



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

FOURTH SECTION

CASE OF NADULISNEAC ION v. MOLDOVA

(Application no. 18726/04)

JUDGMENT

STRASBOURG

16 October 2007

FINAL

16/01/2008

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 Nadulisneac Ion v. Moldova,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

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

Having deliberated in private on 25 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 18726/04) 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 Ion Nadulişneac (“the applicant”), on 8 April 2004.

2. The applicant was represented by Mr Victor Marcu, a lawyer practising in Edineţ. 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 his favour had violated his right to have his civil rights determined by a court 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 14 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 1953 and lives in Edineț.

7. Following the applicant's unlawful detention for three days and then his acquittal, on an unspecified date in 2002 he brought an action against the Edineț Department of Finances, seeking compensation for wrongful prosecution.

8. On 3 December 2002 the Edineț District Court ruled in favour of the applicant and ordered the defendant to pay him 11,739 Moldovan lei (MDL) (the equivalent of 850.04 euros (EUR) at the time). On the same date the District Court issued an enforcement warrant. The judgment was not appealed against and after fifteen days it became final and enforceable.

9. On 11 June 2003 a Bailiff of the Edineț District sent the enforcement warrant to a Bailiff of the Râșcani District.

10. In May 2006, after the case had been communicated to the Government, the judgment was enforced.

II. RELEVANT DOMESTIC LAW

11. The relevant domestic law was set out in *Prodan v. Moldova* (no. 49806/99, ECHR 2004-III (extracts)) and *Popov v. Moldova (no. 1)* (no. 74153/01, §§ 29-41, 18 January 2005).

12. 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

13. The applicant complained that the belated enforcement of the final judgment in his favour had violated his 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

14. 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”).

15. 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 (no. 1)*, cited above, § 32). The Court does not see any reason to depart from that conclusion in the present case.

16. 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).

17. 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).

18. 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

19. 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 Article 1 of Protocol No. 1 to the Convention.

20. 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).

21. Accordingly, the Court finds, for the reasons detailed in those judgments, that the failure to enforce the final judgment of 3 December 2002 within a reasonable time 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

22. 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

23. The applicant claimed, in substance, compensation for the impossibility of using his money for forty-one months.

24. The Government did not submit any comments under this head.

25. The Court considers that the applicant must have suffered pecuniary damage because of his inability to use the money as a result of the belated

enforcement of the judgment of 3 December 2002. Taking into account the line of approach in the case of *Prodan v. Moldova* (cited above, § 73) and the domestic legislation concerning the calculation of default interest (see paragraph 12 above), the Court awards the applicant EUR 504, representing the loss of profit suffered as a result of the failure of the authorities to enforce the judgment in favour of the applicant within a reasonable time.

B. Non-pecuniary damage

26. The applicant also claimed EUR 3,000 in respect of non-pecuniary damage suffered as a result of the failure of the authorities to enforce the judgment.

27. The Government disagreed with 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.

28. 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. It awards the applicant the total sum of EUR 1,400 in respect of non-pecuniary damage.

C. Costs and expenses

29. The applicant did not submit any claims in respect of costs and expenses.

D. Default interest

30. 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 504 (five hundred and four euros) in respect of pecuniary damage and EUR 1,400 (one thousand four hundred euros) in respect of non-pecuniary damage, 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 16 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President