



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

FOURTH SECTION

CASE OF CLIONOV v. MOLDOVA

(Application no. 13229/04)

JUDGMENT

STRASBOURG

9 October 2007

FINAL

09/01/2008

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

Having deliberated in private on 18 September 2007,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 13229/04) 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 Grigore Clionov, (“the applicant”), on 22 March 2004. The applicant, who was granted legal aid, was represented before the Court by Mr V. Zamă from “Lawyers for Human Rights”, a non-governmental organisation based in Chişinău.

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

3. The applicant complained that the delays in enforcing the final judgments of 11 April 2001 and 26 June 2003 had 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. He also complained about a violation of his right of access to a court, contrary to Article 6 § 1 of the Convention.

4. The application was allocated to the Fourth Section of the Court. On 4 January 2005 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1937 and lives in Chişinău.

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

7. The applicant was a victim of a work accident in 1984. He was rendered 100% unfit to work and was found to be in the first degree invalidity category. The employer, The National Institute of Vineyards and Wine ("the NIVW"), was obliged by law to pay him monthly invalidity benefit. After the introduction of the new national currency the amount of benefit was set at approximately 18 euros (EUR) per month and had risen to approximately EUR 50 per month by 2003. He also receives a small State pension.

8. From 1996 the NIVW stopped paying the compensation and the applicant accumulated a significant debt to public utility companies. He initiated court proceedings to oblige the employer to resume payment of the benefit and to recover benefit for the entire period due. According to the Government, the employer did not have sufficient information about the applicant during the period 1996-2001 and this was the reason for discontinuing the payments. The applicant submitted a copy of his complaint to NIVW regarding the discontinuation of the payments dated January 1998 and the NIVW's two letters in response, according to the last of which (March 1998) the payment of the benefit had been suspended because of lack of funds. The applicant also complained to various authorities in 2000 about the NIVW's failure to pay. In a letter dated 2 August 2000 the deputy Minister of Agriculture and Food Processing assured the applicant that his benefit would soon be paid.

9. On 11 April 2001 the Ciocana District Court accepted the applicant's claims and awarded him 23,921 Moldovan lei (MDL) (the equivalent of EUR 2,076 at the time) in respect of compensation due to him to that date. It ordered the NIVW to pay the court fees. No appeal was lodged and the judgment became final and enforceable 15 days later. The court then issued a warrant for the enforcement of the judgment.

10. On 20 February 2002 the NIVW was declared insolvent and an Administrator was appointed for the period of its liquidation. The applicant submitted that the organisation was, in fact, in the process of restructuring and was not liquidated, as evidenced by official documents signed by the NIVW's administrator. He also claimed that the NIVW had continued to pay staff salaries and had even purchased new equipment. He referred to a decision of the Court of Audit (no. 2, 2001), according to which the NIVW had been given a credit in the amount of 2,890,000 United States dollars

(USD) by the Ministry of Finance from its own loan from the International Bank of Reconstruction and Development and that this money had been used to purchase wine production equipment. By July 2000 the NIVW had obtained revenue from this new equipment amounting to approximately EUR 14,500. The applicant also referred to another decision of the same court (no. 20, 2004) according to which in 2003 the NIVW had received from the State budget MDL 785,000 to finance research and specialised education.

11. From June 2002 until October 2002 the NIVW paid the applicant a total of MDL 8,000.

12. On 30 October 2002 the applicant initiated new court proceedings requesting the recalculation of the compensation due (because inflation had decreased the value of the earlier award) and also payment of an additional MDL 49,178 (EUR 3,630 at the time) in damages for the late and partial payment of the previous award (in 2001). He also claimed payment of the compensation arrears which had accumulated since that previous judgment.

13. On 13 November 2002 the NIVW paid him the balance of the 2001 award (MDL 15,900). In a letter dated 14 April 2003 it recognised a part of the applicant's new claims for invalidity benefit for 2002 and stated that the calculation for 2003 would be carried out in cooperation with the Ministry of Labour.

14. On 26 June 2003 the Centru District Court accepted the applicant's new claims in part and awarded him MDL 7,729 (EUR 478 at the time) for the period 11 April 2001 until 1 June 2003, during which he had been paid only a part of his monthly benefit. The court rejected his claim for compensation for damage caused by delayed enforcement and by inflation during the relevant period.

15. Having exempted the applicant from payment of the court fees when initiating this second action, the court ordered that the fees be paid by the unsuccessful party, namely the NIVW.

16. On 10 November 2003 the Economic Court of Appeal issued a certificate confirming that the NIVW was in the process of reorganisation. On 11 November 2003 the Court of Appeal rejected an appeal lodged by the applicant against the judgment of 26 June 2003.

17. He then appealed twice to the Supreme Court of Justice. By letters of 27 November 2003 and 23 April 2004 the court informed the applicant that his appeal had not been examined because he had failed to pay the court fees (approximately EUR 50). His request for an exemption was rejected, the only reason given being that the relevant legal provisions (Articles 85(4) and 86 of the Code of Civil Procedure, see paragraph 21 below) did not apply.

18. In view of the Supreme Court of Justice's refusal to examine his appeal, the judgment of 11 November 2003 became final.

