



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

FOURTH SECTION

CASE OF BAIBARAC v. MOLDOVA

(Application no. 31530/03)

JUDGMENT

STRASBOURG

15 November 2005

FINAL

15/02/2006

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 Baibarac 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. PAVLOVSCHI,

Mr L. GARLICKI,

Mr J. BORREGO BORREGO, *judges*,

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

Having deliberated in private on 18 October 2005,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 31530/03) 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 Victor Baibarac ("the applicant"), on 29 May 2003.

2. 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 27 September 2002 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. The applicant and Government each filed observations on the admissibility, merits and just satisfaction. The Chamber decided, after consulting the parties, that no hearing on the merits was required.

6. 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

7. The applicant, Mr Victor Baibarac, was born in 1931 and lives in Edineț.

8. In 1949 the Soviet authorities nationalised the property owned by his parents and deported his family to Siberia.

9. On 8 December 1992 the Moldovan Parliament enacted Law No. 1225-XII “on the rehabilitation of the victims of the political repression committed by the totalitarian communist occupying regime”. The Law enabled the victims of Soviet repression to claim compensation for their nationalised property.

10. In 2002 the applicant brought an action against the Local Treasury Department in respect of the latter’s refusal to pay him compensation.

11. On 27 September 2002 the Edineț District Court found in favour of the applicant and ordered the Local Treasury Department to pay him compensation of 40,000 Moldovan Lei (MDL) (the equivalent of 3,010 euros (EUR) at the time).

12. The applicant obtained an enforcement warrant which the bailiff failed to enforce. On an unspecified date the applicant wrote to the Ministry of Justice, complaining about the non-enforcement of the judgment of 27 September 2002. In a letter of 7 May 2003, the Ministry of Justice assured the applicant that everything possible was being done to enforce the decision, but that the Local Treasury Department did not have any money in its account.

13. On 20 February 2004, after the case had been communicated to the Government, the judgment was enforced. The applicant wrote a receipt addressed to the head of the Edineț Department of Execution of Judgments in which he confirmed that he had received the money in accordance with the judgment of 27 September 2002 and that he had no more claims against the debtor and against the Department of the Execution of Judgments.

II. RELEVANT DOMESTIC LAW

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

THE LAW

15. 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 Edineț District Court's judgment of 27 September 2002 until 20 February 2004. 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 ..."

16. 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

17. In a letter of 12 March 2004 and later in their observations on just satisfaction, the Government submitted that in the receipt issued by the applicant to the Edineț Department of Execution of Judgments on 20 February 2004 (see paragraph 13 above), he expressed his intention not to pursue his application. Accordingly, the Government asked the Court to strike the application out of its list of cases.

18. The applicant submitted that the judgment of 27 September 2002 was enforced by the Government only thanks to the Court and that the Government had not paid him any compensation for the late enforcement of the judgment. He asked for non-pecuniary damages for the late enforcement (see below).

19. The Court notes that the receipt invoked by the Government appears to be in a standard form. Although it states that the applicant has no further claims against the debtor (i.e. the local Treasury Department) or the Edineț Department of Execution of Judgments, it makes no reference to his application to this Court or to his claims against the Government under the Convention. The suggestion that the applicant had no intention that the receipt would bring about the withdrawal of his application to the Court is borne out by the fact that on 8 June 2004 he submitted a claim for just

satisfaction. The Court does not consider that the applicant has unequivocally indicated any intention not to pursue his application. It must therefore continue its examination of the case (see *Scutari v. Moldova*, no. 20864/03, §§ 17-20, 26 July 2005).

20. 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

21. The applicant complained under Article 6 § 1 of the Convention about the failure of the authorities to execute the judgment of the Orhei District Court of 27 September 2002 until 20 February 2004.

22. The Government submitted that in view of the enforcement of the judgment on 20 February 2004, there was no violation of Article 6 § 1 of the Convention. According to them the judgment had been enforced within a reasonable time.

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

24. The Court notes that the Edineț District Court's judgment of 27 September 2002 remained unenforced for almost seventeen 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: *Shmalko v. Ukraine*, no. 60750/00, § 46, 20 July 2004). Accordingly, it cannot agree with the Government that the judgment of 27 September 2002 was enforced within a reasonable time.

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

26. 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

27. The applicant maintained that the failure of the authorities to execute the judgment of 27 September 2002 violated Article 1 of Protocol No. 1 to the Convention.

28. 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.

29. 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).

30. The Court notes that the applicant had an enforceable claim deriving from the judgment of 27 September 2002. It follows that the impossibility for the applicant to obtain the execution of the judgment until 20 February 2004 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.

31. By failing to comply with the final judgment the national authorities prevented the applicant from enjoying or using the 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).

32. There has accordingly 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. Damage

34. The applicant claimed EUR 100,000 for non-pecuniary damage suffered as a result of the non-enforcement of the final judgment favourable to him. He argued that the failure to enforce the final judgment for a long period of time caused him stress and anxiety. He did not submit any claim in respect of pecuniary damage or costs and expenses.

35. The Government disagreed with the amount claimed by the applicant and argued that the finding of a violation would constitute sufficient just satisfaction.

36. The Court takes the view that the applicant has suffered some non-pecuniary damage as a result of the violations found which cannot be made good by the Court's mere finding of a violation. The particular amount claimed is, however, excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 1,000.

B. Default interest

37. 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 1000 (one thousand euros) 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 amount 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 15 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President