



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

FOURTH SECTION

CASE OF LUPACESCU AND OTHERS v. MOLDOVA

*(Applications nos. 3417/02, 5994/02, 28365/02, 5742/03, 8693/03,
31976/03, 13681/03 and 32759/03)*

JUDGMENT

STRASBOURG

21 March 2006

FINAL

21/06/2006

*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 Lupacescu 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 Mrs F. ELEN-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 28 February 2006,

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

PROCEDURE

1. The case originated in eight applications (nos. 3417/02, 5994/02, 28365/02, 5742/03, 8693/03, 31976/03, 13681/03 and 32759/03) 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”) eight Moldovan nationals, Mr Valeriu Lupăcescu, Mrs Tatiana Roșcina, Mrs Galina Gașpar, Mr Petru Popovici, Mr Valeriu Purice, Mr Timofei Simionel, Mr Igor Cojuhari and Mr Alexandru Cebanenco (“the applicants”), on the dates listed in the attached Appendix.

2. The applicants were represented by “Lawyers for Human Rights” (LHR) and the “Helsinki Committee for Human Rights in Moldova” (HCHRM), non-governmental organisations based in Chișinău, as well as Mr A. Beruciașvili, a lawyer practicing in Chișinău (see details in the attached Appendix). The Moldovan Government (“the Government”) were represented by their Agent, Mr Vitalie Pârlog.

3. The applicants complained that the late enforcement of the judgments in their favour violated their right to a court guaranteed by Article 6 § 1 of the Convention and their right to peaceful enjoyment of possessions guaranteed by Article 1 of Protocol 1 to the Convention.

4. The applications were allocated to the Fourth Section. On the dates listed in the Appendix 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 applications at the same time as their admissibility.

5. On 28 February 2005 the Chamber decided to join the applications in accordance with Rule 42 (1) of the Rules of the Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASES

6. The personal details of the applicants are listed in the attached Appendix.

7. Each of the applicants obtained a final judgment against a State authority, ordering the payment of specific sums of money (the dates of the judgments are listed in the attached Appendix). The judgments were not enforced during the following periods of time:

- in the case of Mr Valeriu Lupăcescu, between 5 November 1997 and 19 December 2003 and between 31 January 2001 and 13 February 2004;
- in the case of Mrs Tatiana Roșcina, between 5 May 2000 and 18 December 2003;
- in the case of Mrs Galina Gașpar, between 5 February 2002 and 2 March 2004;
- in the case of Mr Petru Popovici, between 27 June 2002 and 14 July 2003;
- in the case of Mr Valeriu Purice, between 23 June 1998, 24 December 2001, 27 February 2002, 29 April 2002, 18 July 2002, 19 July 2002 and 26 and 29 November 2003;
- in the case of Mr Timofei Simionel, between 5 June 2001 and 22 December 2003;
- in the case of Mr Igor Cojuhari, between 1 August 1997 and 18 December 2003;
- in the case of Mr Alexandru Cebanenco, between 15 August 2002 and 10 March 2005.

While all judgments have now been enforced, Mr Purice's final judgment has only been partly enforced (see paragraph 32 below and Appendix attached).

II. RELEVANT DOMESTIC LAW

8. The relevant domestic law has been set out in this Court's judgment in the case of *Prodan v. Moldova* (no. 49806/99, ECHR 2004-III (extracts)) and *Popov v. Moldova* (no. 74153/01, §§ 29-41, 18 January 2005).

THE LAW

9. 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 final judgments in their favour. 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”

10. They 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.”

III. ADMISSIBILITY OF THE APPLICATIONS

A. Victim status

11. The Government submitted that, since the payment of the awards to the applicants, they could not claim to be victims of a violation of their Convention rights.

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

13. 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).

14. In the present case, the Court considers that, while the relevant judgments have now been enforced (in Mr Purice’s case, partly) the Government have neither acknowledged, nor afforded adequate redress for, their previous non-enforcement. In these circumstances, the Court considers that the applicants can continue to claim to be “victims” of a violation of their Convention rights by the non-enforcement of final judgments in their favour (*Dumbrăveanu v. Moldova*, no. 20940/03, § 22, 24 May 2005).

