



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

FOURTH SECTION

CASE OF DUMBRAVEANU v. MOLDOVA

(Application no. 20940/03)

JUDGMENT

STRASBOURG

24 May 2005

FINAL

24/08/2005

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 Dumbraveanu 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 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 3 May 2005,

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

PROCEDURE

1. The case originated in an application (no. 20940/03) 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 Dumbraveanu ("the applicant"), on 20 May 2003.

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

3. The applicant complained that the failure to enforce the judgment of 8 November 2000 violated his right of access to 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 8 October 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.

5. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant, Mr Alexandru Dumbraveanu, is a Moldovan national, who was born in 1968 and lives in Chişinău.

7. The applicant is a policeman. According to the Law on Police Forces of 18 December 1990 the local administration is obliged to provide policemen with apartments within one year of their commencing employment. On an unspecified date the applicant filed an official request with the Municipal Council for an apartment. The Municipal Council rejected the request and the applicant brought a civil action against it.

8. On 22 June 1998 the Chişinău District Court found in favour of the applicant and ordered the Municipal Council to provide him with an apartment.

9. On an unspecified date in 2000 the applicant lodged an action with the Centru District Court seeking a change in the manner of enforcement of the judgment of 14 March 1997. In particular, he claimed money from the Municipal Council in lieu of an apartment.

10. On 8 September 2000 the Centru District Court decided to change the manner of enforcement of the judgment of 22 June 1998 and ordered the Municipal Council to pay the applicant 180,357 Moldovan lei (MDL) (the equivalent of 16,800 euros (EUR) at the time), the market value of the apartment. The Municipal Council filed an appeal against that decision.

11. On 8 November 2000 the Chisinau Regional Court allowed the appeal and in a final judgment reduced the amount from MDL 180,357 to MDL 111,240 (the equivalent of approximately EUR 10,500 at the time).

12. At the Municipal Council's request, the Prosecutor General's Office filed an application for annulment with the Supreme Court of Justice, but the application was dismissed on 4 April 2001.

13. The applicant obtained an enforcement warrant which the Bailiff failed to enforce.

14. On an unspecified date the applicant wrote to the Ministry of Justice, complaining about the non-enforcement of the decision. In a letter addressed to the Municipal Council on 17 March 2003, the Ministry of Justice warned the former to execute the court judgment.

15. The judgment of 8 November 2000 was enforced on 11 September 2003.

II. RELEVANT DOMESTIC LAW

16. The relevant domestic law has been summarised in *Prodan v. Moldova*, no. 49806/99, § 31, ECHR 2004-....

THE LAW

17. The applicant complained that his right to have his civil rights determined by a court had been violated by the authorities' failure to enforce the judgment of 8 November 2000 until 11 September 2003. He relied on Article 6 § 1, 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”

18. He also submitted that because of the non-enforcement of the judgment in his favour he was unable to enjoy his possessions, and thus that his 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

19. The Government submitted that since the enforcement of the judgment on 11 September 2003 the applicant had lost his victim status.

20. The applicant argued that he had retained his victim status since the Government had neither acknowledged, expressly or in substance, the violation of his Convention rights, nor afforded redress for it.

21. 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).

22. In the present case, the Court notes that the Government have neither acknowledged nor afforded adequate redress for the alleged violation. In these circumstances, the Court considers that the applicant continues to have standing as a “victim” to complain that the non-enforcement of the final judgment of 8 November 2000 violated his rights under Article 6 § 1 and under Article 1 of Protocol No. 1 to the Convention.

23. 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

24. The applicant complained under Articles 6 § 1 of the Convention about the refusal of the authorities to execute the judgment of the Centru District Court of 8 November 2000 until 11 September 2003.

25. The Government submitted that in view of the enforcement of the judgment on 11 September 2003, there was no violation of Article 6 § 1 of the Convention. According to them the judgment was enforced within a reasonable time.

