



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

FOURTH SECTION

CASE OF CURĂRARU v. MOLDOVA

(Application no. 34322/02)

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 Curăraru 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 18 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 34322/02) 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 two Moldovan nationals Mr Vasile Curăraru (“the first applicant”) and Mrs Ludmila Curăraru (“the second applicant”), on 11 September 2002.

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

3. The applicants complained that the failure to enforce the final judgment of 23 April 1999 in their favour had violated their right to have their civil rights determined by a court within a reasonable time, as guaranteed by Article 6 of the Convention, and their right to peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention. They also complained about the fairness of the proceedings for their dismissal.

4. The application was allocated to the Fourth Section of the Court. On 23 June 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1936 and 1940 respectively and live in Chişinău.

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

1. Litigation in respect of the right to accommodation

7. On 27 January 1994 the room in which the applicants lived was declared uninhabitable. A report issued on 5 December 1996 by the Epidemiology and Hygiene Centre of the Ministry of Health confirmed that water leaked through the damaged roof into the room and caused damp. It requested the local authorities to respond appropriately to the situation.

8. In 1999 the applicants initiated court proceedings. On 23 April 1999 the Centru District Court adopted a judgment in the applicants' favour ("the 1999 judgment"), ordering the Chişinău municipality to allocate them "accommodation in accordance with the number of family members". No appeal was lodged and the judgment became final 15 days later.

9. On 11 May 1999 the applicants submitted the enforcement warrant to the bailiff, who did not enforce it. The municipality responded to all the requests of the bailiff and of the applicants by stating that it could not enforce the judgment in view of the lack of available apartments. It was fined several times (the equivalent of 120 euros (EUR), it is unclear whether the fines were paid) but the judgment was not enforced.

10. In 2002 the Decisions Enforcement Department ("the Department") requested a court to return the enforcement warrant to the applicants without enforcement. On 28 September 2002 the Centru District Court accepted that request. On 28 September 2004 the Court of Appeal quashed that decision because the applicants had not been informed of it. The bailiff's request was remitted for a new examination and on 22 December 2004 it was rejected by the Centru District Court as unfounded. That decision was upheld by the Chişinău Court of Appeal on 16 March 2005.

11. In 2003 the applicants requested a court to set a time-limit for the enforcement of the 1999 judgment. On 16 July 2003 the Centru District Court set a two-month time-limit but no enforcement followed.

12. Also in 2003 the applicants requested a court to change the means of enforcing the 1999 judgment by ordering the Chişinău municipality to pay them the price of a two-room apartment or to register their title to such an apartment in one of the newly built houses belonging to the State and to compensate them for the damage caused by the non-enforcement. On 28 November 2003 the Centru District Court rejected that request, finding

that such requests could only be examined as part of separate proceedings. On 17 March 2004 the Chişinău Court of Appeal rejected an appeal by the applicants.

13. The applicants initiated separate proceedings asking for compensation for damage caused by the non-enforcement and for registration in the land register of their title to a two-room apartment. In two judgments of 16 December 2004 the Centru District Court rejected both requests as unfounded. These judgments were upheld by the Chişinău Court of Appeal on 26 April 2005. Both courts exempted the applicants from paying the court fees on account of their difficult financial situation. The applicants appealed and asked for an exemption from the payment of court fees for their appeal, in view of their difficult financial situation. They also claimed that they had paid the major part of the price of the apartment (9,550 Soviet roubles) at the beginning of the 1990s.

14. By a letter of 11 May 2005 the Supreme Court of Justice informed the applicants that their appeal could not be examined because it was handwritten and the court fees had not been paid. The court informed the applicants that no exemption from payment because of their difficult financial situation was possible. The applicants did not pay and the case was dismissed for failure to pay the court fees.

15. On 11 October 2005 the Chişinău municipality allocated two-room apartments to I.F., R.M., S.I. and V.N., who had the right to accommodation on the basis of court orders of 3 April 2000, 30 June 2003 and 29 September 2004 respectively (two of the above-mentioned received the court orders on the same day). The applicants submitted a request to be allocated accommodation on a priority basis since the judgment in their favour had been adopted in 1999, but it was not examined. The applicants challenged the failure to examine their request in court.

