



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

FOURTH SECTION

CASE OF MOISEI v. MOLDOVA

(Application no. 14914/03)

JUDGMENT

STRASBOURG

19 December 2006

FINAL

19/03/2007

*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 Moisei 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 T.L. EARLY, *Section Registrar*,

Having deliberated in private on 28 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 14914/03) 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”) by a Moldovan national, Ms Pelaghia Moisei (“the applicant”), on 29 January 2003.

2. The applicant was represented by Mr Ștefan Urîtu, from The Helsinki Committee for Human Rights in Moldova, a non-governmental organisation based in Chișinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr A. Pârlog.

3. The applicant complained that the failure to enforce the judgment of 23 July 2001 violated her right to have her civil claims 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, Ms Pelaghia Moisei, is a Moldovan national, who was born in 1921 and lives in the village of Recea.

6. The facts of the case, as submitted by the parties, may be summarised as follows.

7. In 2000 the applicant lodged with the Strășeni District Court a civil action against the Savings Bank and the Government. She sought compensation in connection with her deposits in the Savings Bank pursuant to the Parliament's decision of 29 July 1994 to revalue the savings of citizens in the Savings Bank in order to compensate for losses caused by inflation.

8. On 23 July 2001 the Strasen District Court found for the applicant and ordered the Government to pay her 7,696.23 Moldovan lei (MDL), (approximately 682 euros (EUR) at the time). No appeal was lodged and the judgment became final and enforceable 15 days later.

9. The court issued an enforcement warrant which it sent directly to the Bailiff for enforcement.

10. On 1 November 2001 the applicant's representative lodged a written request with the President of the Chișinău District Court asking for the enforcement of the judgment of 23 July 2001. By a letter of 15 November 2001 the President of that court replied that the enforcement of the decision was impossible because the Ministry of Finance did not have funds and advised the applicant to address the Government, the Parliament and the President of Moldova, because its own requests sent to these institutions remained unheeded.

11. On 28 March 2002 the applicant addressed the Ministry of Justice with a request for its assistance in enforcing the judgment. The Ministry forwarded the letter to the newly created Department for the Enforcement of Judicial Decisions ("the Department"). In a letter dated 2 July 2002, the Department informed the applicant that the enforcement warrant in her name for the sum of MDL 7,696 had been forwarded to the Central Treasury of the Ministry of Finance and added that the legislation did not provide for the forced execution of judgments against the State Budget.

12. On 19 September 2002 the applicant requested the assistance of the Minister of Finance in enforcing the decision. In a letter of 8 October 2002, signed by the Vice-Minister of Finance, the applicant was informed that the State Treasury, which was responsible for enforcing judgments against the

State, had not received an enforcement warrant for the sum mentioned by the applicant. At the same time, it had registered another warrant for the amount of MDL 2,004. The applicant was further informed that the State Budget for the year 2002 did not provide for expenditure related to enforcement of her judgment and that therefore the judgment of 23 July 2001 could not be enforced. The applicant was advised to wait for the adoption of the State Budget for the year 2003 which might provide for such expenditure.

13. The Government submitted evidence of the fact that the Ministry of Finance had transferred a lump sum to the Department on 29 April 2003 for the purpose of enforcing a list of enforcement warrants, including the applicant's. The applicant received her money on 27 May 2003.

II. RELEVANT DOMESTIC LAW

14. The relevant domestic law has been set out in *Prodan v. Moldova* (no. 49806/99, ECHR 2004-III (extracts)).

THE LAW

15. The applicant complained that the failure to enforce the judgment of 23 July 2001 had 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.”

16. The applicant also complained that the non-enforcement of the judgment had violated her rights guaranteed under Article 13 of the Convention.

Article 13 reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

17. The applicant finally complained that the non-enforcement had violated her rights guaranteed under Article 8 of the Convention.

Article 8 reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

18. The Government submitted that the applicant had not informed the Court about the developments in her case, namely that the judgment in her favour had been enforced on 29 April 2003. They invited the Court to declare her application inadmissible since it was manifestly ill founded.

19. The applicant submitted that when the application had been lodged the judgment had not been enforced for over a year. Moreover, at no point had the authorities admitted a violation of her Convention rights and she had not obtained any compensation for the delay in enforcement, which was very long for an 81-year-old person.

20. The Court considers that the failure of the applicant to notify the Court about the enforcement of the judgment after the lodging of her application does not constitute an abuse of the right of individual application within the meaning of Article 35 of the Convention, having regard to the fact that the applicant did not claim the payment of the original award but rather compensation resulting from the failure to enforce.

21. The Government also submitted that since the award had been paid in full the applicant could no longer claim to be a victim of a violation of her Convention rights.

22. 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” (see, e.g., *Prodan v. Moldova*, cited above, § 47). Moreover, no compensation for delayed enforcement was paid.

23. 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.

