught an entire judicial process which had ended in a final and enforceable judicial decision and thus *res judicata*.

28. In applying the provisions of Article 332, the Supreme Court infringed the principle of legal certainty. As recognised by the Supreme Court of Justice in its later judgment of 15 December 2004, that action breached the applicant's right to a fair hearing under Article 6 § 1 of the Convention (see *Brumărescu v. Romania*, cited above, §§ 61 and 62).

29. There has thus been a violation of Article 6 § 1 of the Convention.

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

30. The applicant complained that the Supreme Court of Justice's judgment of 11 July 2001 had had the effect of infringing his right to peaceful enjoyment of his possessions as secured by Article 1 of Protocol No. 1, which provides:

"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."

31. The Court reiterates that a judgment debt may be regarded as a "possession" for the purposes of Article 1 of Protocol No. 1 (see, among other authorities, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III, and the cases cited therein). Furthermore, quashing such a judgment after it has become final and unappealable will constitute an interference with the judgment beneficiary's right to the peaceful enjoyment of that possession (see *Brumărescu*, cited above, § 74). Even assuming that such an interference may be regarded as serving a public interest, the Court finds that it was not justified since a fair balance was not preserved and the applicant was required to bear an individual and excessive burden (cf. *Brumărescu*, cited above, § 75-80).

32. It follows that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed MDL 305,672 (the equivalent of EUR 18,023 at the time) for pecuniary damage suffered as a result of the quashing of the final judgment favourable to him, of which MDL 102,653 (the equivalent of EUR 6,053 at the time) was the amount he was entitled to by virtue of the

final judgment of the Court of Appeal of 17 April 2001 and the rest corresponded to the lost interest calculated by him on the basis of the average interest rate calculated by the National Bank of Moldova during the period in question.

35. The Government submitted that the applicant could not claim the MDL 102,653 because he had already recovered it by virtue of the decision of the Supreme Court of Justice of 15 December 2004. As regards the rest of the amount claimed, the Government submitted that it had been open to the applicant to ask the domestic court to index-link the award. In support of this claim the Government submitted a copy of a judgment in which a person was awarded compensation for the losses caused by inflation. Moreover, the Government submitted that in calculating the lost interest, the applicant should not have relied on figures presented by the National Bank of Moldova, but rather on figures presented by an ordinary commercial bank.

36. The Court considers that the applicant must have suffered pecuniary damage as a result of the impossibility to use and enjoy the money awarded to him by the final judgment of 17 April 2001 for a period of approximately forty-four months (see *Prodan v. Moldova*, no. 49806/99, § 71, ECHR 2004-...). The Court notes that it appears possible under domestic law to claim compensation for inflation from a defendant bank. However, this is not a reason for dismissing the present pecuniary damage claim, since the applicant claims from this Court compensation for his inability to use the money and not for the effects of inflation.

37. The Court notes that the applicant recovered the amount of MDL 102,653 on 15 December 2004. Accordingly, he can be entitled to compensation only in respect of the lost simple interest. Taking into account the line of approach in the *Prodan* case, and the circumstances of the case under consideration, the Court awards the applicant the total sum of EUR 3,500 for pecuniary damages suffered as a result of the quashing of the final judgment of 17 April 2001.

B. Non-Pecuniary Damage

38. The applicant claimed EUR 500,000 for the non-pecuniary damage suffered as a result of the quashing of the final judgment favourable to him.

39. He argued that the quashing of the final judgment caused him suffering, stress and anxiety which had negatively affected his health, mood and work capacity.

40. The Government disagreed with the amount claimed by the applicant, arguing that in the present case the mere fact of finding a violation could be considered to be sufficient just satisfaction. The Government further cited the cases of *Vasilescu v. Romania*, (judgment of 22 May 1998, *Reports* 1998-III) and *Constantinescu v. Romania*,

(no. 28871/95, ECHR 2000-VIII), where the applicants were awarded 30,000 French francs (FRF) and FRF 15,000 respectively for non-pecuniary damage. Referring to the health problems allegedly suffered by the present applicant, the Government submitted that he had not submitted any supporting evidence and that, even assuming that he had suffered health problems, there was no proof of any causal link between them and the quashing of the final judgment of 17 April 2001. Moreover, the Government submitted that the applicant's daughter was a shareholder at the bank which was the defendant in the domestic proceedings and that she had collected dividends between 1999 and 2003. She was also employed by the bank and worked there even after the applicant initiated the domestic court proceedings until she left her job for personal reasons. Mr Rosca's family company had held accounts with the bank since 2001. In conclusion the Government submitted that the revival of the judgment of 17 April 2001 constituted sufficient moral satisfaction for the applicant.

41. The Court considers that the applicant must have been caused a certain amount of stress and frustration as a result of the quashing of the final judgment of 17 April 2001 and of the impossibility to use his money for a period of approximately forty-four months. It awards him EUR 2,000 for non-pecuniary damage.

C. Costs and expenses

42. The applicant also claimed EUR 3,190 for the costs and expenses incurred before the Court, of which EUR 3,000 were representation fees and the rest secretarial expenses.

43. In support of his claims regarding representation fees the applicant sent the Court a copy of a contract signed by him and his lawyer on 25 July 2001 according to which the hourly fee was EUR 10. According to an addendum to the contract dated 24 December 2004 the lawyer had spent three hundred hours working on the case and, accordingly, the amount due was EUR 3,000. As to the secretarial expenses, the applicant has presented to the Court copies of relevant receipts.

44. The Government did not agree with the amounts claimed. According to them, the amount claimed by the applicant for representation was too high in the light of the average monthly wage in Moldova and the official fees paid by the State to *pro bono* lawyers. The Government also contested the number of hours spent by the applicant's representative on the case. Making an assessment on the basis of the rules applicable in cases of *pro bono* representation in Moldova, the Government argued that the applicant could claim only the amount of EUR 23 for representation fees. As regards the secretarial expenses, the Government also contested the amounts claimed in respect of translation and fax. They did not contest the postal expenses.

45. 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, *Amihalachioaie v. Moldova*, no. 60115/00, § 47, ECHR 2004-...).

46. In the present case, regard being had to the legal representation provided by the applicant's lawyer, the above criteria and the complexity of the case, the Court awards the applicant EUR 690 for costs and expenses.

C. Default interest

47. 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* that the applicant may claim to be a “victim” for the purposes of Article 34 of the Convention;
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 the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 3, 500 (three thousand five hundred euros) in respect of pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage;
 - (iii) EUR 690 (six hundred and ninety euros) in respect of costs and expenses;
 - (iv) any tax that may be chargeable on the above amounts;
 - (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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 March 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President