16. On 24 November 2005 the Court of Appeal quashed the municipality's decision and ordered a re-examination of the applicants' request and the allocation of a two-room apartment to them.

17. On 22 February 2006 the Supreme Court of Justice quashed that judgment and ordered a rehearing because the municipality had not been present when the Court of Appeal adopted its judgment. On 12 May 2006 the Chişinău Court of Appeal rejected the applicants' claims. On 12 July 2006 the Supreme Court of Justice upheld that judgment, finding that the other persons to whom the applicants referred had received apartments clearly exceeding the size of the apartment to which the applicants were entitled. Accordingly, those apartments could not have been allocated to the applicants. That judgment was final.

18. In parallel proceedings the Department decided, on 1 September 2005, to freeze the procedure for distributing apartments in apartment blocks built by the municipality and certain private businesses, pending enforcement of several court judgments, including the final judgment in

favour of the applicants. On 18 October 2005 the Centru District Court partly quashed that decision. On 15 December 2005 the Chişinău Court of Appeal quashed the Department's decision of 1 September 2005. The first applicant asked for the reopening of the proceedings, but on 30 March 2006 the Chişinău Court of Appeal rejected that request as unfounded. That decision was upheld by the Supreme Court of Justice on 28 June 2006.

19. According to a document issued on 11 January 2007 by the National Bureau of Statistics, more than a thousand new apartments were made available in the city of Chişinău each year during the period 1999-2006. The document did not specify the proportion of State-owned apartments in the above number.

20. The judgment of 23 April 1999 has not been enforced to date.

2. Litigation in respect of the applicants' dismissal from their jobs

21. In two separate actions, the applicants complained that they had been unlawfully dismissed from their jobs.

22. The first applicant's claim was initially rejected by a judgment of the Centru District Court of 12 November 1998, but was allowed on appeal by the Court of Appeal on 17 June 1999. The Prosecutor-General filed a request for the annulment of the latter judgment. On 10 September 1999 the Supreme Court of Justice accepted that request and quashed the Court of Appeal's judgment, while upholding the judgment of 12 November 1998.

23. The second applicant's claim, filed in January 2001, was granted on 11 June 2002. In a letter of 9 March 2004 she complained about the excessive length of those proceedings.

II. RELEVANT DOMESTIC LAW

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

THE LAW

25. The applicants complained that their rights as guaranteed under Article 6 § 1 of the Convention and under Article 1 of Protocol No. 1 to the Convention had been violated as a result of the failure to enforce the final judgment in their favour. They also complained of a number of violations of Article 6 § 1 in the course of the proceedings for their dismissal.

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

26. The Government submitted that the applicants' complaints regarding their dismissal from their jobs (see paragraphs 21-23 above) had not been lodged with the Court within six months of the date of the final court judgment in each case. They asked the Court to reject these complaints as out of time.

27. The applicants did not comment.

28. The Court reiterates that, under Article 35 § 1 of the Convention, it may only deal with a matter if it has been presented within a period of six months from the date on which the final decision was taken (see, for example, *Meriakri v. Moldova* (dec.), no. 53487/99, 6 May 2003). It notes that the first set of proceedings ended on 10 September 1999, while this application was lodged on 11 September 2002. While the second set of proceedings ended on 11 June 2002, the applicants complained to the Court about their length only on 9 March 2004.

29. It follows that the complaints regarding these two sets of proceedings were introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

30. The Court considers that the applicants' complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention relating to the non-enforcement of the final judgment of 23 April 1999 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 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

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

32. The Government submitted that the Chişinău municipality had been faced with a difficult situation as a result of the failure to provide means in the State budget for the period 1997-2002 for the construction of new apartments. They promised that the judgment in the applicants' favour would be enforced swiftly.

