



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

FOURTH SECTION

CASE OF MALAHOV v. MOLDOVA

(Application no. 32268/02)

JUDGMENT

STRASBOURG

7 June 2007

FINAL

12/11/2007

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 Malahov v. Moldova,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr S. PAVLOVSCHI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*

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

Having deliberated in private on 15 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 32268/02) 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 Mrs Antonina Malahov (“the applicant”) on 9 July 2002.

2. The applicant was represented by A. Petrenco, a lawyer practicing in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Pârlog.

3. The applicant alleged, in particular, that the domestic courts' refusal to examine her claims due to her inability to pay court fees had violated her rights guaranteed under Articles 6 § 1 and 13 of the Convention and that she had been discriminated against because of her ethnicity.

4. The application was allocated to the Fourth Section of the Court. On 22 September 2005 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 was born in 1942 and lives in Chişinău. She is a pensioner.

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

7. The applicant worked for a company in Chişinău. Besides her salary, she allegedly received fees, which were transferred to an account opened for her in the company's name. After retirement, she requested the company to transfer to her account all the fees accumulated (which she estimated at 25,278 United States Dollars (USD)). When the company refused to do so, she initiated court proceedings.

8. She asked the court to waive the obligation to pay court fees on the ground of her poor financial situation. In particular, she produced evidence showing that her only income was a monthly State pension of 102 Moldovan lei (MDL), equivalent to 8.7 euros (EUR) which barely allowed her to survive.

9. On 28 April 2000 the Râşcani District Court exempted the applicant from the payment of court fees because of her poor financial situation. On 31 January 2001 the court rejected her action and ordered the applicant to pay court fees of MDL 9,600 (EUR 826).

10. The Chişinău Regional Court requested pre-payment of additional court fees for examining her appeal. The court reduced those fees by half (from the original MDL 7,200 to MDL 3,600 (EUR 307)) “taking into account the provisions of Article 89 of the Code of Civil Procedure and the financial situation of [the applicant]”.

11. The applicant signed two summonses forms informing the parties about the dates of the next hearings (30 October 2001 and 20 November 2001), which also included the phrase “[Appellant] Malahova A.S. shall pay in court fees 3,600 [MDL]”.

12. On 29 October 2001 the applicant requested the court to waive the court fees altogether given her financial situation (her pension was MDL 143 (EUR 12.2) by that time) and the labour-related character of her claim (she argued that her unpaid fees amounted to “other claims related to work activities” and, according to the law, she should be exempted from court fees). She relied on Article 88 (1) of the Code of Civil Procedure (see paragraph 16 below).

13. On 20 November 2001 the court refused to examine her case because she had failed to pay the court fees. It did not analyse her financial situation or respond to her claim that the case concerned payment for work performed and, as such, was not subject to the payment of court fees.

14. In her appeal the applicant invoked her inability to pay the court fees and relied on the evidence of her small pension, as well as on the fact that her husband was unemployed and had no income. She relied on Article 89 of the Code of Civil Procedure (see paragraph 16 below).

15. On 10 January 2002 the Court of Appeal upheld the lower court's decision. The court, without referring to the applicant's sources of income or analysing her financial situation other than referring to the documents already in the file, found that the applicant had not presented proof of her inability to pay the court fees. The decision was final.

II. RELEVANT DOMESTIC LAW

16. The relevant provisions of the Code of Civil Procedure, in force at the relevant time, read as follows:

“Article 83. Litigation expenses

Litigation expenses include court fees and expenses related to the court proceedings.

Article 84. The amount of court fees

Court fees shall be due for actions lodged by natural persons ..., for appeals and appeals in cassation...:

(1) For court actions of a pecuniary nature, lodged by natural persons – 3% of the value of the action or of the amount sought...;

(11) For appeals – 75% of the court fees due when lodging the action ...;

(12) For appeals in cassation – 50% of the court fees due when lodging the action ...;

Article 88. Exemption from court fees

The following shall be exempted from paying court fees:

(1) plaintiffs (natural persons) – in actions regarding the payment of sums for work performed and other labour-related claims;...

Article 89. Waiver of court fees

In certain cases the court (the judge) may exempt partly or entirely a person from paying court fees, taking into account the person's financial situation ...”

THE LAW

17. The applicant complained that the refusal of the higher courts to examine the substance of her case had constituted a breach of Article 6 § 1 of the Convention, the relevant part of which reads:

“1. In the determination of his civil rights and obligations ..., everyone is entitled to a hearing”

18. The applicant also complained about a violation of Article 13 of the Convention in conjunction with Article 6 because she had no effective remedy in respect of her complaint concerning the obligation to pay court fees. 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.”