B. Exhaustion of domestic remedies

15. In the applications of Mr Simionel and Mr Cebanenco the Government submitted that available domestic remedies had not been exhausted. They argued that the applicants could have filed suit against the bailiff under Article 20 of the Constitution and under Article 426 of the former Code of Civil Procedure (“the former CCP”).

16. The Court notes that it has already dismissed a similar objection raised by the respondent Government in respect of Article 426 of the former CCP because “even assuming that the applicant could have brought an action against the bailiff and obtained a decision confirming that the non-execution had been unlawful in domestic law, such an action would not have achieved anything new, the only outcome being the issue of another warrant enabling the bailiff to proceed with the execution of the judgment” (*Popov v. Moldova*, cited above, § 32). The Court does not see any reason to depart from that conclusion in the present case.

17. For the same reasons, the Court considers that Article 20 of the Constitution, which provides for a general right of access to justice, did not offer the applicants an effective remedy. While the Decision of the Plenary Supreme Court of Justice of 19 June 2000 “Concerning the application in the judicial practice by the courts of certain provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms” may have allowed the applicant to rely on the Convention directly before domestic courts, such reliance would have resulted in nothing more than “another warrant enabling the bailiff to proceed with the execution of the judgment”.

C. Conclusion

18. The Court considers that the applicants’ complaints under Article 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, no other grounds for declaring them inadmissible having 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.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLE 1 OF PROTOCOL 1 TO THE CONVENTION

19. The Court has found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in numerous cases concerning delays in enforcing judgments (see, among other authorities, *Prodan v. Moldova*,

cited above, and *Luntre and Others v. Moldova*, nos. 2916/02, 21960/02, 21951/02, 21941/02, 21933/02, 20491/02, 2676/02, 23594/02, 21956/02, 21953/02, 21943/02, 21947/02 and 21945/02, 15 June 2004).

Having examined the material submitted to it, the Court notes that the applications do not contain any element which would allow it to reach a different conclusion in the present cases. Two of the present cases require clarification.

20. The Court notes that the Government maintained that the enforcement warrant in favour of Mr Cebanenco (application no. 32759/03) was allegedly not re-submitted to the competent enforcement authorities following its withdrawal by the applicant. In support of this argument, the Government presented a domestic court judgment rejecting the applicant's claim for index-linking the award because there was no proof of such re-submission. The applicant claimed that he had re-submitted the warrant: this was confirmed by a letter of 10 October 2003 from the Decisions Enforcement Department ("the Department"). In that letter the Department replied to the applicant's request for enforcement that it was not possible at that time to enforce the judgment in his favour and that two proposals had been made to the respondent Ministry in 2002 and 2003 to enforce the judgment. That letter correctly identified the applicant, his debtor, the number and date of the enforcement warrant and the sum awarded, and mentioned a number of actions taken with the aim of enforcement, both before and after the date when the applicant withdrew the enforcement warrant.

21. The domestic court found that the enforcement warrant had been sent to the Treasury and that the impossibility of enforcing it arose, not due to the respondent Ministry's fault, but rather to its lack of financing. The court thus confirmed that a method of enforcement (through the Treasury) had been set in motion.

22. Even if the letter from the Department was "an administrative error", as argued by the Government, it demonstrates that the competent State authorities were fully aware at that time of the existence of the final judgment and of the continuing failure to enforce it. In addition, they did not consider that the applicant had failed to take any necessary step and did not raise any such matter with him. Accordingly, the Court does not consider that the Government can rely on a lack of knowledge of the existence of the judgment against one of its own Ministries or on a failure of the applicant to submit the enforcement warrant to the authorities.

23. The Court also notes that the final judgment in favour of Mr Popovici (application no. 5742/03) was not enforced for 12 months and 18 days. While such a period may not always be considered excessive *per se*, the nature of the award has to be taken into account. The Court attaches considerable importance to the fact that the relevant award was compensation for detention found by the domestic courts to have been

illegal. Delay in the payment of such compensation must have added to the frustration already resulting from the illegal detention. The authorities were thus under a particular duty to ensure prompt enforcement. Indeed, his request to enforce was left unanswered. This failure to enforce was, in the circumstances of the present case, excessive (*Shmalko v. Ukraine*, no. 60750/00, §§ 45-46, 20 July 2004 and *Malinovskiy v. Russia*, no. 41302/02, § 40, 7 July 2005).

