



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

FOURTH SECTION

CASE OF LOZAN AND OTHERS v. MOLDOVA

(Application no. 20567/02)

JUDGMENT

STRASBOURG

10 October 2006

FINAL

10/01/2007

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 Lozan and Others 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 K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ, *judges*,

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

Having deliberated in private on 19 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 20567/02) 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 Moldovan nationals, Mr Aurel Lozan, Mr Vitalie Samoilo and Mrs Liliana Sângerean (“the applicants”), on 11 March 2002.

2. The applicants were represented by Mr Vladislav Gribincea, acting on behalf of the “Lawyers for Human Rights”, a non-governmental organisation based in Chişinău.

3. The Moldovan Government (“the Government”) were represented by their Agent, Mr Vitalie Pârlog.

4. The applicants complained that the failure to enforce the judgment of 4 November 1999 of the Centru District Court, which became final and enforceable on 25 October 2000, violated their right of access to court guaranteed by Article 6 of the Convention.

5. The application was allocated to the Fourth Section of the Court. On 7 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.

6. The applicants and the Government each filed observations on admissibility, merits and just satisfaction.

7. 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

8. The applicants are Moldovan nationals born in 1969, 1972 and 1965 respectively. They all live in Chişinău.

9. The applicants were employees of the Academy of Sciences of Moldova ("the Academy"), the State's highest scientific institution. They lived in separate rooms in a dormitory. The rooms had been allocated to them during their doctorate studies with the Academy between 1990 and 1997.

10. Following a Chişinău Local Council decision of 16 May 1996, by which the legal status of the building was changed from a dormitory to an apartment building, the Academy refused to issue occupancy vouchers in respect of the applicants' apartments and to sign tenancy agreements with them.

11. On an unspecified date in 1999 the applicants brought an action against the Academy, seeking the creation of legal tenancies in their favour (see §§ 23 and 24 below). Notwithstanding the initiation of proceedings against the Academy and the fact that it had refused to sign tenancy agreements with the applicants, they continued to live in their flats, although Mr Aurel Lozan was periodically on mission abroad between 2001 and 2003.

12. By a judgment of 4 November 1999 the Centru District Court ruled in favour of the applicants and ordered the Academy to grant them legal tenancies. The Academy appealed.

13. On 31 January 2000 the Chişinău Regional Court upheld the Academy's appeal, quashed the judgment of 4 November 1999 and dismissed the applicants' action. The applicants lodged an appeal on points of law with the Court of Appeal.

14. By a final judgment of the Court of Appeal of 6 June 2000 the applicants' appeal on points of law was dismissed.

15. Following a request from the applicants, on 18 August 2000 the Prosecutor General's Office lodged with the Supreme Court of Justice a request for annulment of the judgments of 31 January 2000 and 6 June 2000.

16. By a final judgment of 25 October 2000 the Supreme Court of Justice upheld the Prosecutor General's request for annulment, quashed the judgments of the Chişinău Regional Court and of the Court of Appeal and upheld the judgment of the Centru District Court of 4 November 1999, ordering the Academy to grant the applicants legal tenancies. This would have permitted the applicants to sub-let their flats.

17. Following a request from the Academy, on an unspecified date in 2001 the Prosecutor General's Office lodged with the Supreme Court of Justice a request for annulment of its judgment of 25 October 2000.

18. On 25 June 2001 the Plenary of the Supreme Court of Justice dismissed the Prosecutor General's request for annulment.

19. On 4 January and 20 February 2001 the applicants requested the Bailiff to enforce the judgment of 4 November 1999 and to oblige the Academy to grant the applicants legal tenancies.

20. On 5 December 2001 the Bailiff made an official report about the failure of the Academy to comply with the judgment of 4 November 1999.

21. On 4 December 2003, after the present application had been communicated to the Government, the Academy complied with the judgment of 4 November 1999 and issued the applicants with occupancy vouchers in respect of their flats. The applicants sent written declarations to the Government's Agent, confirming that the judgment of 4 November 1999 had been enforced and that they did not have any pecuniary and non-pecuniary claims against the Academy.

II. RELEVANT DOMESTIC LAW AND PRACTICE

22. The relevant domestic law concerning the enforcement of a final judgment was set out in *Sîrbu and Others v. Moldova*, nos. 73562/01, 73565/01, 73712/01, 73744/01, 73972/01 and 73973/01, § 12, 15 June 2004.

Implementation of the right to a "social tenancy"

23. The MSSR Housing Code (Law No. 306 of 3 June 1983, still in force) provides that Moldovan citizens are entitled to possess flats owned by the State or municipal authorities or other public bodies (sections 1 and 6).

24. A decision on granting a flat has to be implemented by issuing the citizen with an occupancy voucher (*ordin de repartitie a încăperii de locuit*) from the Local Council authority (section 50). The voucher serves as the only legal basis for taking possession of the flat designated therein and for the signing of a tenancy agreement between the landlord, the tenant and the housing maintenance authority (sections 50 and 53).

25. The flat is reserved for the tenant for the period when he or she and the members of his or her family are on mission abroad. The Local Council issues a certificate (*certificat de protecție*), which should be presented to the landlord. If the tenant and the members of his or her family fail to return to the flat within six months of the date of expiry of the validity of the certificate, the landlord has the right to initiate judicial proceedings in order to terminate the tenancy agreement (section 65). During the period of

validity of the certificate, the tenant has the right to sub-let the flat (section 66).

26. At any other time, the tenant has the right to sub-let the flat, with the consent of the members of his family and the landlord (section 77).

