



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

FOURTH SECTION

CASE OF MELNIC v. MOLDOVA

(Application no. 6923/03)

JUDGMENT

STRASBOURG

14 November 2006

FINAL

14/02/2007

*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 Melnic 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 F. ELEN-PAVLOVSKI, *Deputy Section Registrar*,

Having deliberated in private on 24 October 2006,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 6923/03) 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”) on 30 December 2002 by Mrs Galina Melnic.

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

3. The applicant alleged, in particular, that her right to a fair hearing was breached as a result of the failure of the Court of Appeal to give any reasons for extending the time-limit for lodging an appeal. She also complained about a violation of her rights under the Convention as a result of the quashing of the judgments in her favour following a request for annulment lodged by the Prosecutor General with the Supreme Court of Justice.

4. On 29 March 2005 the Court communicated 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.

5. The applicant and the Government each filed observations on the merits and on the claims for just satisfaction under Article 41 of the Convention.

6. The Government submitted two unilateral declarations and invited the Court to strike out the application, in accordance with Article 37 of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1948 and lives in Rezina.

8. The applicant is the widow of the former President of the Rezina District Court. On 7 June 1998, after the death of her husband, the applicant lodged several requests with the Ministry of Finances (“the Ministry”) and Ministry of Justice, seeking the lump sum to which she was entitled in accordance with the “Law on the Status of Judges”. When she was refused on the ground of lack of resources, the applicant brought an action against the Ministry.

9. On 2 March 1999 the Buiucani District Court awarded the applicant 345,491 Moldovan lei (MDL, the equivalent of 35,987 euros (EUR) at the time), to which it found she was entitled following the death of her husband. The Ministry appealed. By judgments of 11 May 1999 and 17 August 1999 the Chişinău Regional Court and the Court of Appeal, respectively, dismissed the Ministry’s appeals.

10. The applicant lodged numerous complaints about the failure of the Ministry to comply with the judgment and pay her compensation. On 13 January 2000 the Ministry paid the compensation.

11. Since the applicant considered that the late enforcement of the judgment had significantly reduced the value of her compensation due to inflation, she requested the Ministry to make good the diminished value. The Ministry refused to comply with the applicant’s request and she brought an action against it, seeking compensation for the late enforcement.

12. On 14 September 2001 the Buiucani District Court ruled in favour of the applicant and ordered the Ministry to pay her MDL 244,953 (EUR 21,007 at the time) in compensation. The Ministry appealed.

13. On 5 February 2002 the Chişinău Regional Court dismissed the Ministry’s appeal and upheld the judgment of 14 September 2001. The judgment of the Chişinău Regional Court stated specifically that the Ministry’s representative had been present and had addressed the court. Since the Ministry did not lodge an appeal in cassation within fifteen days, the judgment of 5 February 2002 became final.

14. On 8 April 2002, 47 days after the expiry of the legal time-limit for lodging the appeal in cassation, the Ministry lodged an appeal in cassation with the Court of Appeal and requested an extension of the legal time-limit for lodging it, without providing any reasons for the failure to observe it.

15. On 9 July 2002 the Court of Appeal examined the Ministry’s appeal in cassation. The Court of Appeal requested, *ex-officio*, a report from the Statistics Department on the level of inflation and relied on it in its judgment. The applicant alleged that she had not been given the possibility

either to familiarise herself with the document or to challenge it before the court. The applicant also alleged that she had expressly requested the Court of Appeal to dismiss the Ministry's appeal in cassation since it had been lodged out of time.

16. By a judgment of 9 July 2002 the Court of Appeal upheld the Ministry's appeal in cassation, quashed the judgments in favour of the applicant and reduced the amount of compensation for inflation to MDL 118,848 (EUR 8,766 at the time). The Court of Appeal did not give any reason for accepting the appeal in cassation lodged out of time.

17. On 16 September 2002 the Prosecutor General lodged with the Supreme Court of Justice a request for annulment of the judgments in favour of the applicant and asked for the reduction of the amount of compensation awarded.

18. On 9 October 2002 the Supreme Court of Justice upheld the Prosecutor General's request for annulment, quashed the judgments in favour of the applicant and dismissed her claims for compensation.

II. RELEVANT DOMESTIC LAW

19. The relevant provisions of the Code of Civil Procedure, in force between 26 December 1964 and 12 June 2003, read as follows:

Section 114. Extension of a time-limit

"Where a person has failed to comply with a legal time-limit for reasons considered by a court to be plausible, that time-limit may be extended by the court.

A request for the extension of the time-limit shall be lodged with the court concerned and shall be examined at a court hearing....

