



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

FOURTH SECTION

CASE OF ERMICEV v. MOLDOVA

(Application no. 42288/02)

JUDGMENT

STRASBOURG

8 August 2006

FINAL

08/11/2006

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 Ermicev 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. PAVLOVSCHI,

Mr J. ŠIKUTA, *judges*,

and Mr T. L. EARLY, *Section Registrar*,

Having deliberated in private on 4 July 2006,

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

PROCEDURE

1. The case originated in an application (no. 42288/02) 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 Alexandru Ermicev (“the applicant”), on 11 November 2002.

2. The applicant was represented by Mr A. Gavrilita, a lawyer practising in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. 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 in his favour.

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

5. On 18 May 2004 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

6. The applicant was born in 1960 and lives in Chisinau.

7. In 2000 the applicant lent 10,000 United States dollars (USD) to A. When A. was only able to return USD 2,500, they agreed, together with T. (A.'s wife at the time), to sell their apartment to the applicant in order to guarantee the return, in instalments, of the outstanding debt. The agreement (signed on 10 November 2000) stated that should the instalments be paid, the applicant would sell the apartment back to T.

8. Pursuant to that agreement, on 11 December 2000, the applicant concluded a contract for the purchase of the apartment from T. The contract specified the address and surface area of the apartment and confirmed that, before concluding the contract, the applicant had paid the entire price freely agreed on by the parties, namely 96,720 Moldovan lei (MDL) (the equivalent of USD 7,818 at the time).

9. In accordance with the contract, the former owner (T.) was to vacate the apartment by 1 April 2001. When A. failed to pay any instalments, the applicant requested the family to vacate the apartment. They refused to do so and the applicant initiated court proceedings for their eviction. T. lodged a counter-claim, requesting the annulment of the contract of sale because in reality she had only intended to guarantee, through the contract, the return of her husband's debt to the applicant.

10. The Centru District Court found in favour of the applicant on 11 June 2001, rejecting T.'s counter-claim. On 17 October 2001 the Chişinău Regional Court upheld the District Court's judgment. On 7 February 2002 the Court of Appeal also upheld that judgment. This judgment was final and enforceable.

11. T. wrote to a number of State authorities (the President, the Government, the Parliament, etc.) asking them to help re-open the proceedings. On 22 April 2002 Mr V. Mişin, a vice-president of the Parliament, wrote to the Prosecutor General asking him to initiate the re-opening of proceedings before the Supreme Court of Justice. The letter was annexed to the case-file.

12. On 5 May 2002 the Prosecutor General filed a request for the annulment of all the above-mentioned judgments and for the re-opening of the proceedings. On 10 July 2002 the Supreme Court of Justice upheld the Prosecutor General's request for annulment and ordered a full re-hearing of the case in the first-instance court. The court found that the lower courts had not paid sufficient attention to the fact that the applicant had lent USD 10,000 to T.'s husband and that T. had concluded the contract for the sale of the apartment with the specific intention of guaranteeing the return

of the money and not of actually selling it. In its view, “the totality of circumstances mentioned cast doubt on the well-founded character, lawfulness and fairness of the judgments adopted in the case”.

13. On 4 December 2002 the Centru District Court found in T.’s favour and declared the contract of sale null and void, rejecting the applicant’s request for eviction. That judgment was upheld on 12 February 2003 by the Chişinău Regional Court and on 8 May 2003 by the Court of Appeal.

II. RELEVANT DOMESTIC LAW

14. The relevant domestic law has been set out in the Court’s judgment in *Roşca v. Moldova* (no. 6267/02, 22 March 2005, §§ 16 – 17).

THE LAW

I. ADMISSIBILITY OF THE COMPLAINTS

15. The applicant complained that the quashing of the final judgment of 7 February 2002 violated his rights under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

16. The Court considers that the applicant’s complaints under both these Articles 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 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 5 above), the Court will immediately consider the merits of these complaints.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No.1 TO THE CONVENTION

17. The applicant complained that the judgment of the Supreme Court of Justice of 10 July 2002, 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 ..., everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law...”

18. He further complained that the Supreme Court of Justice’s judgment of 10 July 2002 had had the effect of infringing his right to the 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.”

19. The Government rejected the applicant’s claims and argued that, following the re-opening of the case, the parties had enjoyed the same procedural rights and that the re-opening was justified.

20. The Court has found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention in numerous cases raising issues similar to those in the present case (see, among other authorities, *Brumărescu v. Romania* [GC], no. 28342/95, §§ 61 and 74, ECHR 1999-VII and *Roșca v. Moldova*, no. 6267/02, 22 March 2005, §§ 29 and 32).

21. Having examined the material submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

22. Having regard to its case-law on the subject, the Court finds that by quashing the final judgment in favour of the applicant, the Supreme Court of Justice breached the applicant’s right to a fair hearing under Article 6 § 1 of the Convention and his right to the peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the Convention.

23. There has accordingly been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention in respect of the applicant.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant claimed USD 38,943 for pecuniary damage suffered as a result of the quashing of the final judgment of the Court of Appeal of 7 February 2002, of which USD 34,147 was the value of the apartment to

which he was entitled by virtue of that judgment, USD 4,680 corresponded to the sums which he could have obtained from renting the apartment and USD 731 constituted loss of interest on the money so obtained, calculated on the basis of the average interest rate during the period in question.