24. The Court considers that the applicant's complaints under Article 6 § 1 and under Article 1 of Protocol No. 1 to the Convention, as well as under Articles 8 and 13, 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

25. The applicant complained that the non-enforcement of the judgment of 23 July 2001 in her favour violated her rights under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention.

26. The Government considered that no violation of those rights had taken place in view of the full enforcement of the judgment within a reasonable time.

27. The Court notes that the judgment of 23 July 2001 remained unenforced until 27 May 2003, when the applicant received her money, that is for 22 months. 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. In particular, the State Treasury's claim that it had not received for enforcement the warrant regarding the entire sum is contradicted by the letter from the Department (see paragraph 11 above).

28. Accordingly, the Court finds, for the reasons given in the above-mentioned cases, that the failure to enforce the judgment of 23 July 2001 within a reasonable time constitutes a violation of Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLE 6 § 1 AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

29. The applicant further complained that she had no effective remedies in respect of her complaints under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention.

30. The Government argued that Article 13 was not applicable in the absence of a violation of either Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention. They added that the applicant had not used all available domestic remedies in respect of her complaint under Article 13, such as requesting the initiation of administrative or criminal proceedings against the person responsible for non-enforcement.

31. The Court observes that the applicant's complaints that the refusal to enforce the judgment in her favour infringed her rights under Article 6 and Article 1 of Protocol No. 1 were undoubtedly arguable (see paragraph 28 above). The applicant was therefore entitled to an effective remedy within the meaning of Article 13. Accordingly, the Court will examine whether such a remedy was available to the applicant.

32. The Court notes that the judgment in favour of the applicant was enforced 22 months after it had been adopted. The debtor in this case was a State body. According to a letter from the enforcement authority of 2 July 2002, "the legislation of the Republic of Moldova does not provide for the forcible enforcement of judicial decisions against the State Budget". In addition, even the domestic court addressed various State institutions with a request to ensure the enforcement, but to no avail (see paragraph 10 above). The Court concludes that the remedies referred to by the Government (see paragraph 30 above) were not effective since in the absence of budgetary provisions for the purposes of enforcement no particular person could be held responsible for the failure to enforce.

33. It is thus apparent that the applicant had no remedy to either prevent the continuation of the violation of her rights guaranteed under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention or to obtain compensation. There has accordingly been a violation of Article 13 taken together with those Articles (*Romashov v. Ukraine*, no. 67534/01, § 47, 27 July 2004, and *Voytenko v. Ukraine*, no. 18966/02, § 43, 29 June 2004).

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

34. The applicant finally complained that the delayed enforcement of the judgment had violated her rights guaranteed under Article 8 of the Convention.

35. The Court considers that this complaint raises essentially the same issues as those already dealt with under Article 6 and Article 1 of Protocol No. 1. It will accordingly not examine this complaint separately.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed EUR 10,217 for damage caused by the delayed enforcement of the judgment of 23 July 2001. She argued that the money awarded to her had constituted her entire life savings on which she had hoped to live upon retiring. Accordingly, she had suffered immensely when her savings were lost and when she could not obtain for two years the meagre compensation awarded by the State. She argued that, by analogy with the rules applicable in the case of delays in paying salaries, she should obtain compensation of 5% of the sum owed to her for each day of delay.

38. Moreover, the applicant argued that she had been humiliated and treated disdainfully during the years when she had had to travel to Chişinău from her village to prove to the public servants that she had no resources to lead a decent life.

39. The Government considered that the amount claimed was excessive. They rejected the applicability of labour legislation principles and in particular the payment of compensation in the amount of 5% per day since the judgment had not dealt with a labour dispute. They further contested the amount claimed for non-pecuniary damage, citing the Court's case-law on the issue of non-enforcement.

40. The Court considers that the applicant must have suffered pecuniary damage as a result of the non-execution of the judgment in her favour within a reasonable time. The Court awards the applicant EUR 192 in this respect.

41. The Court also 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, the more so given her advanced age and the fact that the sum awarded was an essential source of revenue for her. It awards the applicant EUR 500 for non-pecuniary damage.

B. Costs and expenses

42. The applicant also claimed EUR 900 for the costs and expenses incurred before the Court. Her representative submitted a copy of its decision of 30 March 2004 according to which the usual representation fee was fixed at the equivalent of USD 900. The representative added that the

amount claimed would not constitute a profit for the organisation but serve to cover partly its costs in representing applicants.

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

44. In the particular circumstances of the present case the Court awards the applicant EUR 600 for costs and expenses incurred.

C. Default interest

45. 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 on account of the late enforcement of the judgment of 23 July 2001;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention on account of the same delayed enforcement;
4. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention;
5. *Holds* that it is not necessary to examine separately the complaint under Article 8 of the Convention;
6. *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 192 (one hundred and ninety two euros) for pecuniary damage, EUR 500 (five hundred euros) for non-pecuniary damage and EUR 600 (six 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;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T. L. EARLY
Registrar

Nicolas BRATZA
President