



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

FOURTH SECTION

CASE OF BIȚA AND OTHERS v. MOLDOVA

(Applications nos. 25238/02, 25239/02 and 30211/02)

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 Bită 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 L. GARLICKI,

Ms L. MIJOVIĆ, *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 three applications (no. 25238/02, no.25239/02 and no. 30211/02) 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 Moldovan nationals, Mr Fiodor Bița (“the first applicant”), Mr Evghenii Andrienko (“the second applicant”) and Ms Ana Stanilă (the third applicant), on 10 June 2002 and 28 July 2002.

2. The Moldovan Government (“the Government”) were represented by their Agent at the time, Mr A. Pârlog.

3. The applicants complained that the failure to enforce the final judgments in their favour had violated their right to have their civil claims determined by a court within a reasonable time, as guaranteed by Article 6 of the Convention, their right to peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention, and their right to an effective remedy within the meaning of Article 13 of the Convention.

4. The applications were allocated to the Fourth Section of the Court. On 4 February 2003 and on 9 February 2006 a Chamber of that Section decided to communicate the applications to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the applications at the same time as their admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1958, 1950 and 1949 respectively and live in Chișinău.

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

7. All the applicants worked for the Ministry of Transport and Communications (“the employer”). They were promoted in 1997 but their salaries were not increased accordingly in the years 1997-98. When the employer refused to increase their salaries, the applicants initiated court proceedings.

8. On 4 December 2000 the Centru District Court awarded 5,074 Moldovan lei (MDL) (the equivalent of 469 euros (EUR) at the time) to the first applicant and MDL 5,280 (the equivalent of EUR 488 at the time) to the second applicant. On 26 December 2000 the same court awarded MDL 5,388 (the equivalent of EUR 498 at the time) to the third applicant. No appeals were lodged and the judgments became final and enforceable 15 days later.

9. The applicants complained to a number of State authorities, asking for assistance in having the judgments in their favour enforced. They received a number of replies, including that of the Ministry of Justice of 24 May 2001, which readdressed the complaint to the Centru District Court, requesting it to take “all measures provided by the law”. On 31 May 2001 the vice-president of that court informed the first applicant that the enforcement warrant had been sent to the State Treasury and that enforcement was impossible owing to the lack of money in the employer's account. A number of other authorities, including the Centru District Court, the Ministry of Justice, the President's Office and the Human Rights Centre were asked by the applicants to assist in ensuring the enforcement of the judgment. These complaints were either forwarded to the employer or to the court, with instructions to ensure the enforcement of the judgment. The applicants were informed of the lack of money in the employer's debt settlement account, which had been frozen for enforcement purposes, and that the budget had not been modified to provide for the enforcement of the judgment. The applicants were also informed that 70 similar judgments against the employer were awaiting enforcement.

10. The applicants submitted to the Court a copy of a Government decision of 17 January 2002, which ordered the Ministry of Finance to allocate to the employer MDL 483,700 from the Government reserve fund, to cover reorganisation expenses. That money was to be returned to the reserve fund from the employer's 2002 budget. In another Government

decision, dated 5 June 2002, the employer was allowed to buy an apartment in Chișinău for its Minister, funded by the development fund.

11. The domestic court fined the employer several times during 2002 for failing to enforce its judgments.

12. In September 2002 the enforcement warrants were partly enforced. The first applicant received MDL 3,940, the second applicant received MDL 4,145 and the third applicant received MDL 4,172. The remainder (equivalent to EUR 67, EUR 82 and EUR 91 respectively) was withheld as income tax.

13. The applicants brought a new action for compensation for the pecuniary damage caused by inflation and for non-pecuniary damage, which they left to the court's discretion.

14. By its final judgments of 4 February 2004 the Supreme Court of Justice found that the judgments in the applicants' favour had been belatedly enforced, and awarded MDL 5,074 (the equivalent of EUR 334 at the time) to the first applicant and MDL 6,715 (the equivalent of EUR 402 at the time) to the third applicant in compensation for the effect of inflation on the value of the 2000 award. The court did not deal with the applicants' request for compensation for non-pecuniary damage. On 7 May 2004 the second applicant's request for compensation was accepted by the Buiucani District Court, which awarded him MDL 6,579 (the equivalent of EUR 474 at the time).

15. The award of 4 February 2004 was enforced on 4 May 2004. In February 2005 the first and third applicants received MDL 1,755 (EUR 107) each from the employer in compensation for the delay in enforcing this new award.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

17. The Government submitted that since the awards in the applicants' favour had been enforced in September 2002 and they had obtained additional compensation, they could no longer claim to be victims of violations of their Convention rights.

18. The Court notes that it has already dismissed a similar objection raised by the respondent Government (see, for instance, *Prodan v. Moldova*, cited above, § 47). In the present case, even though the courts acknowledged in substance the belated enforcement of the judgments in the applicants' favour, they only awarded partial compensation, ignoring the applicants' claims for compensation for non-pecuniary damage. Moreover, no compensation for pecuniary damage resulting from the non-enforcement was paid, since the 2004 awards compensated only for the effects of inflation, and not for the inability to use the money for almost two years. The additional compensation awarded in 2005 relates to the belated enforcement of the 2004 award and not to the original awards in the applicants' favour.

19. Finally, the Court notes that the judgments in the applicants' favour have still not been fully enforced, certain sums having been withheld from them for income tax (see paragraph 12 above). However, the judgments in the applicants' favour did not provide for such deductions, and awarded specific sums of money to the applicants without reference to any tax. Moreover, the employer did not appeal against those judgments to claim a reduction of the amount to be paid to the applicants for tax purposes, nor did it ask for an interpretation of the judgments to clarify the issue of the withholding of tax. Instead, the employer itself interpreted and effectively modified the judgments, although this could be done only by a court.

