



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

FOURTH SECTION

CASE OF DRAGUTA v. MOLDOVA

(Application no. 75975/01)

JUDGMENT

STRASBOURG

31 October 2006

FINAL

31/01/2007

*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 Drăguță 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 10 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 75975/01) 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, Mrs Valentina Drăguță (“the applicant”), on 16 July 1999.

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

3. The applicant complained that the failure to enforce the judgments of 10 October 1995 and of 29 September 1998 violated her right to have her civil rights determined by a court within a reasonable time, as guaranteed by Article 6 of the Convention, and her right to peaceful enjoyment of her possessions, as guaranteed by Article 1 of Protocol No. 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 1951 and lives in Chișinău. She is an invalid (second degree).

6. The applicant and her family (her husband and three children, two of whom were minors at the relevant time) rented an apartment from the State. In 1994 the apartment was seriously damaged due to leakage from water pipes. Two special commissions of the Chişinău Municipality confirmed the damage to the apartment and found that it was not habitable and was in imminent danger of collapse. The applicant's requests to be offered alternative accommodation as required by law were rejected by the Municipality due to the lack of available apartments. The applicant and her family continued to live in the apartment until December 2000 when they moved to a rented room.

7. In April 1995 the applicant brought a civil action against the Municipality claiming the right to receive a new apartment. On 10 October 1995 the Chişinău District Court found for the applicant and ordered the Municipality to provide accommodation for her five-person family ("the 1995 judgment"). The court issued an enforcement warrant no. 2-383/95. On 21 October 1995 the applicant requested the bailiff and the court to enforce the order.

8. Because the Municipality refused to comply with the judgment of 10 October 1995, the applicant requested the court to change the means of enforcing the judgment, claiming the monetary value of the apartment.

9. On 29 September 1998 the Chişinău District Court issued a new judgment, obliging the Municipality to pay the applicant 146,440 Moldovan lei (MDL) (the equivalent of 24,000 United States dollars at the time) representing the market value of a four-room apartment in Chişinău ("the 1998 judgment"). The court issued a new enforcement warrant under the same number as that issued in 1995 (no. 2-383/95).

10. On 27 October 1998 the Chişinău Regional Court upheld that judgment. There was no further appeal and the judgment became final.

11. The applicant obtained an enforcement warrant which the bailiff did not enforce. Following the applicant's request, the Chişinău District Court froze the Municipality's bank account on 13 November 1998, but there was apparently no money on that account. On 9 June 1999 the applicant wrote a letter to the Ministry of Justice, complaining about the non-enforcement of the 1998 judgment. The Ministry of Justice forwarded the letter to the Chişinău District Court.

12. Following the applicant's request one of the Municipality's buildings was seized for sale at a public auction. However, it was not sold.

13. According to the applicant, the 1998 judgment was enforced on 11 January 2002. According to the Government, the date of enforcement was 26 December 2001.

II. RELEVANT DOMESTIC LAW

14. 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).

In addition, the relevant provisions of the Law no. 824 of 24 December 1991 on index-linking of population income read as follows:

“Article 1

Index-linking of population income means the complete or partial recovery of the losses to the population income caused by the increase in prices and tariffs for goods and services and constitutes a permanent mechanism for automatic correction of the level of population income. ...

Article 3

There shall be an index-linking of all financial income of citizens in the form of wages of persons employed by State organisations, as well as enterprises which sell their products at fixed prices, pensions, stipends, social assistance payments and other income which does not have a one-time character, as well as deposits of the population in banks and credit institutions”.

THE LAW

15. The applicant complained that the failure to enforce the judgments of 1995 and 1998 in her favour violated her rights as guaranteed by Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention.

Article 6 § 1 of the Convention, 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 ... within a reasonable time by a tribunal”

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. THE GOVERNMENT'S PRELIMINARY OBJECTION

16. The Government submitted that since the award had been paid on 26 December 2001 the applicant could no longer claim to be a victim of a violation of her Convention rights.

17. The Court notes that it has already dismissed a similar objection raised by the respondent Government because "the payment ... did not involve any acknowledgement of the violations alleged" (*Prodan v. Moldova*, cited above, § 47). Moreover, no compensation for delayed enforcement was paid.

18. 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.

19. 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

20. The applicant complained that the non-enforcement of the judgments of 1995 and 1998 in her favour violated her right under Article 6 § 1 of the Convention.

21. The applicant also complained that her right to property had been breached as a result of the failure of the authorities to compensate her for the loss of value of the award made to her on account of its delayed enforcement.

22. The Court notes that the 1995 judgment remained unenforced, even after it was modified in 1998, until at least December 2001. However, it notes that Moldova acceded to the Convention on 12 September 1997. Accordingly, only the period between that date and December 2001, that is four years and three months, is within its jurisdiction *ratione temporis*.

