



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

FOURTH SECTION

CASE OF VENERA-NORD-VEST BORTA A.G. v. MOLDOVA

(Application no. 31535/03)

JUDGMENT

STRASBOURG

13 February 2007

FINAL

13/05/2007

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 Venera-Nord-Vest Borta A.G. 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 23 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 31535/03) 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 16 June 2003 by Venera-Nord-Vest Borta A.G., a company incorporated in Moldova (“the applicant”).

2. The applicant was represented before the Court by Mr Mihai Gheorghiu, a lawyer practising in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr Vitalie Pârlog.

3. The applicant alleged that its rights to a fair hearing and to the peaceful enjoyment of its possessions had been breached as a result of the quashing of a final judgment in its favour.

4. On 25 June 2004 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 further written observations (Rule 59 § 1).

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. On 1 May 1999 the applicant concluded a contract with another private company. According to the contract, the applicant would locate assets belonging to the debtors of the second company in exchange for a commission. Since the second company failed to comply with the contract, the applicant brought an action against it seeking damages for breach of the contract.

8. On 8 May 2001 the Chişinău Economic Court found in favour of the applicant and awarded it 244,939 Moldovan lei (MDL) (the equivalent of 21,050.46 euros (EUR) at that time).

9. On 30 January and 9 October 2002 the Economic Court of the Republic of Moldova and the Supreme Court of Justice respectively dismissed the second company's appeals and upheld the judgment of the first-instance court, which thus became final.

10. On 24 December 2002 the Prosecutor General lodged with the Plenary of the Supreme Court of Justice a request for annulment of the judgment in favour of the applicant.

11. On 27 January 2003 the Plenary of the Supreme Court of Justice upheld the Prosecutor General's request for annulment and quashed the judgment. It adopted a new judgment dismissing the applicant's action.

12. Following the communication of the case by the Court, the Government Agent asked the Prosecutor General to lodge a request with the Plenary of the Supreme Court of Justice in order to quash its judgment of 27 January 2003 and to discontinue the request for annulment proceedings. He considered that the quashing of a final judgment in favour of the applicant following the annulment proceedings had breached the applicant's rights under the Convention.

13. On 2 November 2004 the Prosecutor General complied with the Government Agent's request. He lodged a revision request relying on section 449 § 1 (j) of the Code of Civil Procedure (the "CCP", see paragraph 16 below) and indicated that the applicant and the Government intended to conclude a friendly settlement agreement.

14. By a judgment of 21 February 2005 the Plenary of the Supreme Court of Justice dismissed the Prosecutor's request for revision on the ground that the parties had not submitted any evidence of the alleged friendly settlement.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Domestic law

15. The relevant domestic law concerning the quashing of a final judgment was set out in *Roşca v. Moldova*, no. 6267/02, § 16, 22 March 2005.

16. The Code of Civil Procedure of 12 June 2003, insofar as relevant, reads as follows:

Section 449 Grounds for revision

Revision may be requested:

...

j) When the Government of the Republic of Moldova, represented by the Government Agent, or the European Court of Human Rights has started a procedure of friendly settlement in a pending case against the Republic of Moldova, and the Government consider that by a final decision of a court a fundamental right guaranteed by the Constitution of the Republic of Moldova or by the European Convention for the Protection of Human Rights and Fundamental Freedoms has been breached.

k) When the European Court of Human Rights has found a violation of fundamental rights and liberties, as well as when it has found that the interested person could obtain, in accordance with domestic law, at least partial reparation by way of annulment of a judgment pronounced by a domestic court.

B. Relevant domestic practice

17. In *Ungureanu v. the Sângerei Local Council* on 25 January 2006 the Supreme Court of Justice upheld the Prosecutor's request for revision lodged in accordance with section 449 § 1 (j) following the Government's Agent request. It discontinued the annulment proceedings, acknowledged the violation of the applicant's rights under Article 6 § 1 of the Convention and awarded her compensation in respect of pecuniary and non-pecuniary damage and for costs and expenses.

18. In *Dumitru Grosu v. the Ministry of Finance* on 22 March 2006 the Supreme Court of Justice upheld the Prosecutor's request for revision lodged on 6 May 2004 in accordance with section 449 § 1 (j) following the Government's Agent request. It discontinued the annulment proceedings, acknowledged the violation of the applicant's rights under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention and awarded him

compensation in respect of pecuniary and non-pecuniary damage and for costs and expenses.