19. The applicant further complained under Article 14 of the Convention, in conjunction with Article 6, claiming that she had been discriminated against as she belonged to the Russian-speaking minority. She stated that she had been given summonses to sign in Romanian, which she had not understood. Article 14 reads as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

20. The applicant finally contended that Article 17 of the Convention had been violated by the authorities' “purposeful destruction of her right to a fair trial”. Article 17 reads as follows:

“Nothing in [the] Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”

I. ADMISSIBILITY OF THE COMPLAINTS

21. The Court considers that the applicant's complaints under Articles 14 and 17 of the Convention are unfounded. She has not provided any details to substantiate them and there is nothing in the case file which assists in this connection. She does not contend that she did not understand the nature of the two summonses (see paragraph 11 above), and she was allowed to submit all her documents in Russian. The issue of the sentence appearing in the summonses regarding the obligation to pay court fees shall be examined as part of her complaint under Article 6 of the Convention.

Accordingly, these complaints are manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected under Article 35 § 4.

22. The Court considers that the applicant's complaints under Articles 6 and 13 of the Convention raise questions of fact and law which are sufficiently serious that their determination should depend on an examination of their merits. No 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 the complaints.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

A. Arguments of the parties

23. The applicant complained that the refusal of the Chişinău Regional Court and the Court of Appeal to examine the substance of her claim due to her inability to pay court fees breached her right of access to a court, guaranteed by Article 6 § 1 of the Convention.

24. The Government disagreed and considered that the applicant had been given sufficient assistance by way of reducing the court fees due. Moreover, she had signed two documents confirming her obligation to pay court fees of MDL 3,600, thus acknowledging her ability to pay that sum (see paragraph 11 above). Finally, not only was the applicant given sufficient time to pay the court fees, she also benefited from a full exemption from payment of the court fees by the first-instance court and a partial reduction by the second-instance court.

B. The Court's assessment

1. General principles

25. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way, that provision embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before a court in civil matters, constitutes one aspect only; however, it is an aspect that makes it in fact possible to benefit from the further guarantees laid down in paragraph 1 of Article 6. The fair, public and expeditious characteristics of judicial proceedings are indeed of no value at all if such proceedings are not first initiated. And in civil matters one can scarcely conceive of the rule of law without there being a possibility of having access to the courts (see, among many other authorities, *Golder v. the United Kingdom*, judgment of 21 January 1975, Series A no. 18, pp. 16-18, §§ 34 *in fine* and 35-36; *Z and Others v. the United Kingdom* [GC], no. 29392/95, §§ 91-93, ECHR 2001-V; and *Kreuz v. Poland*, no. 28249/95, § 52, ECHR 2001-VI).

26. The “right to a court” is not absolute. It may be subject to limitations permitted by implication because the right of access by its very nature calls for regulation by the State. Guaranteeing to litigants an effective right of access to courts for the determination of their “civil rights and obligations”, Article 6 § 1 leaves to the State a free choice of the means to be used towards this end but, while the Contracting States enjoy a certain margin of appreciation in that respect, the ultimate decision as to the observance of the

Convention's requirements rests with the Court (see *Golder and Z and Others*, cited above, *ibid.*, and, *mutatis mutandis*, *Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32, pp. 14-16, § 26).

27. The Court has ruled that in some cases, in particular where the limitations in question related to the conditions of admissibility of an appeal, or where the interests of justice required that the applicant, in connection with his appeal, provide security for costs to be incurred by the other party to the proceedings, various limitations, including financial ones, may be placed on the individual's access to a "court" or "tribunal" (see, for instance, *Brualla Gómez de la Torre v. Spain*, *Reports of Judgments and Decisions* 1997-VIII, p. 2955, § 33, and *Tolstoy-Miloslavsky v. the United Kingdom*, judgment of 13 July 1995, Series A no. 316-B, pp. 80-81, §§ 61 et seq.).

28. The Court underlines that a restriction placed on access to a court or tribunal will not be compatible with Article 6 § 1 unless it pursues a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the legitimate aim sought to be achieved (see, for instance, *Tinnelly & Sons Ltd and Others and McElduff and Others v. the United Kingdom*, *Reports* 1998-IV, p. 1660, § 72).

29. The Court further recalls that, when assessing compliance with the above-mentioned standards, its task is not to substitute itself for the competent domestic authorities in determining the most appropriate means of regulating access to justice, nor to assess the facts which led those courts to adopt one decision rather than another. The Court's role is to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation and ascertain whether the consequences of those decisions have been compatible with the Convention (see, *mutatis mutandis*, *Tolstoy-Miloslavsky*, cited above, *ibid.*, and *Brualla Gómez de la Torre*, cited above, § 32 *in fine*).

30. The Court would finally reiterate that its scrutiny is based on the principle that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective. This is particularly so of the right of access to the courts in view of the prominent place held in a democratic society by the right to a fair trial (see *Airey*, cited above, pp. 12-14, § 24, and *Aït-Mouhoub v. France*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3227, § 52).

2. *Application of these principles to the present case*

31. The Court notes that none of the domestic courts examined in detail the applicant's financial situation. While using general phrases such as "taking into account [the applicant's] financial situation", the courts never referred to specific evidence of this (see paragraphs 9, 10 and 13 above). On the other hand, the applicant provided specific information regarding her relatively modest pension as her only source of existence (see paragraph 8

above). None of the courts expressed any doubts as to either the amount of her pension or the existence of other sources of income.