26. He contended that, given that he had another apartment in Chişinău where he lived, he would have rented out the disputed apartment had the final judgment been enforced in due time, namely on 11 June 2001 and had not been quashed by the Supreme Court of Justice on 10 July 2002. In support of his claims, the applicant submitted a copy of his residence card confirming that he lived in another apartment in Chişinău. He also submitted two valuations from a leading estate agent of 4 October 2005, according to which the market price of the apartment was USD 34,147 and, given its size and location and assuming that it had not been modernised, its rental would have amounted to a monthly sum of USD 60 in 2001, 80 in 2002, 100 in 2003, 120 in 2004 and 150 in 2005.

27. The applicant claimed that the price paid to T. under the December 2000 contract was the real price. In support of that claim he submitted a certificate issued by the Cadastre authority on 27 November 2000, in which the price of the apartment in issue was set at MDL 21,708 (the equivalent of USD 1,763 at the time). He submitted that apartment prices in Chişinău had risen considerably, as proven by a second valuation of the apartment by a real estate agent on 3 April 2006 according to which the market value of the apartment was already MDL 500,000 at that time (approximately USD 39,703). Moreover, his complaint was not about losing money but about the quashing of a final court judgment which declared him to be the owner of the apartment.

28. The Government did not contest the reasonableness of the initial price paid for the apartment or its market value according to the valuation in 2005, or the rental calculations made by the estate agent. They submitted that the applicant could not claim compensation for his inability to offer the apartment for rental because he was not its owner, according to the final judgment of the Court of Appeal of 8 May 2003. It was also important to note that rents were not stable and may fluctuate each month. Lastly, the applicant did not submit any documents confirming the exact size of the apartment.

29. The Court notes that in accordance with a final domestic court judgment the applicant was recognised as the owner of a two-room apartment. As a result of the quashing of that judgment he lost the ownership of his apartment. The Court considers that the applicant should be awarded the market value of the apartment. The applicant submitted a valuation of the apartment which the Government have not contested. Accordingly, the Government should pay him EUR 29,000.

30. The Court considers that the applicant must have suffered pecuniary damage as a result of not being able to rent the apartment. It is to be noted

that the applicant already had accommodation and therefore it is reasonable to surmise that he would have attempted to offer the apartment for rental. The Court does not agree with the Government that there is no proof of the surface area of the applicant's apartment. It is mentioned clearly in the contract for its purchase in 2000 and in the estate agent's valuation.

31. In making its assessment, the Court takes into account the fact that the applicant would inevitably have experienced certain delays in finding suitable tenants, would have incurred certain maintenance expenses in connection with the apartment and would have been taxed on the income he received.

32. Taking into account the approach in the case of *Prodan v. Moldova*, no. 49806/99, §§ 70-76, ECHR 2004-III (extracts) and *Popov v. Moldova (no. 2)*, no. 19960/04, §§ 64-69, 6 December 2005 and having regard to the above circumstances, the Court, deciding on an equitable basis, awards the applicant the sum of EUR 2,465 for lost rental revenue.

B. Non-pecuniary damage

33. The applicant claimed USD 10,000 for non-pecuniary damage suffered as a result of the quashing of the final judgment in his favour. He argued that the quashing of the final judgment caused him suffering, stress and anxiety for five years.

34. The Government disagreed with the amount claimed by the applicant, arguing that he had not supported his claims with any evidence and that there was no causal link between the alleged violation and the moral damage claimed.

35. The Court considers that the applicant must have suffered a certain amount of distress and frustration as a result of the quashing of the final judgment of 7 February 2002 and of the impossibility to use his apartment for a period of over four years. It awards him EUR 2,000 in compensation for non-pecuniary damage.

C. Costs and expenses

36. The applicant also claimed EUR 1,406 for costs and expenses incurred before the Court, of which EUR 1,380 were representation fees and the rest were the expenses incurred in valuing the apartment.

37. In support of his claims for representation fees the applicant sent the Court a copy of a contract signed by him and his lawyer on 1 June 2003 according to which the hourly fee was EUR 60. According to an addendum to the contract dated 4 October 2005 the lawyer had spent twenty-three hours working on the case and, accordingly, the amount due was EUR 1,380. As to the cost of valuing the apartment, the applicant presented to the Court a copy of the relevant receipt.

38. The Government did not agree with the amounts claimed. In their view, 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. 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 only claim of EUR 23 for representation fees.

39. 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-III).

40. The Court notes that the applicant's representative has not submitted any observations on either the admissibility or the merits of the case, but only on the just satisfaction claims. It decides therefore to award the applicant EUR 300 in respect of legal costs.

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* admissible the complaint under Article 6 § 1 of the Convention and under Article 1 of Protocol No. 1 to 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* that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final under Article 44 § 2 of the Convention the following amounts to be converted into the currency of the respondent State at the rate applicable on the date of settlement:
 - (a) EUR 29,000 (twenty-nine thousand euros), which represent the market value of the apartment;
 - (b) EUR 2,465 (two thousand four hundred and sixty five euros) in respect of pecuniary damage;

- (c) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage;
- (d) EUR 300 (three hundred euros) for costs and expenses;
- (e) any tax that may be chargeable on the above amounts;
- (f) 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 8 August 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President