20. In these circumstances, the Court considers that the applicants can claim to be victims of violations of Articles 6 § 1 and 13 of the Convention, as well as of Article 1 of Protocol No. 1 to the Convention.

21. The Court considers that the applicants' complaints under Article 6 § 1 and Article 13 of the Convention and Article 1 of Protocol No. 1 raise questions of law which are sufficiently serious for their determination to 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 these complaints.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

22. The applicants complained that the non-enforcement of the judgments in their favour had violated their rights under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention.

23. The Government considered that no violation of those rights had taken place, in view of the full enforcement of the judgments within a reasonable time and the payment of compensation. They conceded a violation of Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention

in respect of the second applicant, noting that urgent measures had been taken following the communication of the case to have the judgment fully enforced.

24. The Court notes that in the present case the applicants had access to a court under national law in respect of their dispute with the employer. Accordingly, Article 6 is applicable (see *Vilho Eskelinen and Others v. Finland* [GC], no. 43803/98, § 62, 19 April 2007).

25. The Court notes that the judgments in the applicants' favour adopted in December 2000 remained unenforced for 21 months, until September 2002, when the applicants received a part of the award. The remaining sums have still not been paid. 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 *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).

26. Having examined the material submitted to it, the Court notes that the files do not contain any element which would allow it to reach a different conclusion in the present cases.

27. Accordingly, the Court finds, for the reasons given in the cases mentioned in paragraph 25 above, that the failure to enforce the judgments in the applicants' favour within a reasonable time constitutes a violation of Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLE 6 § 1 AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

28. The applicants further complained that they had had no effective remedies in respect of their complaints under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention.

29. The Government argued that Article 13 was not applicable in the absence of a violation of either Article 6 § 1 or Article 1 of Protocol No. 1 to the Convention. They added that the applicants had not used all available domestic remedies in respect of their complaint under Article 13, such as requesting the initiation of administrative or criminal proceedings against the person responsible for non-enforcement. They relied on the direct applicability of the Convention in Moldova's domestic legal order. Finally, they conceded a violation of Article 13 of the Convention in respect of the second applicant.

30. The Court observes that the applicants' complaints that the failure to enforce the judgments in their favour infringed their rights under Article 6 and Article 1 of Protocol No. 1 were undoubtedly arguable (see

paragraph 27 above). The applicants were 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 applicants.

31. The Court notes that the judgments in favour of the applicants were partly enforced 21 months after they had been adopted. The debtor in this case was a State body. 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 that judgment executed” (see *Koltsov v. Russia*, no. 41304/02, § 16, 24 February 2005 and *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). Notwithstanding the above, the applicants' judgments have not yet been fully enforced, despite the bailiff's reasonable efforts, including the freezing of one of the Ministry's accounts.

32. It is thus apparent that the applicants had no remedy, either to prevent the continuation of the violation of their rights guaranteed under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention, or to obtain full compensation. There has accordingly been a violation of Article 13, taken together with those Articles (*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

33. 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

1. *The first applicant*

34. The first applicant made no claims for just satisfaction. The Court notes that the judgment in his favour was partly enforced and that he has already received partial compensation for the damage caused. Accordingly, it does not make an award under Article 41 of the Convention. However, the Court notes that a part of the initial award in the first applicant's favour remains unenforced. It considers that the judgment of 4 December 2000 should now be fully enforced and that the applicant should receive the outstanding amount (EUR 67) withheld from him by the employer (see paragraphs 12 and 19 above).

2. The second applicant

35. The second applicant claimed EUR 83, corresponding to the outstanding part of the original award in his favour and for compensation in respect of non-pecuniary damage, which he left to the Court's discretion.

36. The Government considered that the finding of a violation would constitute sufficient just satisfaction.

37. The Court recalls that the judgment in the second applicant's favour has not been fully enforced to date (see paragraphs 12 and 19 above). It also considers that the applicant must have suffered non-pecuniary damage as a result of the failure fully to enforce the judgment in his favour for seven years. Deciding on an equitable basis, it awards the applicant EUR 2,000.

3. The third applicant

38. The third applicant claimed MDL 15,826 (EUR 930) for damage caused by the non-enforcement of the judgment in her favour. She stated that her inability to use the money had been particularly stressful because she had lost her husband and had three children to care for.

39. The Government considered that the applicant had been fully compensated for the damage caused by the belated enforcement of the judgment in her favour. In any event, the amount claimed was excessive.

40. The Court considers that the applicant must have suffered some pecuniary loss, as well as stress and frustration as a result of the non-execution of the judgment in her favour within a reasonable time and notes the incomplete enforcement of that judgment (see paragraphs 12 and 19 above). It therefore allows the applicant's claim for just satisfaction in full.

B. Costs and expenses

The applicants did not make any claim under this head.

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 applications admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the failure to enforce fully the final judgment in favour of each applicant;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention on account of the same failure to enforce;
4. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of effective remedies in respect of the applicants' complaints regarding the failure to enforce fully the judgments in their favour;
5. *Holds*
 - (a) that the respondent State is to pay, within three months of the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 67 (sixty seven euros) representing the outstanding part of the award in favour of Mr Bița, 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 the respondent State is to pay, within three months of the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) for pecuniary and non-pecuniary damage to Mr Andrienco, 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;
 - (c) that the respondent State is to pay, within three months of the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 930 (nine hundred and thirty euros) for pecuniary and non-pecuniary damage to Ms Stanilî, 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;
 - (d) 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;
6. *Dismisses* the remainder of the applicants' claims 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