19. According to a letter from the NIVW director submitted to the Court by the Government, by Government Decision no. 159 of 20 January 2004 the NIVW was split into two separate State companies and received approximately 20% of its funds from the State budget.

II. RELEVANT DOMESTIC LAW

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

21. In addition, the relevant provisions of the new Code of Civil Procedure, in force since 12 June 2003, read as follows:

“Article 85

...

(4) The judge (the court) may exempt partly or entirely a natural person from paying court fees, taking into account the person's financial situation.

Article 437

...

(2) Proof of payment of court fees shall be annexed to the cassation appeal; Articles 85(4) and 86 do not apply.”

THE LAW

22. The applicant complained that his rights as guaranteed under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention had been violated as a result of the delayed enforcement of the judgments of 11 April 2001 and 26 June 2003. He also complained about a violation of his right of access to court guaranteed by Article 6 as a result of the refusal of the Supreme Court of Justice to examine his cassation appeal because of his failure to pay the court fees.

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.”

I. ADMISSIBILITY

The Government's preliminary objection

23. The Government submitted that since both awards in the applicant's favour had been fully enforced and since he had been compensated for the effects of inflation on the value of the 2001 award, the applicant could no longer claim to be a victim of a violation of his Convention rights.

24. The Court notes that it has already dismissed a similar objection raised by the respondent Government (see *Prodan v. Moldova*, cited above, § 47). Moreover, despite the applicant's express request to compensate him for damage, as well as for the effects of inflation on his awards, the courts rejected any such compensation (see paragraphs 14 and 17 above). Compensation for the effect of inflation on the value of the first award offered only partial redress for the pecuniary damage and nothing was awarded for the non-pecuniary damage caused to the applicant.

25. In these circumstances, the Court considers that the applicant has not lost his status as a victim of a violation of his Convention rights. The Court considers that the applicant's complaints under Article 6 § 1 of the Convention 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

26. 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.

27. The Government disagreed. They submitted that the delay in enforcing the judgment had not been excessive. Moreover, enforcement had been obstructed by an objective factor, namely the NIVW's liquidation proceedings, during which no enforcement was allowed. They added that the State could not be held liable for the debts of the NIVW, which was independent of the State.

28. The Court notes that in the present case the NIVW was formally declared to be independent from the State and to be in charge of its own economic activity. However, it also notes that the NIVW received substantial funding directly from the State budget (see paragraphs 10 and 19 above). Moreover, State authorities had direct control over the management of the NIVW, as illustrated by the Government Decision of 20 January 2004 (see paragraph 19 above) and were involved in various decisions taken in respect of the NIVW (see paragraphs 8 and 13 above).

29. In view of the direct funding from the State budget and the extensive control over the NIVW's activity by the authorities, the Court considers that the State is to be held responsible for any debts incurred by the NIVW (see *Cooperativa Agricola Slobozia-Hanesei v. Moldova*, no. 39745/02, § 19, 3 April 2007, and *Mykhaylenky and Others v. Ukraine*, nos. 35091/02, 35196/02, 35201/02, 35204/02, 35945/02, 35949/02, 35953/02, 36800/02, 38296/02 and 42814/02, §§ 41-46, ECHR 2004-XII). Hence, the enforcement warrant in favour of the applicant may be considered as having been issued against the State itself.

30. The Government relied on the difficulties in enforcing the judgment which were due to the NIVW's liquidation (see paragraph 10 above). The applicant considered that the NIVW had not been liquidated but only reorganised, as evidenced by various documents (see paragraph 16 above) and by the fact that the NIVW continued to function.

31. The Court notes that the first judgment in the applicant's favour became enforceable on 27 April 2001, while the NIVW was declared to be in the process of liquidation on 20 February 2002. There is nothing in the file to show that any action was taken during the period of almost 10 months before the liquidation proceedings. At the same time, the authorities were aware (see paragraph 8 above) of the urgent need that the applicant had to obtain his invalidity benefit, since this was his main source of subsistence.

32. The Court considers that, regardless of whether the NIVW was in the process of liquidation or reorganisation, the judgment in the applicant's favour should have been enforced as a matter of urgency. Since the State was ultimately liable for the NIVW's debts (see paragraph 29 above), the lack of funds could not constitute an obstacle to enforcement since "it is not open to a State authority to cite lack of funds as an excuse for not honouring a judgment" (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74, ECHR 1999-V).

33. The issues raised under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention are identical to those found to give rise to violations of those Articles in *Prodan v. Moldova* (cited above, §§ 56 and 62) and *Cooperativa Agricola Slobozia Hanesei* (cited above, § 28). There is no reason to depart from those findings in the present case.

34. There has, accordingly, been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention in the present case.

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

35. The applicant complained that the refusal of the Supreme Court of Justice to examine his cassation appeal because of his inability to pay the court fees had breached his right of access to a court, guaranteed by Article 6 § 1 of the Convention.

36. The Government pointed to the absence, in the domestic case file, of any reference to a cassation appeal lodged by the applicant. They doubted that such an appeal had been lodged and asked the Court to reject this complaint as manifestly ill-founded.