A court judgment dismissing a request for extension of a time-limit may be challenged by way of an appeal."

Section 284. The extension of the time-limit

"The time-limit for lodging an appeal may be extended in accordance with the provisions of section 114 of the present Code. If a court does not have reasons to extend the time-limit, it shall dismiss the appeal as time-barred."

Section 305. The time-limit for lodging an appeal in cassation

"The legal time-limit for lodging an appeal in cassation is fifteen days, unless the law provides otherwise."

Section 314. The judgment of the cassation instance and the procedural provisions

“The issuance of the judgment as well as other procedural provisions before the appeal instance should be applicable to the proceedings before the cassation instance.”

Section 316. Irrevocable judgments (*Hotărârile irevocabile*)

“Irrevocable judgments are:

...

3) non-appealed judgments, issued by the appeal instances.”

THE LAW**I. THE GOVERNMENT’S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 OF THE CONVENTION**

20. The Government, in their additional observations of 7 December 2005 and 28 March 2006, submitted two unilateral declarations similar to that in the case *Tahsin Acar v. Turkey* ((preliminary objection) [GC], no. 26307/95, ECHR 2003-VI) and informed the Court that they were ready to accept that there had been a violation of the applicant’s rights under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention as a result of the quashing of the judgments in her favour. In respect of pecuniary damage, the Government proposed to reinstate the applicant in the position in which she found herself prior to the quashing of the judgment of the Court of Appeal of 9 July 2002, by lodging a revision request with the Supreme Court of Justice in accordance with relevant provisions of the domestic law. In respect of non-pecuniary damage, the Government proposed to award the applicant the equivalent in MDL of EUR 1,800. They also proposed to award her compensation for her reasonable and proven costs and expenses incurred before the Court. The Government invited the Court to strike out the application in accordance with Article 37 of the Convention.

21. The applicant did not agree with the Government’s proposal. She considered that she was entitled to receive a higher amount of compensation and requested the Court to continue the examination of the application. She claimed that in accordance with the judgment of the Chişinău Regional Court she was entitled to receive MDL 244,953 (EUR 21,007 at the time). She also requested MDL 150,000 (EUR 8,785.39) in respect of non-pecuniary damage.

22. The Court observes, as it has previously stated in *Tahsin Acar* (cited above, §§ 74-77), that a distinction must be drawn between, on the one hand, declarations made in the context of strictly confidential friendly-settlement proceedings and, on the other, unilateral declarations – such as the present declarations – made by a respondent Government in public and adversarial proceedings before the Court. In accordance with Article 38 § 2 of the Convention and Rule 62 § 2 of the Rules of Court, the Court will proceed on the basis of the Government's unilateral declarations and the parties' observations submitted outside the framework of friendly-settlement negotiations, and will disregard the parties' statements made in the context of exploring the possibilities for a friendly settlement of the case and the reasons why the parties were unable to agree on the terms of a friendly settlement.

23. The Court considers that, under certain circumstances, it may be appropriate to strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued. It will, however, depend on the particular circumstances whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (Article 37 § 1 *in fine*).

24. Relevant factors in this respect include the nature of the complaints made, whether the issues raised are comparable to issues already determined by the Court in previous cases, the nature and scope of any measures taken by the respondent Government in the context of the execution of judgments delivered by the Court in any such previous cases, and the impact of these measures on the case at issue. It may also be material whether the facts are in dispute between the parties, and, if so, to what extent, and what *prima facie* evidentiary value is to be attributed to the parties' submissions on the facts. In that connection it will be of significance whether the Court itself has already taken evidence in the case for the purposes of establishing disputed facts. Other relevant factors may include the question of whether in their unilateral declaration the respondent Government have made any admission(s) in relation to the alleged violations of the Convention and, if so, the scope of such admissions and the manner in which they intend to provide redress to the applicant. As to the last-mentioned point, in cases in which it is possible to eliminate the effects of an alleged violation (as, for example, in certain categories of property cases) and the respondent Government declare their readiness to do so, the intended redress is more likely to be regarded as appropriate for the purposes of striking out the application, the Court, as always, retaining its power to restore the application to its list as provided in Article 37 § 2 of the Convention and Rule 44 § 5 of the Rules of Court.

25. The foregoing list is not intended to be exhaustive. Depending on the particular circumstances of each case, it is conceivable that further considerations may come into play in the assessment of a unilateral declaration for the purposes of Article 37 § 1 (c) of the Convention.

