



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

FOURTH SECTION

CASE OF OVCIAROV v. MOLDOVA

(Application no. 31228/02)

JUDGMENT

STRASBOURG

12 April 2007

FINAL

12/07/2007

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 Ovciarov 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 20 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 31228/02) 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”) on 25 July 2002 by a Russian national, Mr Nicolai Ovciarov.

2. The applicant was represented before the Court by Mr Vitalie Iordachi from “Lawyers for Human Rights”, a non-governmental organisation based in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr Vitalie Pârlog.

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

4. On 4 May 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. On 29 July 2004 the representative of the Russian Government before the Court, Mr Pavel Laptev, informed the Court that they did not wish to exercise their right to intervene in the present case (Article 36 § 1 of the Convention and Rule 44 § 1 (b)).

6. The applicant and the Government each filed observations on the admissibility and merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1933 and lives in Chişinău.

8. On 22 January 1999 he bought a one-room apartment from X for 13,000 Moldovan lei (MDL) (the equivalent of 1,500 United States dollars (USD) at the time). Since X did not comply with the applicant's request to vacate the apartment, on 8 June 1999 he brought an action against her, seeking her eviction. X brought a counter action against the applicant, seeking the annulment of the sale contract and *restitutio in integrum* on the ground that the contract had been vitiated by fraud.

9. On 16 March 2000 the Centru District Court ruled in favour of X and dismissed the applicant's action. The applicant appealed.

10. On 6 July 2000 the Chişinău Regional Court upheld the applicant's appeal, quashed the judgment of the Centru District Court, ordered X's eviction from the apartment and dismissed her action. X appealed.

11. On 3 October 2000 the Court of Appeal dismissed X's appeal on points of law and upheld the judgment of 6 July 2000. The judgment became final and enforceable.

12. On 6 June 2001 the Supreme Court of Justice upheld a Prosecutor General's request for annulment of the judgment in favour of the applicant and ordered the re-opening of the proceedings before the first-instance court.

13. On 26 October 2001 the Centru District Court upheld X's action and dismissed the applicant's claims. The applicant appealed.

14. On 23 January 2002 the Chişinău Regional Court upheld the applicant's appeal, quashed the judgment of the Centru District Court of 26 October 2001, ordered X's eviction from the disputed apartment and dismissed her action. X appealed.

15. By a final judgment of 18 April 2002 the Court of Appeal dismissed X's appeal.

16. On 18 April 2002 the Deputy Prosecutor General lodged with the Supreme Court of Justice a request for annulment of the judgments of the Chişinău Regional Court of 23 January 2002 and of the Court of Appeal of 18 April 2002. He asked the court to uphold the judgment of the Centru District Court of 26 October 2001.

17. By a judgment of 29 May 2002 the Supreme Court of Justice upheld the Prosecutor's request for annulment, quashed the judgment in favour of the applicant and upheld the judgment of the Centru District Court of 26 October 2001.

18. Following the communication of the case by the Court, the Prosecutor General lodged with the Supreme Court of Justice a revision

request in respect of the judgment of 29 May 2002 on the ground that the applicant and the Government intended to conclude a friendly settlement agreement.

19. By a judgment of 5 October 2005 the Supreme Court of Justice upheld the Prosecutor's request for revision, quashed its judgment of 29 May 2002 and discontinued the annulment proceedings. The Supreme Court did not order payment of any compensation for the pecuniary damage sustained by the applicant as a result of the alleged violations.

20. On an unspecified date between the quashing of the final judgment in favour of the applicant and the discontinuance of the annulment proceedings X had joined the disputed apartment to another apartment and had substantially reconstructed the newly created apartment. She subsequently sold 1/3 of the joined apartments to a third party. The applicant and the third party have filed actions against each other seeking mainly the recognition of their ownership rights over the disputed apartment. The proceedings are still pending before the domestic courts and the applicant has not been able to move into his apartment to date.

II. RELEVANT DOMESTIC LAW

21. The relevant domestic law is set out in *Roşca v. Moldova*, no. 6267/02, § 16, 22 March 2005.

THE LAW

I. ADMISSIBILITY OF THE COMPLAINTS

22. The applicant complained that the quashing of the final judgment of 18 April 2002 had violated his rights under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

23. The Court considers that the applicant's complaints under both these Articles raise questions of law which are sufficiently serious that their determination should depend on an examination of the merits. 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 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

24. The applicant complained that the judgment of the Supreme Court of Justice of 29 May 2002, which set aside a final judgment in his favour, had violated Article 6 § 1 of the Convention.

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. ...”

