



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

FOURTH SECTION

CASE OF UNGUREANU v. MOLDOVA

(Application no. 27568/02)

JUDGMENT

STRASBOURG

6 September 2007

FINAL

06/12/2007

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 Ungureanu 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 10 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 27568/02) 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 Petru Ungureanu, (“the applicant”), on 10 July 2002. The applicant was represented before the Court by Ms N. Mardari from the “Moldovan Helsinki Committee”, a non-governmental organisation based in Chişinău.

2. 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 21 December 2001 in his favour 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.

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 1963 and lives in Chişinău.

6. He worked as Manager-in-Chief of the State company “Inspectorate for the Transport of Freight and Passengers”, a subdivision of the Ministry of Transportation (“the employer”).

7. In October 2001 the applicant was dismissed from his job. He brought a court action against the Ministry challenging the lawfulness of his dismissal.

8. On 7 November 2001 the Centru District Court ordered the applicant's reinstatement. He was reinstated but was dismissed again on the following day.

9. He brought another action against the Ministry, asking for his reinstatement and payment of his salary for the entire period of his involuntary absence from work.

10. On 21 December 2001 the Centru District Court found for the applicant and ordered the Ministry to reinstate him. It also awarded the applicant 3,800 Moldovan lei (MDL) (the equivalent of 323 euros (EUR) at the time).

11. That judgment was upheld by the Chişinău Regional Court on 13 February 2002 and by the Appellate Court on 23 May 2002.

12. On 22 December 2001 the Centru District Court issued an enforcement warrant which it sent to the Ministry for enforcement. Since the Ministry failed to comply with the warrant within the time-limit set by the court, it was warned and twice given additional time to comply.

13. On 5 February 2002 the applicant asked the Prosecutor General's Office to initiate criminal proceedings in respect of the refusal of the Minister of Transport, as head of the Ministry, to comply with a final court judgment. In the reply sent to the applicant on 18 February 2002 he was informed that there was no reason for the prosecution to intervene since it was the court's function to supervise the enforcement. The applicant also complained to other authorities (the prosecution service, the President), to no avail.

14. On 8 February 2002 the Centru District imposed a fine of MDL 900 on the Minister of Transport for failing to comply with its judgment. The court also awarded the applicant his salary for the period of his involuntary absence from work between 21 December 2001 and 8 February 2002, amounting to MDL 2,219 (EUR 195).

15. On 27 February 2002 a bailiff confirmed the Ministry's non-compliance with the judgment of 21 December 2001.

16. On 28 February 2002 the applicant complained to the Ministry of Justice about the non-enforcement of the judgment. On 22 March 2002 the Ministry of Justice informed him of the previous attempts to enforce the judgment and of a new request by the bailiff to have the Minister of Transport fined.

17. On 9 April 2002 the Centru District Court imposed a fine of MDL 1,350 on the Minister of Transport at the bailiff's request. The court also awarded the applicant his salary for the period of his involuntary absence from work after 8 February 2002, amounting to MDL 3,360 (EUR 195). According to the applicant, the Minister never paid any of the fines imposed by the court.

18. On 12 September 2002 the applicant was reinstated and on 18 September 2002 he received MDL 9,925, representing his salary arrears. On 1 October 2002 he was reimbursed for the legal expenses incurred during the trial and on 31 October 2002 he received the last sum due to him.

II. RELEVANT DOMESTIC LAW

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

In addition, Article 208 of the Code of Civil Procedure, in force at the relevant time, reads as follows:

“Judgments shall be enforced immediately if ordering the respondent:

... (2) to pay [a] salary to ... an employee, limited to one month;

... (4) to reinstate an employee who has been unlawfully dismissed”.

THE LAW

20. The applicant complained that his rights as guaranteed under Article 6 § 1 and Article 13 of the Convention and under Article 1 of Protocol No. 1 to the Convention had been violated as a result of the delayed enforcement of the judgment in his favour.

Article 6 § 1 of the Convention, in so far as relevant, provides:

“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 to the Convention 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.

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.”

Article 13 of the Convention provides:

“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

The Government's preliminary objection

21. The Government submitted that since the award had been fully enforced the applicant could no longer claim to be a victim of a violation of his Convention rights.

22. The Court notes that it has already dismissed a similar objection raised by the respondent Government (*Prodan v. Moldova*, cited above, § 47). Moreover, even though the courts ordered the applicant's salary to be paid for two subsequent periods during which the judgment in his favour had not been enforced (see paragraphs 14 and 17 above), no compensation was paid to him for the inability to use that money and for the non-pecuniary damage caused.