23. 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 concerning delays in enforcing final 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 file does not contain any element which would allow it to reach a different conclusion in the present case.

24. Accordingly, the Court finds, for the reasons given in those cases, that the failure to enforce the 1995 judgment, as modified in 1998, within a reasonable time 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

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 applicant claimed 50,000 euros (EUR) for both pecuniary and non-pecuniary damage suffered. She claimed MDL 163,573 (EUR 10,724) for the pecuniary damage suffered as a result of the failure of the authorities to enforce the judgment of 29 September 1998 for over three years. She submitted statistical data showing that during 1998-2002 inflation had amounted to 111.7%, decreasing the value of her 1998 monetary award.

27. The Government submitted that the applicant could have claimed compensation for the effects of inflation on her award on the basis of Law no. 824 (see paragraph 14 above).

They also submitted that the bailiff took all reasonable measures to enforce the judgment, but this proved impossible due to the lack of money in the Municipality's account.

28. The Court observes that the Government have not submitted any case-law to show that Law no. 824, on which they relied, has been interpreted by the courts to cover situations such as that of the applicant, i.e. persons who have judgment debts in their favour.

29. As for the argument that the bailiff had taken all reasonable measures to enforce the judgment, the Court notes that the applicant's debtor was the Chişinău Municipality, a State authority. It recalls that “it is not open to a State authority to cite lack of funds and available alternative accommodation as an excuse for not honouring a judgment debt. Admittedly, a delay in the execution of a judgment may be justified in particular circumstances. But the delay may not be such as to impair the essence of the right protected under Article 6 § 1 of the Convention” (*Prodan*, cited above, § 53). Therefore, the Government's argument that the

Municipality had no money to discharge the debt cannot be taken into account.

30. The Court considers that the depreciation of the actual value of the award of 29 September 1998 during the period when it was not enforced constitutes pecuniary damage sustained by the applicant which must be compensated by the respondent State (see, e.g., *Akkuş v. Turkey*, judgment of 9 July 1997, *Reports of Judgments and Decisions* 1997-IV, § 35). It considers that the applicant has proved the depreciation as claimed and it therefore awards the entire amount sought in this respect.

31. The applicant also submitted that her family had accumulated debts in respect of the apartment which she and her family had to vacate in December 2000 (electricity, water, etc). However, the bills which she submitted were issued in 2004 and it is not clear to which period they relate, considering that the judgment debt was enforced in December 2001. The Court considers that she has not substantiated this part of her claims.

32. Moreover, since December 2000 the applicant's family had to rent a room to live in and thus incurred additional expenses. The applicant presented a confirmation to that effect but did not specify the amount of money spent on rental or provide any proof of such expenses.

33. The Government noted this lack of specification of the expenses and declared that the applicant had the right to reduced payments in respect of matters such as rent, electricity, etc. by virtue of her invalidity.

34. In view of the applicant's failure to specify the amounts spent on rent and to provide any supporting evidence, and taking into account that since 29 September 1998 the enforcement proceedings concerned the sum of money due to her and not the provision of accommodation, the Court does not make an award in this respect.

35. Having regard to the above circumstances, and deciding on an equitable basis, the Court awards the applicant the total sum of EUR 10,724 for pecuniary damage suffered as a result of the late enforcement of the judgment of 29 September 1995 as modified in 1998.

B. Non-pecuniary damage

36. The applicant also submitted that she had suffered non-pecuniary damage as a result of the failure of the authorities to enforce the two judgments within a reasonable time. She emphasised that the belated enforcement had prevented her family from living in acceptable conditions for over six years and that she suffered from cancer as a result and became an invalid.

37. The Government disagreed with the amount claimed by the applicant, arguing that it was excessive and that no reasonable link between her living conditions and her illness had been established.

38. In making awards for non-pecuniary damage, the Court takes into consideration such factors as the applicant's age and health, the period during which the judgment was not enforced and other relevant aspects (*Croitoru v. Moldova*, no. 18882/02, § 31, 20 July 2004).

39. The Court considers that the applicant must have been caused a significant amount of stress and frustration as a result of the late enforcement of the 1995 judgment as modified in 1998, particularly given her precarious state of health and the rather long period during which she and her family, including two minors, had to live in unacceptable and dangerous conditions. It awards the applicant EUR 3,000 under this head (*Prodan v. Moldova*, cited above, § 82 and *Malinovskiy v. Russia*, no. 41302/02, § 52, ECHR 2005-... (extracts)).

C. Costs and expenses

40. The applicant did not make any claim in this respect.

D. 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 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 10,724 (ten thousand seven hundred and twenty four euros) for pecuniary damage and EUR 3,000 (three 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 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 31 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President