



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

FOURTH SECTION

CASE OF MIZERNAIA v. MOLDOVA

(Application no. 31790/03)

JUDGMENT

STRASBOURG

25 September 2007

FINAL

25/12/2007

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 Mizernaia 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 4 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 31790/03) 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”) by Mrs Nina Mizernaia (“the applicant”), on 25 July 2003.

2. The applicant was represented by Mr Vitalie Iordachi, a lawyer practising in Chişinău and member of the non-governmental organisation “Lawyers for Human Rights”. The Moldovan Government (“the Government”) were represented by their Agent at the time, Mr Vitalie Pârlog.

3. The applicant complained that the failure to enforce a final judgment in her favour violated her right to have her civil rights determined by a court as guaranteed by Article 6 § 1 of the Convention and her right to peaceful enjoyment of her 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 9 February 2006 the President of that Section decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

5. The applicant and the Government each filed observations on admissibility, merits and just satisfaction.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1952 and lives in Chişinău.

7. After having been excluded in 1994 from a State-run apartment building association, the applicant brought an action against it, seeking the restitution of the money she had invested in a three-roomed apartment.

8. On 29 April 1996 the Râşcani District Court ruled in favour of the applicant and ordered the building association to pay her 23,733.80 Moldovan lei (MDL) (the equivalent of 4,550 euros (EUR) at the time).

9. The building association appealed unsuccessfully against the judgment on two occasions and, by a final judgment of 4 November 1997, the Court of Appeal upheld the judgment of 29 April 1996.

10. In December 1997 and May 1998 the applicant received MDL 3,071.10 and MDL 1,970, respectively.

11. Following several complaints about non-enforcement of the judgment lodged by the applicant with the Ministry of Justice, on 5 September 2000 and on 19 January 2001 the Ministry of Justice requested the Bailiff to take all the necessary steps to enforce the judgment.

12. The final judgment of 4 November 1997 has not been enforced to date.

II. RELEVANT DOMESTIC LAW

13. The relevant domestic law was set out in *Prodan v. Moldova* (no. 49806/99, ECHR 2004-... (extracts)) and *Popov v. Moldova* (no. 74153/01, §§ 29-41, 18 January 2005).

14. The Civil Code of 12 June 2003 reads as follows:

Article 619. Default interest

“(1) Default interest is payable for delayed execution of pecuniary obligations. Default interest shall be 5% above the interest rate provided for in Article 585 [NBM refinancing interest rate] unless the law or the contract provides otherwise. Proof that less damage has been incurred shall be admissible.

(2) In non consumer-related situations default interest shall be 9% above the interest rate provided for in Article 585 unless the law or the contract provides otherwise. Proof that less damage has been incurred shall be inadmissible.”

THE LAW

15. The applicant complained that the non-enforcement of the final judgment in her favour had violated her rights under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

Article 6 § 1 of the Convention, insofar 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”

Article 1 of Protocol No. 1 reads as follows:

“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.”

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

16. In their observations on the admissibility and merits of the case, the Government submitted that available domestic remedies had not been exhausted. They argued that the applicant could have brought an action against the Bailiff under Article 20 of the Constitution and under Article 426 of the former Code of Civil Procedure (“the former CCP”).

17. The Court notes that it has already dismissed a similar objection raised by the respondent Government in respect of Article 426 of the former CCP because “even assuming that the applicant could have brought an action against the Bailiff and obtained a decision confirming that the non-execution had been unlawful in domestic law, such an action would not have achieved anything new, the only outcome being the issue of another warrant enabling the Bailiff to proceed with the execution of the judgment” (see *Popov v. Moldova*, cited above, § 32). The Court does not see any reason to depart from that conclusion in the present case.

18. For the same reasons, the Court considers that Article 20 of the Constitution, which provides for a general right of access to justice, did not offer the applicant an effective remedy. While the decision of the Plenary Supreme Court of Justice of 19 June 2000 “concerning the application in judicial practice by the courts of certain provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms” may have allowed the applicant to rely on the Convention directly before the domestic courts, such reliance would have resulted in nothing more than “another warrant enabling the Bailiff to proceed with the

execution of the judgment” (see *Lupacescu and Others v. Moldova*, nos. 3417/02, 5994/02, 28365/02, 5742/03, 8693/03, 31976/03, 13681/03, and 32759/03, § 17, 21 March 2006).

19. In any event, the Court reiterates that a person who has obtained an enforceable judgment against the State as a result of successful litigation cannot be required to resort to enforcement proceedings in order to have it executed (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004).

20. The Court considers that the applicant's complaints under Article 6 § 1 of the Convention and under 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, no other grounds for declaring them inadmissible having 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 VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

21. The applicant complained that the non-enforcement of the judgment in her favour had violated her rights under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

22. The issues raised under these Articles are identical to those found to give rise to violations of those Articles in the judgments in the cases of *Prodan v. Moldova* (cited above, §§ 56 and 62) and *Sîrbu and Others v. Moldova* (nos. 73562/01, 73565/01, 73712/01, 73744/01, 73972/01 and 73973/01, §§ 27 and 33, 15 June 2004).

23. Accordingly, the Court finds, for the reasons detailed in those judgments, that the failure to enforce the final judgment of 4 November 1997 constitutes a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant claimed MDL 36,771.28 (EUR 2,161.7) in respect of pecuniary damage, representing the loss of profit suffered as a result of the failure of the authorities to enforce in full the judgment in her favour.

26. The Government considered the amount claimed by the applicant excessive and contested the method of calculation.

27. In view of its finding that the authorities have not taken the necessary steps to ensure the enforcement of the judgment in the applicant's favour and given that the judgment has still not been fully enforced (see paragraph 10 above), the Court finds that the applicant is still entitled to recover the judgment debt awarded in the domestic proceedings (EUR 1,927).

28. The Court also considers that the applicant must have suffered pecuniary damage as a result of the non-enforcement of the judgment of 4 November 1997. Taking into account the line of approach in the above-cited *Prodan*, § 73, and the domestic legislation concerning the calculation of default interest (see paragraph 14 above), the Court awards the applicant EUR 2,060, representing the loss of profit suffered as a result of the failure of the authorities to fully enforce the judgment in her favour.

29. The total amount of pecuniary damage awarded by the Court is EUR 3,987.

B. Non-pecuniary damage

30. The applicant also claimed EUR 10,000 in respect of non-pecuniary damage suffered as a result of the failure of the authorities to enforce the judgment.

31. The Government disputed the amount claimed by the applicant, arguing that it was excessive in light of the case-law of the Court. They stated that in some cases the mere fact of finding a violation was considered to be sufficient just satisfaction.

32. The Court considers that the applicant must have been caused a certain amount of stress and frustration as a result of the non-enforcement in full of the judgment, particularly given the rather long period during which the judgment has not been fully enforced. It awards the applicant the total sum of EUR 2,000 in respect of non-pecuniary damage.

C. Costs and expenses

33. The applicant also claimed EUR 700 for costs and expenses.

34. The Government disputed the amount claimed, stating that the applicant had failed to prove her alleged representation expenses.

35. The Court reiterates 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 are reasonable as to quantum (see, for example, *Amihalachioaie v. Moldova*, no. 60115/00, § 47, ECHR 2004-...).

36. In the present case, regard being had to the itemised list submitted by the applicant, the above criteria and the complexity of the case, the Court awards the applicant the entire amount claimed.

D. Default interest

37. 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, EUR 3,987 (three thousand nine hundred and eighty-seven euros) in respect of pecuniary damage, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage and EUR 700 (seven hundred euros) for 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 25 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş ARACI
Deputy Registrar

Nicolas BRATZA
President