THE LAW

27. 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 judgment of the Centru District Court of 4 November 1999, which became final and enforceable on 25 October 2000, until 4 December 2003. They relied on Article 6 § 1, which in so far as relevant, reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair hearing ... by a tribunal”

I. ADMISSIBILITY OF THE COMPLAINTS

28. The case was communicated to the Government on 8 October 2003 and the Government were requested to submit their observations on the admissibility and merits of the case before 20 January 2004. Insofar as the applicants had been employees of the Academy of Sciences of Moldova (a State scientific institution), it is to be noted that the Government did not submit any observations on the applicability of Article 6 § 1 of the Convention to the present case in the light of the *Pellegrin v. France* case-law ([GC], no. 28541/95, § 66, ECHR 1999-VIII). In the absence of any evidence on whether the applicants' duties typified the specific activities of the public service and whether they were acting as the depositaries of public authority responsible for protecting the general interests of the State or other public authorities, and given that their domestic claims related to their property rights, the Court considers that Article 6 § 1 of the Convention applies to the present case.

29. In their observations on the admissibility and merits and in their observations on the applicants' just satisfaction claims, the Government submitted that the judgment had been enforced on 4 December 2003. Accordingly, the applicants had lost their “victim status”. They also mentioned that in the applicants' declarations of 4 December 2003 (see paragraph 21 above) the latter had indicated that they would not claim compensation from the Academy. Therefore, the Government asked the Court to dismiss the application.

30. The applicants submitted that the final judgment of 25 October 2000 was only enforced by the Government on account of the Court's decision to

communicate the application. Moreover, the Government had not paid them any compensation for the late enforcement of the judgment, despite the fact that had the occupancy vouchers been issued earlier, they could have sub-let the apartments.

31. 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).

32. In the present case, the Court considers that, while the relevant judgment had now been enforced, the Government have neither acknowledged, nor afforded adequate redress for, the belated 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).

33. The Court also notes that the documents invoked by the Government appear to be in a standard form. Although the declarations state that the applicants had no further claims against the Academy, no reference is made in them to their application to this Court or to their claims against the Government summarised in paragraph 30 above. That the applicants had no intention of withdrawing their application to the Court is borne out by the fact that on 23 March 2004 they expressly requested the Court to deal with their claims for just satisfaction against the Government. The Court must therefore continue the examination of the case (see *Scutari v. Moldova*, no. 20864/03, §§ 17-20, 26 July 2005).

34. The Court considers that the applicants’ complaint under Article 6 § 1 of the Convention raises questions of law which are sufficiently serious that their determination should depend on an examination of the merits. No other grounds for declaring it inadmissible have been established. The Court therefore declares the complaint 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 the complaint.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

35. The Government submitted that in view of the enforcement of the judgment on 4 December 2003, there had been no violation of Article 6 § 1 of the Convention. According to them, the judgment had been enforced within a reasonable time.

36. The general principles which apply in cases of this type are set out in *Prodan v. Moldova*, no. 49806/99, §§ 52-53, ECHR 2004-III (extracts).

37. The Court notes that the final judgment of the Supreme Court of Justice of 25 October 2000 remained unenforced for more than three years. 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 *Scutari*, cited above, § 26). Accordingly, it cannot agree with the Government that the judgment of 25 October 2000 was enforced within a reasonable time.

38. 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 (see *Scutari*, cited above, § 25).

39. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicants claimed 17,000, 15,000 and 15,000 euros (EUR) respectively for non-pecuniary and pecuniary damage suffered as a result of the non-enforcement of the final judgment. They argued that the failure to enforce the final judgment for a long period of time caused them stress and anxiety as well as pecuniary loss since they could have sub-let the flats and obtained income.

42. The Government disagreed with the amounts claimed by the applicants and argued that the finding of a violation would constitute sufficient just satisfaction.

a) Pecuniary damage

43. The Court considers that it is a matter of pure speculation whether or not the applicants would have sub-let the flats if the judgment had been enforced earlier. It notes that they would not have become the owners of the flats and would still have needed the landlord's consent to sub-let or a certificate from the Local Council, as in Mr Aurel Lozan's case (see paragraphs 25 and 26 above). It also notes in this respect that the applicants lived in the flats throughout the period in question and it does not appear that they had other accommodation where they could have lived had they

sub-let their flats. Therefore, the Court does not award any compensation to the applicants for pecuniary damage.

b) Non-pecuniary damage

44. Given that for more than three years the applicants' legal status as tenants was precarious and that this must have caused them some anxiety, the Court considers that they must have suffered non-pecuniary damage which cannot be made good by the mere finding of a violation of the Convention. 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 applicants EUR 500 each for non-pecuniary damage.

B. Costs and expenses

45. The applicants also claimed EUR 1,500 for legal representation and EUR 50 for costs and expenses. In support of their claims their representative sent to the Court copies of the contract of representation and a copy of the detailed timesheet showing the number of hours spent by him on their case.

46. The Government did not agree with the amount claimed, stating that it was excessive. The amount claimed by the applicants was too high in the light of the average monthly wage in Moldova. The Government also contested the number of hours spent by the applicants' representative on the case.

47. 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).

48. In the present case, regard being had to the itemised list submitted by the applicants, the above criteria, and to the fact that this was a relatively straightforward case in which the applicants were all represented by the same lawyer, the Court does not consider that the costs claimed were reasonable as to quantum. It awards the applicants a global sum of EUR 500, plus any tax that may be payable.

C. Default interest

49. 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*
 - (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 500 (five hundred euros) each to Mr Aurel Lozan, Mr Vitalie Samoil and Mrs Liliana Sângerean in compensation for non-pecuniary damage and a global sum of EUR 500 (five hundred euros) in respect of 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President