19. In *Enachi v. the Ministry of Finance* on 15 March 2006 the Supreme Court of Justice upheld the applicant's action following the re-opening of the proceedings upon the Prosecutor's request for revision lodged in accordance with section 449 § 1 (j). It acknowledged the violation of the applicant's rights under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention and awarded him compensation in respect of pecuniary and non-pecuniary damage and for costs and expenses.

20. In *The Ministry of Industry of the Republic of Moldova v. JSC Hidromasina*¹ on 29 June 2006 the Supreme Court of Justice dismissed the Prosecutor's request for revision lodged in accordance with section 449 § 1 (j) following the Government's Agent request. It found that the Government had failed to submit any evidence of the violation of the applicant company's rights under the Convention. The Supreme Court also stated it could not re-open the case until the Court had adopted a judgment on the merits of the case.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

21. The applicant complained under Article 6 § 1 of the Convention about the quashing on 27 January 2003 of a final judgment in its 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. ..."

22. It further complained that the judgment of the Plenary of the Supreme Court of Justice of 27 January 2003 had had the effect of infringing its right to the peaceful enjoyment of its possessions as secured by Article 1 of Protocol No. 1, which provides:

"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

¹ The application *Moldovahidromaş v. Moldova*, no. 30475/03 was declared partially admissible by the Court on 4 April 2006. The applicant company complained about a breach of principle of legal certainty, since in 2002 the Supreme Court of Justice had quashed a judgment of 1992, by which the JSC Hidrotehnica's constitution as an independent company from JSC Moldovahidromaş had been declared unlawful.

and subject to the conditions provided for by law and by the general principles of international law.”

23. The Government, in their initial observations of 1 September 2005, denied that there had been a violation of the applicant’s rights under the Convention. However, in subsequent observations, including unilateral observations (see paragraph 24 below), they admitted the breach of the provisions of the Convention in respect of the applicant.

II. THE GOVERNMENT’S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 OF THE CONVENTION

24. In their additional observations of 7 December 2005 the Government submitted a unilateral declaration similar to that in the case *Tahsin Acar v. Turkey* ((preliminary objection) [GC], no. 26307/95, ECHR 2003-VI). They 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 final judgment in its favour. In respect of pecuniary damage, the Government proposed to reinstate the applicant in the position in which it had been prior to the quashing of the judgment of the Supreme Court of Justice of 9 October 2002, by lodging a revision request with the Plenary of the Supreme Court of Justice in accordance with section 449 (k) of CCP (see paragraph 16 above), after the Court had struck the application out of its list of cases. In respect of non-pecuniary damage, the Government proposed to award the applicant the equivalent in MDL of EUR 2,000. They also proposed to award it EUR 300 in compensation for legal costs before the Court.

25. In their second unilateral declaration of 28 March 2006 the Government submitted that the applicant should seek compensation for the breach of its rights under the Convention with the domestic courts. They mentioned several cases in which the domestic courts had acknowledged the breach of an applicant’s rights and had awarded substantial amounts of compensation (see paragraphs 17-19 above).

26. In both unilateral declarations the Government invited the Court to strike out the application in accordance with Article 37 of the Convention.

27. The applicant did not object to a possible review of the judgment after a strike-out decision of the Court. It stated, however, that even if the judgment were to be revised so as to reinstate it in the position prior to the quashing of the final judgment, it would still be entitled to compensation for pecuniary damage arising from the impossibility of using the money during the intervening period. The applicant agreed with the amount of compensation for non-pecuniary damage and considered that the costs and expenses should reflect the time spent by the representative on the case.

28. The Court observes, as it has previously stated in *Tahsin Acar* (cited above, § 74), 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.

29. 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 (see *Tahsin Acar*, cited above, § 75).

30. 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 (see *Tahsin Acar*, cited above, § 76).

31. 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 (see *Tahsin Acar*, cited above, § 77).

32. 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 on 21 February 2005 the Plenary of the Supreme Court of Justice already dismissed an attempt to initiate revision proceedings. It therefore considers that the striking out of the present application by the Court would not guarantee a successful outcome to the second attempt to review a judgment. Moreover, it is to be noted that the provisions of section 449 (k) (see paragraph 16 above) do not provide as a ground for revision a decision of the Court to strike the application out of its list of cases.

