



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

FOURTH SECTION

CASE OF AVRAMENKO v. MOLDOVA

(Application no. 29808/02)

JUDGMENT

STRASBOURG

6 February 2007

FINAL

06/05/2007

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 Avramenko 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 J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

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

Having deliberated in private on 16 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 29808/02) 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 Valeriu Avramenko (“the applicant”) on 11 June 2002.

2. The applicant was represented by Mr V. Nagacevski, from “Lawyers for Human Rights”, a non-governmental organisation based in Chişinău. 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 26 June 2002 violated his right to have his civil rights determined by a court within a reasonable time, as guaranteed by Article 6 of the Convention, and his right to peaceful enjoyment of his possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention. He also complained about the examination of his case in his absence by the courts, contrary to his rights guaranteed under Article 6 of the Convention.

4. The application was allocated to the Fourth Section of the Court. On 24 September 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

5. The applicant, Mr Valeriu Avramenko, is a Moldovan national, who was born in 1947 and lives in Bălți.

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

1. The main events and court proceedings

7. In May 1998 the Ministry of Privatisation and of State Property published its decision to sell shares in a State-owned transport company in Bălți. An auction was announced for that purpose. The applicant participated in the auction and, through a broker, bought 26.033% of the company's shares for 180,698.68 Moldovan lei (MDL) (approximately 34,484 euros (EUR)).

8. The Ministry of Transport and Telecommunications challenged in court the results of the auction, claiming that the correct procedure had not been followed (in particular, the name and address of the State company had been incorrectly presented, which resulted in a low public interest and low share prices).

9. On 24 July 1998 the Economic Court of Moldova annulled the decision of the Ministry of Privatisation and of State Property to offer the relevant shares at an auction.

10. The applicant unsuccessfully appealed to the Appeal Chamber of the Economic Court and the Supreme Court of Justice. By its final judgment of 10 February 1999 the Supreme Court of Justice rejected his appeal, finding that he had no standing in those proceedings.

11. The Ministry of Privatisation and of State Property therefore initiated court proceedings to annul the purchase of shares by the applicant at the auction. On 11 April 2001 the Bălți District Court accepted the Ministry's claim and annulled the purchase. The applicant was present.

12. On 3 July 2001 the Bălți Regional Court rejected his appeal. The Regional Court examined the case in his absence, finding that his request for another adjournment based on medical grounds had not been substantiated since he was being treated on an out-patient basis and could thus have appeared at the hearing.

13. On 7 March 2002 the Court of Appeal rejected his appeal in cassation and upheld the judgment of the Bălți District Court. The applicant was present.

14. The applicant asked the Prosecutor General to initiate annulment proceedings for the quashing of all the judgments adopted earlier. On an

unspecified date the Prosecutor General initiated such proceedings before the Supreme Court of Justice.

15. On 26 June 2002 the Supreme Court of Justice rejected the Prosecutor General's appeal but added to the judgment of the Bălți District Court of 3 July 2001 the obligation to return to the applicant MDL 180,698.68 (approximately EUR 13,411 at the time), representing the sum of money he had paid for the shares. That judgment was final and enforceable.

16. The applicant obtained a warrant to enforce the judgment which was sent to the Decisions Enforcement Department of the Ministry of Justice ("the Department").

17. On 22 October 2002 he complained to the Department about its failure to enforce the judgment. On 13 November 2002 he received an answer from the bailiff who informed him that the Ministry of Finance, which was responsible for returning the applicant's money, had refused to pay and that the judgment could not be enforced.

18. The applicant complained to various State officials (the President, the Speaker of the Parliament, the Prime Minister, the Ministry of Justice, the Ministry of Finance, etc.) requesting enforcement of the judgment in his favour. He was informed that it was impossible for the Ministry of Finances to make the payment, one reason being the Government decision no. 59 of 19 January 1998, which prohibited the enforcement of judgments against the Ministry of Finance.

19. The judgment of 26 June 2002 was enforced on 18 March 2004.

2. Proceedings concerning compensation for damage

20. On 3 June 2002 the applicant initiated court proceedings claiming compensation for pecuniary and non-pecuniary damage caused to him by the failure to enforce the final judgment, including the effects of inflation on the real value of the award and lost profits as a result of his inability to use his money for four years.

21. On 13 November 2002 the Centru District Court partly accepted the applicant's claims and awarded him MDL 220,085. That judgment was upheld by the Chişinău Regional Court on 3 March 2003.

22. On 20 May 2003 the Chişinău Court of Appeal quashed the lower courts' judgments. It found that damages could only be sought if the debtor was responsible for intentionally not paying the debt. Since it was unclear which State authority should have repaid the debt and, accordingly, whether there had been any intentional failure to enforce, the claim for damages could only be examined after the judgment had been enforced.

23. On 29 April 2004 the Bălți Regional Court partly accepted the applicant's claims and awarded him MDL 285,503 (approximately EUR 20,272) in compensation for the effects of inflation on the value of the

original award in his favour. That decision was upheld by the Bălți Court of Appeal on 5 October 2004. The decision was final and enforceable.

3. *Revision of the decision of 29 April 2004*¹

24. On 3 January 2005 the Ministry of Finance lodged a request for the revision of the judgment of 29 April 2004. On 5 April 2005 the Bălți Court of Appeal rejected that request as unfounded.