26. As to whether it would be appropriate to strike out the present application on the basis of the unilateral declarations made by the Government, the Court notes in the first place that the applicant mainly complained about the fact that the Court of Appeal had quashed the judgment of the Chişinău Regional Court following the examination of the Ministry's appeal in cassation lodged outside the time-limit, without providing any reason for extending that time-limit. The Government did not comment on that issue, either in their observations or in the unilateral declarations.

27. Secondly, although the Government accepted in their unilateral declarations that the upholding by the Supreme Court of Justice of the Prosecutor General's request for annulment and the quashing of the judgments in favour of the applicant constituted violations of Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention, they did not, however, offer her an adequate redress, but proposed to initiate further proceedings before the Supreme Court of Justice in order to discontinue the request for annulment proceedings.

28. Thirdly, the Court notes that in accordance with the judgment of the Chişinău Regional Court the applicant would be entitled to receive MDL 244,953 (EUR 21,007 at the time), while under the Government's unilateral declarations the applicant would receive only MDL 118,848 (EUR 8,766 at the time), (MDL 126,105 (EUR 12,241) less). The Court can but note the substantial difference in the amount awarded to the applicant by the judgment of the Chişinău Regional Court and by that of the Court of Appeal.

29. As to the Government's proposal to lodge a request with the Supreme Court of Justice in order to discontinue the request for annulment proceedings and to place the applicant in the situation prior to the initiation of those proceedings, even assuming that the Government's proposed revision request was successful (see paragraph 20 above), that would not lead to a reinstatement of the applicant in the position in which she found herself prior to the quashing of the final judgment of the "original" court, namely the judgment of the Chişinău Regional Court of 5 February 2002.

Finally, the Court considers that the sum proposed in declarations made by the Government in respect of non-pecuniary damage suffered by the applicant as a result of the alleged violations of the Convention does not bear a reasonable relationship with the amounts awarded by the Court in similar cases for non-pecuniary damage.

30. On the facts and for the reasons set out above, the Court finds that the Government failed to submit a statement offering a sufficient basis for

finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (see, by contrast, *Akman v. Turkey* (striking out), no. 37453/97, §§ 23-24, ECHR 2001-VI).

31. This being so, the Court rejects the Government's request to strike the application out under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

II. ADMISSIBILITY OF THE APPLICATION

32. The applicant complained that her right to a fair trial, as guaranteed by Article 6 § 1 of the Convention, was violated by the fact that the Court of Appeal examined the Ministry's appeal in cassation even though it was out of time. She also complained that her right to a fair trial was violated by the refusal of the Court of Appeal to allow her time to read and challenge evidence relied on by the Court of Appeal. Finally, the applicant complained that her rights under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention were violated by the fact that the Supreme Court of Justice upheld the Prosecutor General's request for annulment and quashed the judgments in her favour.

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 within a reasonable time by an independent and impartial tribunal established by law. ..."

The relevant part of Article 1 of Protocol No. 1 to the Convention 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."

33. The Government did not comment on the complaint about the quashing of the judgment, which became final through failure to appeal within the legal time-limit, and mentioned that the Ministry had requested an extension of the time-limit. The Government submitted that the applicant's other complaints should be dismissed either as being manifestly ill-founded or on the ground that the applicant could have sought redress for the alleged violations before the domestic courts.

34. The Court considers that the application as a whole raises questions of law which are sufficiently serious that their determination should depend on an examination of the merits. No other ground for declaring it inadmissible has been established. The application must therefore be declared admissible. Pursuant to Article 29 § 3 of the Convention, the Court will now consider the merits of the applicant's complaints.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING THE APPEAL OUT OF TIME

35. The applicant complained under Article 6 § 1 of the Convention about the quashing by the Court of Appeal of the judgment of the Chişinău Regional Court of 5 February 2002, without providing any reasons for upholding an appeal in cassation which had been lodged out of time.

36. The Government submitted that since the Ministry in its appeal in cassation had expressly requested the extension of the time-limit, the applicant's complaint should be rejected as manifestly ill-founded.

37. The Court reiterates that Article 6 § 1 of the Convention obliges the courts to give reasons for their judgments. In *Ruiz Torija v. Spain*, (judgment of 9 December 1994, Series A no. 303-A), the Court found that the failure of a domestic court to give reasons for not accepting an objection that the action was time-barred amounted to a violation of that provision.

38. The right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which, in its relevant part, declares the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have finally determined an issue, their ruling should not be called into question (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII; *Roşca v. Moldova*, no. 6267/02, § 24, 22 March 2005).