24. Having regard to its case-law on the subject (see, *inter alia*, § 19 above), the Court finds that the failure to comply with the enforceable judgments in favour of the applicants constituted a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention in respect of each of the applicants.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. 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 Lupăcescu – 341.58 euros (EUR), Mrs Roșcina – EUR 363.53, Mr Popovici – EUR 187.47, Mr Purice made several claims, examined in paragraph 32 below, Mr Simionel – EUR 263.59, Mr Cojuhari – 166,144 Moldovan lei (MDL) for both pecuniary and non-pecuniary damage and Mr Cebanenco – EUR 516. They argued that had they received the money in time, they could have deposited it in commercial banks and obtained the above amounts as interest.

27. The Government considered excessive the amounts claimed and argued that the enforcement of the judgments had effectively compensated the applicants for any damage caused. They challenged the manner of calculating the pecuniary damage claimed by the applicants.

28. In respect of the application by Mr Simionel and Mr Cebanenco, the Government submitted that it had been open to them to ask the domestic court to index-link the awards in accordance with Article 253 of the Code of Civil Procedure. In support of this claim the Government submitted a copy of a judgment in which a person had been awarded compensation for the losses caused by inflation.

29. The Court considers that Mr Simionel must have suffered pecuniary damage as a result of the impossibility of using and enjoying the sum awarded to him by the final judgment in his favour: the applicant claims from this Court compensation for that inability to use the money awarded and not for the effects of inflation (*Roșca v. Moldova*, no. 6267/02, § 36, 22 March 2005).

30. Mr Cebanenco's request for index-linking his award was rejected, his case was then re-opened and remains pending before the domestic courts. The Court considers that the Government's argument regarding index-linking essentially relates to the applicant's claim for just satisfaction, in respect of which there is no requirement to separately exhaust domestic remedies (*De Wilde, Ooms and Versyp v. Belgium* (Article 50), judgment of 10 March 1972, Series A no. 14, §§ 14-17).

31. The Court notes that all the applicants (except for Mr Purice) eventually recovered the amounts awarded to them. Accordingly, they can be entitled to compensation only in respect of the lost simple interest. Taking into account the approach in the *Prodan* case, the circumstances of the cases under consideration and the amounts claimed, the Court awards the following amounts for pecuniary damage suffered as a result of the failure to enforce the final judgments: Mr Lupăcescu – EUR 341.58, Mrs Roșcina – EUR 363.53, Mr Popovici – EUR 156, Mr Simionel – EUR 169, Mr Cojuhari – EUR 124, and Mr Cebanenco – EUR 516.

32. The Court notes that Mr Purice eventually received MDL 15,799.35 out of a total MDL 19,986 established in the seven awards in his favour. The difference of MDL 4,108.5 has not been paid to date. Therefore, it considers that this applicant was caused additional pecuniary damage by the failure to enforce the balance of the awards in his favour. It awards the entire amount claimed of EUR 518.53.

B. Non-pecuniary damage

33. The applicants claimed the following amounts for the non-pecuniary damage suffered as a result of the failure of the authorities to enforce the final judgments in their favour: Mr Lupăcescu – EUR 100,000, Mrs Roșcina – EUR 100,000, Mrs Gașpar – EUR 50,000, Mr Popovici – EUR 100,000; Mr Purice – EUR 100,000, Mr Simionel – EUR 1500 and Mr Cebanenco – EUR 5,000.

34. The Government disagreed with the amounts claimed by the applicants, arguing that they were excessive in light of the case-law of the Court and compared to Moldovan realities. They stated that in some cases the mere fact of finding a violation was considered to be sufficient just satisfaction. The Government further relied on the case of *Burdov v. Russia* (no. 59498/00, ECHR 2002-III), where the applicant was awarded EUR 3,000 for non-pecuniary damage.

35. 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. 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 Lupăcescu – EUR 1400, Mrs Roșcina – EUR 1200, Mr Popovici – EUR 800, Mr Purice – EUR 1600 and EUR 1000 each to Mrs Gașpar, Mr Simionel, Mr Cojuhari and Mr Cebanenco.

C. Costs and expenses

36. The applicants also claimed the following amounts for representation fees and secretarial expenses: Mr Lupăcescu – EUR 1050, Mrs Roșcina – EUR 1050, Mrs Gașpar – EUR 1500, Mr Popovici – EUR 1050; Mr Purice – EUR 1050, Mr Simionel – EUR 830 and Mr Cojuhari – USD 900. They relied on contracts concluded with their lawyers, according to which the fees would be paid only in case of success.