37. The applicant stated that no reference was to be found in the case file because the Supreme Court of Justice, considering that his appeal did not correspond to the requirements established by law (because of his failure to pay the court fees), had not requested the case file from the lower court and had not made any mention of the appeal in the file. Instead, the court returned the appeal with its annexed documents to him, as shown by the two letters sent to him (see paragraph 17 above). In their subsequent observations the Government conceded that the applicant had lodged a cassation appeal. They submitted that it was reasonable to restrict access to the third level of jurisdiction in order to ensure the efficient administration of justice.

38. The Court refers to the general principles established in its case-law concerning access to a tribunal within the meaning of Article 6 § 1 of the Convention and, more specifically, the requirement to pay court fees (see, among many authorities, *Kreuz v. Poland*, no. 28249/95, §§ 52-57, ECHR 2001-VI and the further references therein).

39. In the present case the Court notes that the relevant proceedings concerned the applicant's claim for damages. Accordingly, Article 6 § 1 applies under its civil head (see *Kreuz*, cited above, § 35). The Court also reiterates that Article 6 § 1 does not guarantee a right to appeal from a decision of first instance. Where, however, domestic law provides for a right of appeal, the appeal proceedings will be treated as an extension of the trial process and accordingly will be subject to Article 6 (*Delcourt v. Belgium*, judgment of 17 January 1970, Series A no. 11, § 25; *Gurov v. Moldova*,

no. 36455/02, § 33, 11 July 2006). It is to be noted that Moldovan law allowed the applicant to lodge an appeal in cassation with the Supreme Court of Justice. That court could restrict his right of appeal only where it found that the appeal did not correspond to the applicable legal requirements.

40. The Court notes that the Supreme Court of Justice relied on the provisions of the law in refusing to examine the applicant's appeal, namely his failure to pay court fees. Accordingly, the Court needs to examine whether, in rejecting the applicant's request to waive the payment of court fees, the Supreme Court of Justice took into account the particular circumstances of his case, first of all his ability to pay.

41. It was not disputed by the parties that the Supreme Court of Justice had never examined the case file (see paragraphs 17, 36 and 37 above). Therefore, the court had no direct knowledge of the applicant's financial situation. Moreover, the Supreme Court of Justice was prevented from verifying the applicant's ability to pay by the express provisions of the law (Article 437 (2) of the Code of Civil Procedure, see paragraph 21 above). Such a blanket prohibition on granting court fee waivers as contained in that Article raises of itself an issue under Article 6 § 1 of the Convention.

42. In view of the above, the Court considers that the applicant was denied access to a tribunal. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed EUR 1,059 for pecuniary damage resulting from his inability to use the money awarded on 11 April 2001 for over a year. He relied on the interest rates on deposits made in a leading commercial bank in Moldova.

45. The Government contested these calculations and considered that no pecuniary damage to the applicant had been proved.

46. The Court considers that the applicant suffered pecuniary damage as a result of the failure to enforce the judgment of 11 April 2001 within a reasonable time. The specific amount claimed is, however, excessive. The Court awards the applicant EUR 300, taking into account that he has already received the judgment debt in its entirety.

B. Non-pecuniary damage

47. The applicant also claimed EUR 30,000 for non-pecuniary damage. He referred to his advanced age for Moldova (70) and sufferings as a result of the failure to enforce the award in his favour within a reasonable time, which resulted in his inability to afford basic commodities, medications and to pay for a nurse to take care of him since he is 100% unfit for any activity. In addition, he suffered because of the refusal of the Supreme Court of Justice to examine his cassation appeal without verifying his personal situation.

48. The Government submitted that in view of the NIVW's liquidation the enforcement of the judgment in the applicant's favour had been prevented by objective factors and thus could not have caused him damage. Moreover, the NIVW had complied with the judgment. As for the refusal to examine the applicant's cassation appeal, it was not unreasonable but pursued legitimate aims. The Government asked the Court to reject the applicant's claims for non-pecuniary damage.

49. The Court considers that the applicant must have been caused a considerable 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 his invalidity benefit for over a year. This damage was compounded by the refusal to examine his cassation appeal, concerning as it did compensation for the delay in enforcing the judgment of 11 April 2001. However, the amount claimed is excessive. Ruling on an equitable basis, the Court awards the applicant EUR 2,700 for non-pecuniary damage.

C. Costs and expenses

50. The applicant claimed EUR 1,200 for costs and expenses. In support of his claims he submitted a contract with his lawyer and an itemised list of hours spent by the lawyer in preparing the case.

51. The Government disagreed with the amount claimed and the number of hours worked on the case.

52. The Court notes that it has granted the applicant legal aid under the Court's legal-aid scheme for the submission of his observations and additional comments and secretarial expenses. In the circumstances of the present case and given its partly repetitive nature, the Court considers that no further compensation for costs and expenses is necessary. Accordingly, it makes no award under this head.

D. Default interest

53. 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 11 April 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 11 April 2001 within a reasonable time;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the restriction on the applicant's right of access to a court;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 300 (three hundred euros) in respect of pecuniary damage and EUR 2,700 (two thousand seven 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 9 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President