26. The general principles which apply in cases of this type are set out in *Prodan v. Moldova*, (cited above § 52-53).

27. The Court notes that the Centru District Court's judgment of 8 November 2000 remained unenforced for more than thirty-four months. It recalls that it has found a violation in cases in which the periods of non-enforcement were much shorter than in the present case (see, for example: *Pasteli and Others v. Moldova*, nos. 9898/02, 9863/02, 6255/02 and 10425/02, § 23, 15 June 2004; *Shmalko v. Ukraine*, no. 60750/00, § 46, 20 July 2004). Accordingly, it cannot agree with the Government that the judgement of 8 November 2000 was enforced within a reasonable time.

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

29. 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

30. The applicant maintained that the failure of the authorities to execute the judgment of 8 November 2000 violated Article 1 of Protocol No. 1 to the Convention.

31. The Government submitted that they did not breach in any way the applicant's rights under Article 1 of Protocol No. 1 to the Convention.

32. 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 *Prodan*, § 59).

33. The Court notes that the applicant had an enforceable claim deriving from the judgment of 8 November 2000. It follows that the impossibility for the applicant to obtain the execution of the judgment until 11 September 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.

34. By failing to comply with the final judgment the national authorities prevented the applicant 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 *Prodan*, § 61).

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed 40,430 US dollars (USD) for pecuniary damage suffered as a result of the refusal of the authorities to enforce the judgment of 8 November 2000. He claimed that this amount would cover the lost interest calculated by him on the basis of the average interest rate indicated by the National Bank of Moldova during the period in question, the loss suffered as a result of the increase in the price of apartments in Chişinău, and the expenses suffered by him in seeking alternative accommodation.

38. The Government considered excessive the amounts claimed by the applicant and contested his method of calculation.

39. The Court considers that the applicant must have suffered pecuniary damage as a result of the non-execution of the final judgment of 8 November 2000 until 11 September 2003. Taking into consideration the average interest rate as indicated by the National Bank of Moldova for the period in question (see *Prodan*, cited above, § 73 *in fine*) and the circumstances of the case under consideration, the Court awards the applicant the total sum of EUR 3,400 for pecuniary damages.

B. Non-Pecuniary Damage

40. The applicant claimed USD 10,000 for non-pecuniary damage suffered as a result of the non-enforcement of the final judgment favourable to him.

41. He argued that the failure to enforce the final judgment for a long period of time caused him stress and anxiety. It also had a negative impact on his family life. His wife filed a divorce action against him arguing *inter alia* that he was unable to secure the financial needs of their family and to provide it with decent living conditions. The applicant submitted a copy of his ex-wife's divorce action.

42. The Government disagreed with the amount claimed by the applicant. They cited the cases of *Burdov v. Russia* (no. 59498/00, ECHR 2002-III), *Slimane-Kaïd v. France* (no. 3) (no. 45130/98, 6 April 2004) and *Krzak v. Poland* (no. 51515/99, 6 April 2004) where the applicants were awarded EUR 3,000, EUR 8,000 and EUR 3,500 respectively for non-pecuniary damage.

43. The Court considers that the applicant must have been caused a certain amount of stress and frustration as a result of the late enforcement of the judgment of 8 November 2000 and of the impossibility to use his money for a period of approximately thirty-four months. It awards him EUR 1,360 for non-pecuniary damage.

C. Costs and expenses

44. The applicant also claimed USD 500 for the costs and expenses incurred before the Court. In support of his claims the applicant submitted copies of two receipts confirming the payment of the above sum.

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

46. 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-...).

47. In the present case, regard being had to the above criteria, the Court awards the applicant EUR 390 for costs and expenses.

D. Default interest

48. 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 3,400 (three thousand four hundred euros) for pecuniary damage, EUR 1,360 (one thousand three hundred and sixty euros) for non-pecuniary damage, and EUR 390 (three hundred and ninety euros) for costs and expenses, 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 24 May 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President