37. The Government did not agree with the amounts claimed, stating that they were excessive and that the applicants had failed to prove the alleged representation expenses.

38. 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, *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. In the present case, the Court has noted the submitted itemised list of hours worked on the cases together with the relative lack of complexity of the cases. It also notes that Mr Lupăcescu, Mrs Roșcina, Mr Popovici, Mr Purice and Mr Simionel all signed powers of attorney for their representation before the Court by the same organisation – “Lawyers for Human Rights”, that all the cases are similar in nature and that the submissions made by the organisation were similarly worded in each case. In light of the above, the Court does not consider that the costs claimed were reasonable as to quantum. It awards the applicants EUR 300 each, plus any tax that may be payable.

The Court further notes that Mrs Gașpar and Mr Cojuhari did not submit information on the number of hours of work or on the hourly rate sought by their representatives. Accordingly, the Court decides not to make any award for costs and expenses to these two applicants (*Pasteli and Others*

v. *Moldova*, nos. 9898/02, 9863/02, 6255/02 and 10425/02, § 43, 15 June 2004).

C. 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 applications admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of each of the applicants;
3. *Holds* that there has been a violation of Article 1 of Protocol 1 to the Convention in respect of each of the applicants;
4. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts to the following persons:
 - to Mr Lupăcescu – EUR 341.58 for pecuniary damage, EUR 1400 for non-pecuniary damage and EUR 300 for costs and expenses;
 - to Mrs Roșcina – EUR 363.53 for pecuniary damage, EUR 1200 for non-pecuniary damage and EUR 300 for costs and expenses;
 - to Mrs Gașpar – EUR 1000 for non-pecuniary damage;
 - to Mr Popovici – EUR 156 for pecuniary damage, EUR 800 for non-pecuniary damage and EUR 300 for costs and expenses;
 - to Mr Purice – EUR 518.53 for pecuniary damage, EUR 1600 for non-pecuniary damage and EUR 300 for costs and expenses;
 - to Mr Simionel – EUR 169 for pecuniary damage, EUR 1000 for non-pecuniary damage and EUR 300 for costs and expenses;
 - to Mr Cojuhari – EUR 124 for pecuniary damage and EUR 1000 for non-pecuniary damage;
 - to Mr Cebanenco – EUR 516 for pecuniary damage and EUR 1000 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.

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

Done in English, and notified in writing on 21 March 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President

LUPACESCU AND OTHERS v. MOLDOVA JUDGMENT – ANNEX

Name and application number	Date of birth and residence	Name of Representative	Date of introduction	Date of communication	Date of final judgment	Date of enforcement	Articles invoked
Valeriu Lupacescu, 3417/02	1945, Chişinău	LHR	19/12/2001	08/10/2003	05/11/1997 and 31/01/2001	19/12/2003 and 13/02/2004	Art.6, P1-1
Tatiana Roşcina, 5994/02	1951, Chişinău	LHR	26/09/2001	07/10/2003	05/05/2000	18/12/2003	Art.6, P1-1
Galina Gaşpar, 28365/02	1954, Sculeni	LHR	04/07/2002	24/09/2004	05/02/2002	02/03/2004	Art.6, P1-1
Petru Popovici, 5742/03	1980, Rezina	LHR	03/12/2002	07/10/2003	27/06/2002	14/07/2003	Art.6, P1-1
Valeriu Purice, 8693/03	1953, Chişinău	LHR	24/02/2003	07/10/2003	23/06/1998, 24/12/2001, 27/02/2002, 29/04/2002 (2 judgments), 18/07/2002, 19/07/2002	26/11/2003 and 29/11/2003	Art.6, P1-1
Timofei Simionel, 31976/03	1945, Chişinău	LHR	09/07/2003	09/12/2004	05/06/2001	22/12/2003	Art.6, P1-1
Igor Cojuhari, 13681/03	1961, Chişinău	HCHRM	10/04/2001	08/10/2003	01/08/1997	18/12/2003	Art.6, P1-1
Alexandru Cebanenco, 32759/03	1962, Chişinău	Andrei Beruciaşvili	18/08/2003	09/12/2004	15/08/2002	10/03/2005	Art.6, P1-1