



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

FOURTH SECTION

CASE OF LUNGU v. MOLDOVA

(Application no. 3021/02)

JUDGMENT

STRASBOURG

9 May 2006

FINAL

09/08/2006

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 Lungu 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 K. TRAJA,

Mr S. PAVLOVSKI,

Mr J. ŠIKUTA, *judges*,

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

Having deliberated in private on 11 April 2006,

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

PROCEDURE

1. The case originated in an application (no. 3021/02) 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 Vasile Lungu ("the applicant"), on 27 November 2001.

2. The applicant was represented by Ms S. Chitic, acting on behalf of the "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 18 August 1997 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 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957 and lives in Cocieri. He is a retired employee of the Ministry of Internal Affairs. In 1997 the applicant, along with other employees of the Ministry of Internal Affairs, lodged with the Chişinău District Court an action against the Ministry of Internal Affairs seeking compensation in place of the servicemen's food allowance.

6. On 18 August 1997 the Chişinău District Court awarded the applicant, along with other co-plaintiffs, compensation in the amount of 1,407 Moldovan lei (MDL) (307 euros (EUR) at the time). No appeal was lodged and the judgment became final.

7. The applicant obtained an enforcement warrant which the Bailiff did not enforce. On an unspecified date the applicant complained about the non-enforcement of the judgment of 18 August 1997. In an undated letter, the Superior Bailiff of the Chişinău District Court replied to the applicant that the judgment of 18 August 1997 could not be enforced due to the lack of funds in the bank account of the Ministry of Internal Affairs.

8. On 18 December 2003 the judgment was enforced.

II. RELEVANT DOMESTIC LAW

9. The relevant provisions of domestic law and practice are set out in this Court's judgment in the case of *Prodan v. Moldova* (no. 49806/99, § 31, ECHR 2004-III (extracts)).

THE LAW

I. ADMISSIBILITY OF THE APPLICATION

The Government's preliminary objection

10. The Government submitted that, since the payment of the award on 18 December 2003, the applicant could not claim to be a victim of a violation of his Convention rights.

11. The Court recalls that it has already dismissed a similar objection of the respondent Government on the grounds that “the payment, which occurred only after the present application had been communicated to the Government, did not involve any acknowledgement of the violations alleged” (*Prodan v. Moldova*, cited above, § 48). It does not see any reason to depart from this conclusion in the present case.

12. In these circumstances, the Court considers that the applicant may claim to be a victim of a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention for the period from 18 August 1997 until 18 December 2003.

13. The Court considers that the applicant’s 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, 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 AND OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

14. The applicant complains that the non-enforcement of the judgment in his favour violated his right under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention.

15. The issues raised under these Articles are identical to those found to give rise to violations of those Articles in the judgments in the cases of *Prodan v. Moldova* (cited above, §§ 56 and 62) and *Sîrbu and Others v. Moldova* (nos. 73562/01, 73565/01, 73712/01, 73744/01, 73972/01 and 73973/01, § 40, 15 June 2004).

16. Accordingly, the Court finds, for the reasons detailed in those judgments, that the failure to enforce the judgment of 18 August 1997 constitutes a violation of Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. 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

18. The applicant claimed MDL 1,519 (EUR 98) for the pecuniary damage suffered as a result of the failure of the authorities to enforce the judgment until 18 December 2003. He maintained that, had the amount awarded been deposited in a commercial bank in Moldova, it would have generated the above-mentioned revenue.

19. The Government considered excessive the amount claimed, at least in relation to Moldovan economic reality. It left the appraisal of the pecuniary damage to the Court's discretion.

20. The Court considers that the applicant must have suffered pecuniary damage as a result of the non-execution of the judgment from 18 August 1997 until 18 December 2003. The Court awards the applicant the entire amount sought in this respect, plus any tax that may be chargeable.

B. Non-pecuniary damage

21. The applicant also claimed EUR 100,000 for non-pecuniary damage suffered as a result of the failure of the authorities to enforce the judgment.

22. 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 sufficient 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.

23. 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.

24. 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 rather long period during which the judgment was not enforced. Having regard to the case of *Sîrbu and Others v. Moldova* (cited above, § 40), a case which is virtually identical to the present application, the Court awards the applicant EUR 1,000 under this heading, plus any tax that may be chargeable.

C. Costs and expenses

25. The applicant also claimed EUR 1,000 for legal representation and EUR 50 for secretarial expenses.

26. The Government did not agree with the amount claimed, stating that the applicant had failed to prove the alleged representation expenses and, in

particular, that he had failed to submit to the Court a copy of his contract with the lawyer representing him.

They referred to 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 in general and on research of the case-law of the Court in particular, arguing that a person with a law degree from the Moldovan State University did not need to study the case-law of the European Court of Human Rights since he or she was presumed to have studied it during the second and fourth year of studies.

Finally, the Government emphasised that the applicant's representative was a member of a non-profit organisation and she was not thus supposed to receive any fees.

27. 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, *Croitoru v. Moldova*, no. 18882/02, § 35, 20 July 2004).

28. 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.

29. The Court notes that three copies of the contract between the applicant and his representative were in fact received by its Registry on 5 April 2004 and a copy thereof was sent to the respondent Government.

30. In the present case, regard being had to the itemised list submitted by the applicant in a letter of 6 May 2004, to the above criteria and to the fact that this is a repetitive case of a type in respect of which the representative has already submitted similar submissions on a number of occasions, the Court awards the applicant EUR 300 on legal costs and expenses, plus any tax that may be chargeable.

D. Default interest

31. 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 98 (ninety eight euros) for pecuniary damage, EUR 1,000 (one thousand euros) for non-pecuniary damage and EUR 300 (three hundred 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 9 May 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President