



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

FOURTH SECTION

CASE OF BOTNARI v. MOLDOVA

(Application no. 19981/02)

JUDGMENT

STRASBOURG

19 June 2007

FINAL

19/09/2007

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 Botnari 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 Mrs F. ARACI, *Deputy Section Registrar*,

Having deliberated in private on 29 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 19981/02) 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 Andrei Botnari (“the applicant”), on 1 April 2002.

2. The applicant was represented by Ms Luciana Iabangi, from the Helsinki Committee for Human Rights in Moldova, a non-governmental organisation based in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Pârlog.

3. The applicant complained that the failure to enforce the judgment of 25 May 2000 violated his right to have his civil claims determined by a court within a reasonable time, as guaranteed by Article 6 of the Convention, and his right to an effective remedy within the meaning of Article 13 of the Convention.

4. The application was allocated to the Fourth Section of the Court. On 7 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 was born in 1968 and lives in Chişinău.

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

7. The applicant is a public prosecutor. According to Law no. 902-XII of 29 January 1992 the local authorities are obliged to provide public prosecutors with an apartment within one year of their commencing employment. In 1999 the applicant filed an official request with the local council for an apartment. The local council replied that due to the lack of funds allocated from the central budget, no new apartments had been built and the provisions of the law could not be enforced.

8. In March 2000 the applicant brought a civil action against the local council. On 25 May 2000 the Chişinău District Court ordered the local council to provide him with an apartment. No appeal was lodged and the judgment became final and enforceable 15 days later.

9. The applicant obtained an enforcement warrant which the bailiff failed to enforce. Because the local council did not comply with the judgment of 25 May 2000 and with other judgments, it was fined 1,800 Moldovan lei (MDL) by a decision of 9 February 2001 of the Chişinău District Court. According to the Government, the same court fined the local council MDL 2,700 on 17 February 2001 on account of its continued failure to enforce the judgment. The applicant disputes that the second fine was ever imposed.

10. On an unspecified date the applicant wrote to the Ministry of Justice, complaining about the non-enforcement of the judgment. In a letter addressed to the applicant on 26 December 2000, the Ministry of Justice assured the applicant that everything possible was being done to enforce the judgment.

11. On 23 December 2001 the applicant wrote another letter to the Ministry of Justice. That letter was forwarded to the Chişinău District Court. The applicant also wrote letters on numerous occasions to the Prime Minister and the President of Moldova.

12. The judgment of 25 May 2000 has still not been enforced.

II. RELEVANT DOMESTIC LAW

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

THE LAW

14. The applicant complained that the failure to enforce the final judgment in his favour had violated his rights as guaranteed by Article 6 § 1 of the Convention.

Article 6, 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”

He also complained that the same failure to enforce had violated his rights under Article 13 of the Convention. Although this complaint was not communicated, the Government nevertheless submitted comments on it.

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

15. The Court considers that the applicants' 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

16. The applicant complained that the non-enforcement of the final judgment in his favour violated his rights under Article 6 § 1 of the Convention.

17. The Government considered that no violation of those rights had taken place since the authorities had taken all reasonable measures to ensure the enforcement of the judgment. This had been difficult owing to the lack of available apartments in Chişinău.

18. The Court notes that in the present case the applicant had access to a court under national law in respect of his dispute with the local council. Accordingly, Article 6 is applicable (see, for a description of the relevant principles, *Vilho Eskelinen and Others v. Finland* [GC], no. 43803/98, § 62, 19 April 2007).

19. The Court notes that the judgment of 20 May 2000 remains unenforced to date. The Court has found violations of Article 6 § 1 of 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).

20. 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 recalls the principle, reiterated in *Prodan* (cited above, § 53) that:

“it is not open to a State authority to cite lack of funds and available alternative accommodation as an excuse for not honouring a judgment. Admittedly, a delay in the execution of a judgment may be justified in particular circumstances. But the delay may not be such as to impair the essence of the right protected under Article 6 § 1 of the Convention”

The seven-year delay in enforcing the judgment in the applicant's favour deprived him of the benefits of that judgment.

21. Accordingly, the Court finds, for the reasons given in the above-mentioned cases, that the failure to enforce the judgment of 20 May 2000 constitutes a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 TAKEN IN CONJUNCTION WITH ARTICLE 6 § 1 OF THE CONVENTION

22. The applicant further complained that he had no effective remedies in respect of his complaint under Article 6 § 1 of the Convention.

23. The Government argued that the applicant had at his disposal remedies in respect of his complaint under Article 13, such as requesting the initiation of administrative or criminal proceedings against the person responsible for non-enforcement.

24. The Court observes that the applicant's complaints to the effect that the refusal to enforce the judgment in his favour infringed his rights under Article 6 were undoubtedly arguable (see paragraph 21 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.

25. The Court notes that the judgment in favour of the applicant has still not been enforced seven years after its adoption. The debtor in this case was a State body. Moreover, the courts fined the local council for its failure to enforce the judgment in favour of the applicant. The Court concludes that the remedies referred to by the Government 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.

26. It is thus apparent that the applicant had no remedy to either prevent the continuation of the violation of his rights guaranteed under Article 6 § 1

of the Convention or to obtain compensation. There has accordingly been a violation of Article 13 taken together with that Article (see *Romashov v. Ukraine*, no. 67534/01, § 47, 27 July 2004, and *Voytenko v. Ukraine*, no. 18966/02, § 43, 29 June 2004).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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. Non-pecuniary damage

28. The applicant claimed 38,000 euros (EUR) in compensation for the non-pecuniary damage caused as a result of the non-enforcement of the judgment in his favour. He stated that his family, which includes three children, had to live for many years in an apartment not offering even the most basic comforts, despite being entitled by law and a final court judgment to receive an apartment from the State. He submitted photographs of his apartment in support of his claims.

29. The Government considered that the amount claimed was excessive in the light of the Court's case-law.

30. The Court 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 the undisputedly bad conditions in which he and his family had to live for many years. However, the amount claimed is excessive. Ruling on an equitable basis, the Court awards the applicant EUR 2,000 for non-pecuniary damage.

B. Costs and expenses

31. The applicant also claimed the equivalent of 900 United States dollars for the costs and expenses incurred before the Court. His representative submitted that this corresponded to the amount fixed by the Helsinki Committee for Human Rights in Moldova.

32. The Government considered that the amount claimed was excessive. They emphasised that the applicant had not submitted any evidence regarding the claim for costs and expenses.

33. The Court notes that the applicant did not submit any evidence of having paid his representative's fees or that such fees were due. Accordingly, regard being had to the information in its possession and the

above criteria, and the fact that the representative had clearly carried out some work on the case, the Court considers it reasonable to award the applicant the sum of EUR 100 for incidental costs and expenses.

C. Default interest

34. 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 as a result of the failure to enforce the final judgment of 20 May 2000;
3. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of an effective remedy in respect of the applicant's complaint regarding non-enforcement of the final judgment;
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 2,000 (two thousand euros) in respect of non-pecuniary damage and EUR 100 (one hundred euros) in respect of costs and expenses, plus any tax that may be chargeable on the above amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (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. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş ARACI
Deputy Registrar

Nicolas BRATZA
President