33. The Court has already found, in cases similar to the present one where apartments owned by the State are given to persons on the basis of “social tenancy agreements”, that “a 'claim' – even concerning a particular social benefit – can constitute a 'possession' within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable” (see *Shpakovskiy v. Russia*, no. 41307/02, § 33, 7 July 2005; *Malinovskiy v. Russia*, no. 41302/02, §§ 43 and 44, ECHR 2005-... (extracts) and *Lozan and Others v. Moldova*, no. 20567/02, § 39, 10 October 2006).

34. The Court reiterates that it is not open to a State authority to cite lack of funds or available alternative accommodation as an excuse for not honouring a judgment. Admittedly, a delay in the execution of a judgment may be justified in certain circumstances. But the delay must not be such as to impair the essence of the right protected under Article 6 § 1 of the Convention (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74, ECHR 1999-V; and *Prodan*, cited above, § 53). It follows that the Government's argument that for more than eight years the Chişinău municipality could not find the means to enforce the judgment must be dismissed.

35. 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*, 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).

36. Accordingly, the Court finds, for the reasons given in those cases, that the delay in enforcing the judgment of 23 April 1999 constitutes a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 TAKEN IN CONJUNCTION WITH ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

37. The applicants also complained that they had been discriminated against as regards the enforcement of the final judgment in their favour. They referred to the distribution of apartments to persons who had obtained final judgments after their own had become final (see paragraphs 15-19 above).

38. The Court finds that there is nothing in the materials before it which indicates that the applicants were victims of discriminatory treatment in the allocation of apartments (see paragraph 17 above).

39. Accordingly, the Court concludes that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected under Article 35 § 4.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicants claimed 298,530 Moldovan lei (MDL) (the equivalent of EUR 17,863 at the time), EUR 165,000 and 490,000 United States dollars (USD) for both pecuniary and non-pecuniary damage. This included the loss of the first applicant's salary following his dismissal, the price of a two-room apartment in Chişinău together with expenses for repairing it, as well as compensation for damage to the applicants' health and non-pecuniary damage for eight years of living in an uninhabitable and overcrowded room despite a final judgment in their favour giving them the right to accommodation in a two-room apartment.

42. The Government considered that these claims were highly exaggerated and that the applicants had failed to submit any evidence of a causal link between the violations alleged and the damage caused. They emphasised that the court had not awarded the applicants ownership of an apartment, but only a social tenancy. Accordingly, they could not claim the price of an apartment in the proceedings before the Court.

1. Pecuniary damage

43. The Court refers to its finding that the applicants' claims regarding their dismissal from their jobs were inadmissible (see paragraph 29 above). Accordingly, no claims for payment of salary or other compensation can be made under this heading.

44. The Court also recalls that the final judgment in the applicants' favour did not award them ownership of an apartment but merely a right to accommodation on a social tenancy basis (see paragraph 8 above). Therefore, they cannot claim the price of an apartment and related expenses, but only allocation of accommodation (see *Lozan and Others v. Moldova*, cited above, § 43).

45. In the absence of specific evidence of damage to the applicants resulting from the failure to enforce the judgment in their favour, the Court does not make any award in respect of pecuniary damage.

2. Non-pecuniary damage

46. The Court considers, however, that the judgment of 23 April 1999 should be enforced without further delay.

47. The Court also considers that the applicants must have been caused a considerable amount of stress and frustration as a result of the non-enforcement of the judgment, the more so given the undisputedly harmful conditions in which they had to live for more than eight years. However, the amount claimed is excessive. Ruling on an equitable basis and in view of the exceptional circumstances of the present case, the Court awards the applicants EUR 4,000 for non-pecuniary damage (see *Malinovskiy*, cited above, § 52).

B. Costs and expenses

48. The applicants requested EUR 70 in compensation for their expenses in connection with the proceedings before the Court. They submitted receipts for translation services and postal expenses.

49. The Government have not commented.

50. On the basis of the documents in the file, the Court allows this claim in full.

C. Default interest

51. 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* admissible the complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention in respect of the failure to enforce the judgment of 23 April 1999, and the remainder of the application inadmissible;
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 23 April 1999;
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;
4. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) in respect of non-pecuniary damage and EUR 70 (seventy 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 9 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President