32. Moreover, while the first-instance court found that the applicant was unable to pay the court fees, it made her pay them after rejecting her claims. The court did not explain the reasons for this change of position, nor did it refer to any new evidence showing that the applicant's financial situation had drastically improved. When the Chişinău Regional Court examined the applicant's request for a waiver of the court fees, it did not take into consideration the fact that the applicant was already under the obligation to pay MDL 9,600 in court fees. Moreover, the additional MDL 3,600 which she was required to pay for her appeal to be examined, meant that the final sum due was over 90 times her monthly income. Even if, some five years later, the applicant appears to have found the means to pay a substantial amount of fees to her lawyer (see paragraph 48 below), there is nothing in the domestic courts' decisions suggesting that they had found evidence that the applicant was able to pay the court fees at the time of the events.

33. In addition, under domestic law (see paragraph 16 above) litigants in court actions regarding “other labour-related claims” were expressly exempted from court fees, regardless of their financial situation. The applicant expressly referred to that legal provision in one of her appeals, but the courts did not respond to her arguments (see paragraph 12 above).

34. The Government's reliance on the two documents signed by the applicant does not controvert the above findings as they do not prove that she had the ability to pay the court fees. Moreover, these documents, which the applicant could not have refused to sign as they also contained summonses to attend court hearings, were not referred to by the courts when rejecting her requests for a waiver of the court fees and are thus irrelevant to the present application.

35. The Court concludes that the domestic courts failed to carry out a proper assessment of the applicant's ability to pay the court fees, as well as to respond to her submission that she was entitled to an exemption due to the nature of her claims. The court fees required from the applicant were, moreover, clearly excessive in comparison with her resources at the time.

36. The Court therefore considers that the imposition of the court fees on the applicant constituted a disproportionate restriction on her right of access to a court. It accordingly finds that there has been a breach of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

37. The applicant also complained about the lack of effective remedies in respect of her complaint, contrary to Article 13 of the Convention, since the courts refused to examine her civil action.

38. The Government disagreed and asked the Court to reject the complaint.

39. The Court considers that the complaint under Article 13 of the Convention essentially repeats the complaint made under Article 6 examined above. Accordingly, it does not consider it necessary to examine this complaint separately.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed EUR 25,278 for pecuniary damage, corresponding to the amount which she had claimed in the domestic proceedings from her former employer but had been prevented from obtaining as a result of the refusal of the courts to examine her case.

42. The Government asked the Court to reject this claim as there had been no violation of any of the applicant's rights, the courts having taken all reasonable steps to examine her case.

43. The Court does not see any causal link between the violation of Article 6 § 1 it has found and the amount claimed in the domestic proceedings. In particular, it cannot speculate as to the outcome of the proceedings had the applicant's case been examined in its substance. Therefore, it rejects this claim for compensation.

B. Non-pecuniary damage

44. The applicant claimed EUR 7,000 for non-pecuniary damage resulting from the anguish and humiliation of seeing her case rejected without examination by the courts.

45. The Government disagreed and asked the Court to reject this claim as unsubstantiated.

46. The Court considers that the applicant must have been caused a certain amount of stress and frustration as a result of the breach of her right of access to a court. Making its assessment on an equitable basis, it awards the applicant EUR 1,800 for non-pecuniary damage.

47. However, the Court also notes that the applicant continues to be subject to the consequences of the refusal of the domestic courts to examine

the substance of her case. It considers that the most appropriate form of redress for this continuing situation would be for the applicant's appeal against the judgment of 31 January 2001 to be examined (see, *mutatis mutandis*, *Bujnița v. Moldova*, no. 36492/02, § 29, 16 January 2007).

C. Costs and expenses

48. The applicant claimed EUR 600 for costs and expenses. She relied on a receipt of payment of that amount to her lawyer based on contract no. 183 of 28 February 2006, as well as on the decision of the Moldovan Bar Association adopted on 29 December 2005, which set out the recommended level of remuneration for lawyers representing applicants before international courts.

49. The Government considered this claim to be unjustified, given the economic realities of life in Moldova. They argued that the applicant had not submitted a copy of the contract for her representation.

50. The Court recalls that in order for costs and expenses to be reimbursed under Article 41, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (*Croitoru v. Moldova*, no. 18882/02, § 35, 20 July 2004). According to Rule 60 § 2 of the Rules of Court, itemised particulars of claims made are to be submitted, failing which the Chamber may reject the claim in whole or in part.

51. The Court notes that the applicant has not submitted a list of hours worked by her lawyer on her case. At the same time, the lawyer has clearly carried out a certain amount of work and the payment, which does not appear unreasonable, has already been made, as confirmed by the receipt. The Court therefore allows this claim in full.

D. Default interest

52. 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 applicant's complaints under Articles 6 and 13 of the Convention and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there is no need to examine separately the complaint under Article 13 of 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, EUR 1,800 (one thousand eight hundred euros) in respect of non-pecuniary damage and EUR 600 (six hundred euros) in respect of 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President