33. In any event, and more fundamentally, the Court considers that it would be too onerous in a case where the applicant is complaining about the

quashing of a final judgment through annulment proceedings to require him to initiate another round of domestic proceedings for compensation. Such a proposal therefore cannot be considered appropriate redress or as a basis on which to strike an application out of the list of cases (see *Brumărescu v. Romania* [GC], no. 28342/95, § 50, ECHR 1999-VII and *Macovei and Others v. Moldova*, nos. 19253/03, 17667/03, 31960/03, 19263/03, 17695/03 and 31761/03, § 36 and 37, 25 April 2006).

34. Finally, 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 judgment in favour of the applicant constituted violations of Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention, they did not offer any redress in respect of pecuniary damage for its inability to use the money during the intervening period.

35. On the facts and for the reasons set out above, the Court finds that the Government have 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).

36. 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.

III. ADMISSIBILITY OF THE COMPLAINTS

37. The applicant complained that its rights under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention were violated by the fact that the Plenary of the Supreme Court of Justice upheld the Prosecutor General's request for annulment and quashed a final judgment in its favour.

38. The Government, in their initial observations of 1 September 2005, denied that there had been a violation of the applicant's rights under the Convention.

39. The Court considers that the applicant's complaints under Article 6 § 1 and 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.

40. 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.

IV. MERITS

41. 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 raising issues similar to those in the present case (see, among other authorities, *Brumărescu v. Romania*, cited above, §§ 61 and 74 and *Roşca*, cited above §§ 29 and 32).

42. Having examined the material submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

43. Having regard to its case-law on the subject, the Court finds that by quashing the final judgment in favour of the applicant, the Plenary of the Supreme Court of Justice breached the applicant's right to a fair hearing under Article 6 § 1 of the Convention and its right to the peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the Convention.

44. There has accordingly been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention in respect of the applicant.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed MDL 244,939 (EUR 21,050.46 at the time) as awarded by the Supreme Court of Justice in its final judgment of 9 October 2002. It also asked for EUR 50,064 in compensation for pecuniary damage suffered as a result of its inability to use its money since 27 January 2003, when the violation occurred.

47. The Government considered that the applicant was not entitled to receive compensation in respect of pecuniary damage and that it should seek compensation before the domestic courts (see paragraph 25 above).

48. The Court considers that the applicant must have suffered pecuniary damage as a result of the quashing of the final judgment favourable to the applicant and as a result of the impossibility to use and enjoy the money awarded to it for a period of approximately forty-six months (see *Prodan v. Moldova*, no. 49806/99, § 71, ECHR 2004-III (extracts)). Taking into account the line of approach in the *Prodan* case, and the circumstances of

the case under consideration, the Court awards the applicant the total sum of EUR 28,333 for pecuniary damage. This amount includes the sum awarded to the applicant by virtue of the judgment of 9 October 2002 and the lost interest.

B. Non-pecuniary damage

49. The Court notes that the applicant was satisfied with the amount proposed by the Government (see paragraph 24 above), which corresponds to amounts awarded by the Court in similar cases (see, for example, *Roșca*, cited above, § 41). It therefore awards the applicant EUR 2,000 in compensation for non-pecuniary damage.

C. Costs and expenses

50. The applicant claimed EUR 2,630 in respect of costs and expenses incurred before the Court. The fees of the representative who presented the case before the Court amounted to EUR 935.17 and those of the representative who presented the case before the domestic courts amounted to EUR 1,595.87. The applicant presented two receipts which showed that the representatives had been paid these fees. Other costs incurred for the representation before the Court amounted to EUR 50.

51. The Government disagreed with the amounts claimed by the applicant and stated that they were too high in the light of the average monthly wage in Moldova.

52. 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, *Amihalachioaie v. Moldova*, no. 60115/00, § 47, ECHR 2004-III).

53. In the present case, regard being had to the receipts submitted by the applicant, the above criteria and the complexity of the case, the Court considers an award of EUR 985 should be made for the Convention proceedings.

D. Default interest

54. 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;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
6. *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, the following amounts, 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;
 - (i) EUR 28,333 (twenty eight thousand three hundred and thirty three euros) in respect of pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage;
 - (iii) EUR 985 (nine hundred and eighty five euros) in respect of costs and expenses;
 - (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 13 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President