25. On 12 October 2005 the Supreme Court of Justice quashed the decisions of 5 October 2004 and 5 April 2005 and ordered a re-hearing of the case.

26. On 9 February 2006 the Bălți Court of Appeal quashed the decision of 29 April 2004 and awarded the applicant MDL 180,698 (approximately EUR 11,678) in compensation for the effects of inflation on his original award. That decision was final.

II. RELEVANT DOMESTIC LAW

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

THE LAW

28. The applicant complained under Article 6 § 1 because the Bălți Regional Court had examined the case in his absence on 3 July 2001 and because the Economic Court had examined the case without allowing him to make submissions in 1998-1999. He also complained of a violation of the same article because the Prosecutor General had requested the annulment of a final judgment.

29. He also complained under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention about the failure to enforce the judgment of 26 June 2002.

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.

¹ These proceedings are the subject of a separate application.

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.”

30. The applicant finally complained under Article 13 of the Convention taken together with the above Articles.

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.”

I. ADMISSIBILITY OF THE COMPLAINTS

A. Complaint under Article 6 § 1 of the Convention regarding the 1998 and 2001 proceedings and complaint under Article 13 of the Convention

31. The applicant complained about the failure of the courts to allow him to intervene in the proceedings which ended with the judgment of 10 February 1999 (see paragraph 10 above).

32. The Government have not commented.

33. The Court notes that the first complaint relates to proceedings which ended with a final judgment of 10 February 1999 and that this application was lodged with the Court on 11 June 2002. It follows that this complaint was introduced outside the time-limit set by Article 35 § 1 of the Convention and must be rejected as inadmissible pursuant to Article 35 § 4 of the Convention.

34. The applicant also complained about the examination of his appeal by the Bălți Regional Court on 3 July 2001 in his absence.

35. The Court notes that he was present at the first and third-instance court hearings and had not submitted to the second-instance court a valid reason for his absence (see paragraph 12 above). It therefore considers that the complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

36. The applicant complained about the quashing of a final judgment by the Supreme Court of Justice on 26 June 2002 (see paragraph 14 above).

37. The Court considers that the applicant cannot complain about any violation of his rights as a result of the quashing since it was initiated at his own request and resulted in an improvement of his situation (see paragraph 15 above). It therefore considers that the complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

38. The Court further notes that the applicant initially complained under Article 13 of the Convention. However, by letter of 28 June 2006 he withdrew that complaint.

39. In view of the above, the Court will not examine this complaint.

B. Complaint under Article 6 and Article 1 of Protocol No. 1 to the Convention regarding the belated enforcement of a judgment

40. The Government submitted that since the award made on 26 June 2002 in the applicant's favour had been paid on 18 March 2004 the applicant could no longer claim to be a victim of a violation of his Convention rights. In addition, the applicant had the right to claim compensation for the effects of inflation on the original award.

41. The applicant disagreed, stating that he retained his victim status.

42. 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, apart from mitigating the effects of inflation on the value of the award (see paragraph 26 above), even though the applicant had initiated court proceedings for that purpose (see paragraphs 20-23 above).

43. 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.

44. 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

45. The applicant complained that the non-enforcement of the judgment of 26 June 2002 in his favour had violated his rights under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention.

46. The Government submitted that the applicant's rights had not been violated in view of the fact that he had received the entire amount awarded to him.

47. The Court notes that the judgment remained unenforced for approximately 21 months. It recalls that it 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, it notes that the award was made against the State itself, in the form of the Ministry of Finance, and that the reason for the delay in enforcing, as explained by the enforcement authority, was a Government decision prohibiting enforcement against that Ministry (see paragraph 18 above).

48. Accordingly, the Court finds, for the reasons given in the cases cited above, that the failure to enforce the judgment of 26 June 2002 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

49. 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

50. The applicant referred to his other application lodged with the Court in respect of the revision of the decision of 29 April 2004 (see paragraphs 24-26 above). He asked the Court to examine his claims for compensation in respect of the present application after it had examined the other one.

51. The Government submitted that the judgment in the applicant's favour had been enforced without delay and that he could not claim compensation. It also referred to the re-opening of the proceedings as a result of the annulment of the decision of 29 April 2004.

52. In the light of the re-opening of the proceedings following the decision of the Bălți Court of Appeal of 9 February 2006, the Court considers that the issue of the application of Article 41 of the Convention in respect of compensation for damage caused is not ready for decision. Consequently, it decides to reserve it.

B. Costs and expenses

53. The applicant also claimed EUR 4,850 for costs and expenses incurred before the Court.

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

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. *Declares* admissible the complaints under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention regarding the late enforcement of the judgment of 26 June 2002 and the remainder of the complaints inadmissible;
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 26 June 2002;
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*
 - (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 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Holds*, that the question of the application of Article 41 of the Convention in respect of pecuniary and non-pecuniary damage is not ready for decision;
accordingly,
 - (a) reserves it in that respect;

- (b) invites the Government and the applicant to keep the Court informed within six months of the date of this judgment, of any developments in the re-opened proceedings or of any agreement they might reach;
- (c) reserves the further procedure and delegates to the President of the Chamber power to fix the same if need be;

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

Done in English, and notified in writing on 6 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T. L. EARLY
Registrar

Nicolas BRATZA
President