39. In the present case, the Court notes that an appeal in cassation should be lodged by a party in the domestic proceedings in accordance with the provisions of the Moldovan Code of Civil Procedure (the "CCP"). The Court's task is to determine whether this procedure was applied in a manner which is compatible with Article 6 of the Convention, including respect for the principle of legal certainty. The Court shall do so while bearing in mind that it is in the first place the responsibility of national courts to interpret provisions of national law (see *Waite and Kennedy v. Germany* [GC], no. 26083/94, 18 February 1999, § 54).

40. It is to be noted that according to Article 316 of CCP, in force at the time, a judgment delivered by the appeal instance became final once the time-limit for the lodging of an appeal had expired. According to Article 305 of the same Code, "the legal time-limit for lodging an appeal in cassation is fifteen days". Articles 314, 284 and 114 of CCP provide that when a party has failed to observe the legal time-limit for lodging an appeal in cassation, the cassation instance should either dismiss it as statute-barred, or provide reasons for extending the time-limit.

41. In the present case, the Court notes that since the Ministry's representative had been present during the proceedings before the Chişinău Regional Court on 5 February 2002 (see paragraph 13 above), the legal

time-limit for lodging the appeal in cassation expired on 20 February 2002. Thus, the judgment of 5 February 2002 became final through the failure to appeal within the time-limit. The Court also notes that although the appeal in cassation was lodged only on 8 April 2002, that is 47 days after the expiry of the legal time-limit for lodging it, the Ministry's representative did not provide any reasons for the failure to observe the legal time-limit and nor did the Court of Appeal examine the issue of the extension of the time-limit or at least give reasons for its decision (see, *mutatis mutandis*, *Ruiz Torija*, cited above).

42. The Court observes that a similar situation has already been examined in the case of *Popov v. Moldova* (no. 2), (no. 19960/04, § 53, 6 December 2005), in which the Court found that by not giving any reasons for extending the defendant's time-limit for lodging a procedural act, the domestic courts breached the applicant's right to a fair hearing.

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

44. With regard to the complaint about defects in the proceedings before the Court of Appeal, the Court finds that, having concluded that there has been a violation of the applicant's right under Article 6 § 1, it is not necessary to consider whether other procedural guarantees were observed in those proceedings.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION CONCERNING THE REQUEST FOR ANNULMENT

45. The applicant also complained that her rights under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention were violated by the fact that the Supreme Court of Justice had upheld the Prosecutor General's request for annulment and subsequently quashed the judgments in her favour.

46. In their observations the Government requested the Court to dismiss the applicant's complaints on the ground that she could have obtained redress for the alleged violations with the domestic courts.

47. Having regard to the fact that the Court has found a violation of the applicant's rights under Article 6 § 1 of the Convention prior to the upholding by the Supreme Court of Justice of the Prosecutor General's request for annulment, the Court does not consider it necessary to rule on the question whether there has been a violation of Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention in the circumstances alleged.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The applicant claimed MDL 244,953 (EUR 21,007 at the time) in respect of pecuniary damage, as awarded by the Chişinău Regional Court in its judgment of 5 February 2002. The applicant also claimed the sum of MDL 150,000 (approx. EUR 8,800) in compensation for non-pecuniary damage arising from suffering and anxiety caused by the alleged violations of her rights.

50. The Government considered that the applicant was not entitled to receive compensation in respect of pecuniary damage and disagreed with the amount of non-pecuniary damage claimed by the applicant.

51. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Former King of Greece and Others v. Greece* [GC] (just satisfaction), no. 25701/94, § 72). In the present case, the reparation should aim at putting the applicant in the position in which she would have found herself had the violation not occurred, namely prior to the quashing of the judgment of the Chişinău Regional Court of 5 February 2002 by the Court of Appeal.

52. Therefore, the Court awards the applicant EUR 21,007 in respect of pecuniary damage.

53. The Court also considers that the applicant must have been caused a certain amount of stress and frustration as a result of the quashing of the judgment of 5 February 2002. The particular amount claimed is, however, excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 for non-pecuniary damage.

B. Costs and expenses

54. The applicant claimed no costs and expenses for the Convention proceedings. The Court therefore makes no award under this head.

C. Default interest

55. 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. *Rejects* the Government's request to strike the application out of the list;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the quashing of the judgment of the Chişinău Regional Court of 5 February 2002;
4. *Holds* that there is no need to examine the applicant's other complaints under Article 6 and under Article 1 of Protocol No. 1 to the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 21,007 (twenty-one thousand and seven euros) for pecuniary damage, EUR 2,000 (two thousand euros) in respect of 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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President