25. He further complained that the judgment of the Supreme Court of Justice of 29 May 2002 had had the effect of infringing his right to the peaceful enjoyment of his possessions as secured by Article 1 of Protocol No. 1 to the Convention, 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 and subject to the conditions provided for by law and by the general principles of international law.”

26. The Government rejected the applicant's claims and argued that there had been no violation of the applicant's rights and that the Deputy Prosecutor General's request for annulment had been lawful.

27. 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* [GC], no. 28342/95, §§ 61 and 74, ECHR 1999-VII and *Roşca v. Moldova*, no. 6267/02, 22 March 2005, §§ 29 and 32).

28. 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.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant argued that because of the quashing of the judgment in his favour and X's continued residence in the property, he had had to rent an apartment since May 2002. The applicant submitted a copy of a lease dated 5 May 2002 which fixed the rent at USD 200 and asked the Court to award him USD 8,400 in respect of pecuniary damage. Since a new round of domestic proceedings was pending before the domestic courts and the disputed apartment had been significantly reconstructed and partially sold to a third party, by a letter of 31 October 2006 the applicant requested the Court to award him the market value of the apartment.

32. The Government argued that the applicant had not proved his expenditure and expressed doubts about the validity of the lease. They pointed out that, in accordance with a certificate from the National Social Insurance Office, the applicant's pension was MDL 284 (the equivalent of 20.61 euros (EUR) at the time). It would not, therefore, have been possible for the applicant to pay such a high rent.

33. The Court observes that following a request to provide it with a valuation of the disputed apartment, the applicant submitted a valuation report made by a State real estate agency and a copy of the Official Gazette (*Monitorul Oficial*) indicating the average price of real estate. According to the valuation report and the Official Gazette, the market value of a one-room apartment was USD 29,000 (the equivalent of EUR 22,300 at the time). The Government submitted a certificate issued by the Chişinău Cadastre Office according to which the estimated cadastral value of the apartment was MDL 180,285 (the equivalent of EUR 11,357 at the time).

34. The Court also notes that in accordance with a final domestic court judgment the applicant was recognised as the owner of a one-room apartment. It appears from the case file that in January 1999 he paid MDL 13,000 (the equivalent of EUR 1,291 at the time) for the apartment. As a result of the quashing of that judgment he lost the ownership of his apartment. Taking into account the fact that the disputed apartment had been significantly reconstructed, partially sold to a third party and that the applicant was unable to recover it even after the quashing by the Supreme Court of its judgment of 29 May 2002 (see paragraphs 19 and 20 above), the Court considers that the applicant should be awarded the market value of his

one-room apartment calculated at the price obtaining prior to its reconstruction.

35. As to the market value of the disputed apartment, the Court is not persuaded by the evidence submitted by the Government, since it represents the estimated cadastral value of the apartment whereas the applicant submitted its actual market price as assessed by a real estate agency, which had compared the average prices of similar one-room apartments. The valuation provided by the latter is also consistent with the average property prices as indicated in the Official Gazette (see paragraph 33 above). The Court therefore awards the applicant EUR 22,300. In the Court's view and having regard to the fact that the applicant's claim in respect of rent of alternative accommodation had not been sufficiently substantiated, such an award would be sufficient compensation for the applicant's pecuniary loss.

B. Non-pecuniary damage

36. The applicant claimed EUR 50,000 for non-pecuniary damage suffered as a result of the quashing of the final judgment in his favour. He argued that the quashing of the final judgment caused him suffering, stress and anxiety.

37. The Government disagreed with the amount claimed by the applicant, arguing that he had not supported his claims with any evidence and that there was no causal link between the alleged violation and the moral damage claimed.

38. The Court considers that the applicant must have suffered a certain amount of distress and frustration as a result of the quashing of the final judgment of 18 April 2002 and of the impossibility to use his apartment for a period of over four years. Taking into consideration the amounts awarded by the Court in similar cases (see, for example, *Roşca*, cited above, § 41), it awards him EUR 2,000 in compensation for non-pecuniary damage.

C. Costs and expenses

39. The applicant claimed EUR 1,450 in respect of costs and expenses incurred before the Court. He submitted a copy of a contract with his lawyer and an itemised list of the number of hours spent by the representative on the case.

40. 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.

41. 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).

42. In the present case, regard being had to the itemised list submitted by the applicant and the above criteria, the Court awards the applicant EUR 800 in respect of costs and expenses.

D. Default interest

43. 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 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 22,300 (twenty-two thousand three hundred euros) in respect of pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage;
 - (iii) EUR 800 (eight hundred 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President