23. In these circumstances, the Court considers that the applicant has not lost his status as the victim of a violation of Convention rights. The Court considers that the applicant's complaints under Articles 6 § 1 and 13 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. 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 AND OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

24. The applicant complained that the non-enforcement of the final judgment in his favour had violated his rights under Article 6 § 1 of the Convention and under Article 1 of Protocol No. 1 to the Convention. He relied on Article 208 of the Code of Civil Procedure, in force at the relevant

time (see paragraph 19 above), under which judgments ordering the reinstatement of an employee were to be enforced immediately.

25. The Government disagreed. They submitted that the delay in enforcing the judgment was not excessive, considering that the final court judgment had been adopted on 23 May 2002 and was enforced in September-October 2002 and that a number of actions had been taken to ensure compliance with the judgment.

26. The Court has repeatedly held that proceedings concerning reinstatement are of “crucial importance” to plaintiffs and that, as such, they must be dealt with “expeditiously” (see *Guzicka v. Poland*, no. 55383/00, § 30, 13 July 2004); this requirement is additionally reinforced in States where domestic law itself provides that all such cases must be resolved with particular urgency (see *Borgese v. Italy*, judgment of 26 February 1992, Series A no. 228-B, § 18). This is particularly so when a judgment has already been adopted and the authorities have only to enforce it. The Court notes that the particular hardship to which a person is undoubtedly subjected when he or she is unlawfully deprived of a salary, even for a short period, has been taken into account by the domestic legislator in Article 208 of the Code of Civil Procedure (see paragraph 19 above), which makes court orders for reinstatement and the payment of part of the salary immediately enforceable.

27. It follows that the relevant date for the purposes of enforcement is that on which the first-instance court adopted its judgment (that is, 21 December 2001 in the present case), and not the date on which that judgment became final (see *Polonets v. Ukraine*, no. 39496/02, 20 September 2005). The domestic court confirmed this when it fined the Minister for his failure to comply with the judgment even though an appeal was pending and the judgment had not yet become final (see paragraphs 14 and 17 above).

28. In the present case, the Court cannot agree with the Government's position that the judgment had been enforced within a reasonable time. While a nine-month period for enforcing a judgment does not appear unreasonable by itself, in the circumstances of the present case it was unjustified. The court order concerned the applicant's reinstatement and payment of his salary, which, in the absence of any claim that he had alternative sources of revenue, was presumably his main source of income. Moreover, there were no apparent objective factors preventing the immediate enforcement of the judgment. Enforcement did not require important resources since it involved only the applicant's reinstatement and the payment of a single month's salary. Nor should it have required the use of coercive measures, such as if the order concerned a private company (see, *a contrario*, *Fociac v. Romania*, no. 2577/02, 3 February 2005), since the order was given to a Minister.

29. 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 concerning delays in enforcing final judgments (see, among other authorities, *Prodan v. Moldova*, cited above, and *Lupacescu and Others v. Moldova*, nos. 3417/02, 5994/02, 28365/02, 5742/03, 8693/03, 31976/03, 13681/03, and 32759/03, 21 March 2006).

30. Accordingly, the Court finds, for the reasons given in those cases, that the failure to enforce the judgment of 21 December 2001 within a reasonable time constitutes a violation of Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention.

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

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

32. 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.

33. 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 30 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.

34. The Court notes that the judgment in favour of the applicant was not enforced for nine months. The debtor in this case was a State body. Moreover, at the bailiff's request the court fined the Minister for his failure to enforce the judgment in the applicant's favour. 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 the bailiff could not be held responsible for the failure to enforce.

35. It is thus apparent that the applicant had no remedy to either prevent the continued violation of his rights as 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).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed EUR 5,000 for the non-pecuniary damage sustained as a result of the delay in enforcing the judgment in his favour.

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

39. 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 in his favour within a reasonable time, in particular given the nature of the award and the fact that he had to live without a salary for several months. However, the amount claimed is excessive. Ruling on an equitable basis, the Court awards the applicant EUR 500 for non-pecuniary damage.

B. Costs and expenses

40. The applicant did not make any claim in this respect.

C. Default interest

41. 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 judgment of 21 December 2001 within a reasonable time;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention as a result of the same failure to enforce the judgment of 21 December 2001 within a reasonable time;
4. *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 judgment of 21 December 2001;
5. *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 500 (five hundred euros) in respect of non-pecuniary damage, 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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

T.L. EARLY
Registrar

Nicolas BRATZA
President