



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

FOURTH SECTION

CASE OF DEORDIEV AND DEORDIEV v. MOLDOVA

(Application no. 33276/03)

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 Deordiev and Deordiev 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 S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *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. 33276/03) 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 Deordiev and Mr Stanislav Deordiev (“the applicants”), on 28 July 2003.

2. The applicants were represented by Mr Vitalie Zama, a lawyer practising in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent at the time, Mr Vitalie Pârlog.

3. The applicants complained that the belated enforcement of the final judgment in their favour violated their right to have their civil rights determined by a court as guaranteed by Article 6 of the Convention and their right to the peaceful enjoyment of their 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 15 December 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.

5. The applicants and the Government each filed observations on the admissibility and merits of the case (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants, Mrs Nina Deordiev and Stanislav Deordiev, were born in 1953 and 1976, respectively, and live in Orhei.

7. On 22 December 1995 the Orhei Local Council (the “Local Council”) rented out an apartment to the applicants giving them the possibility to buy it at a reduced price. Since the applicants had left the country in 1999, the Local Council terminated their lease and concluded a similar contract with a third party, who subsequently purchased the apartment from the Local Council.

8. Between 2001 and 2003 the applicants, the Orhei Local Council and the third party were involved in a legal dispute over the apartment and on 9 June 2003 the applicants obtained a final and enforceable judgment from the Court of Appeal in their favour. In its judgment the Court of Appeal annulled the decision of the Local Council to let and sell the apartment to the third party. The Court of Appeal stated, *inter alia*, that in order to avoid delay in the enforcement of the judgment, the third party should be evicted without being allocated alternative housing. During the proceedings, the applicants presented a certificate from the Local Council indicating that the third party was the owner of a 100 square metre house. Another certificate confirmed that the disputed apartment had been the applicants' only accommodation.

9. On 8 July 2003 a Bailiff received the enforcement warrant.

10. On an unspecified date in July 2003 the third party asked the court to stay the enforcement proceedings since he had allegedly lodged a request for revision of the judgment of the Court of Appeal.

11. On 17 July 2003 the Orhei District Court issued a judgment and ordered the stay of the enforcement proceedings on the ground that the third party had initiated revision proceedings. The applicants appealed against the order, arguing that the third party had not lodged any request for revision.

12. On 29 October 2003 the Chişinău Court of Appeal dismissed the applicants' appeal, relying on the same grounds as the District Court. The applicants allege that they were not summoned to attend the hearing.

13. On 14 November 2003 the applicants complained about the non-enforcement to the Orhei District Court and a Bailiff. They also mentioned that the third party had not initiated revision proceedings either with the Court of Appeal or with the Supreme Court of Justice.

14. Following several complaints about the non-enforcement of the judgment lodged by the applicants with the Ministry of Justice, the latter informed them that the judgment in their favour would be enforced as soon as the revision proceedings initiated by the third party had been terminated.

15. On 18 November 2003 the applicants lodged a request with the Orhei District Court asking for a copy of the third party's request for revision, which had served as the ground for the stay of the enforcement proceedings. The District Court did not answer their request.

16. On 21 November 2003 the applicants lodged a request for revision of the order of 17 July 2003 on the ground that the third party had not initiated any revision proceedings and that the stay of the enforcement proceedings had been unlawful.

17. Although the applicants had been summoned to attend the hearing on their request for revision scheduled for 14 January 2004, the Chişinău Court of Appeal examined the request on 24 December 2003 and dismissed it as unsubstantiated without giving any reasons. The applicants appealed. They also complained to the Chişinău Court of Appeal and the Superior Council of Magistrates that the judges of the Court of Appeal had misled them about the date of the hearing and that they had not therefore had the chance to present evidence proving that the third party had not initiated any revision proceedings. In reply, on 9 February 2004 the Chişinău Court of Appeal requested the applicants to return to it the copy of its decision of 24 December 2003.

18. On 20 February 2004 the Superior Council of Magistrates informed them that the registry of the Chişinău Court of Appeal had sent them by mistake the wrong date for the hearing of their revision request.

19. On 13 and 20 February 2004 the Supreme Court of Justice and the Chişinău Court of Appeal, respectively, issued certificates confirming that the third party had never initiated revision proceedings against the judgment of 9 June 2003 of the Court of Appeal.

20. By a judgment of 1 June 2004 the Supreme Court of Justice upheld the applicants' appeal against the decision of 24 December 2003 and quashed the order of 17 July 2003 of the Orhei District Court. The Supreme Court found that there was no evidence in the case file proving that the third party had initiated revision proceedings and the proceedings concerning the stay of the enforcement of the final judgment of 9 June 2003 were therefore discontinued.

21. According to a report of 28 June 2004 drafted by the Bailiff in charge of the case and the applicants, the third party was evicted from the applicants' apartment on 22 June 2004. According to the same report, on 28 June 2004 the applicants received the keys to the apartment.

II. RELEVANT DOMESTIC LAW

22. The relevant domestic law was set out in *Prodan v. Moldova*, no. 49806/99, § 31, ECHR 2004-III (extracts).

THE LAW

23. The applicants complained that the non-enforcement of the final judgment in their favour had violated their rights under Article 6 § 1 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

24. In their observations on the admissibility and merits of the case, the Government submitted that the final judgment in favour of the applicants had been enforced on 10 June 2004. Accordingly, the applicants had lost their “victim status”.

25. The applicants submitted that the final judgment in their favour had been enforced only after an unreasonable delay. They argued that the national authorities had neither acknowledged the breach of the Convention nor paid them any compensation for the late enforcement of the judgment.

26. The Court recalls that a decision or measure favourable to an applicant is not, in principle, sufficient to deprive the individual of his or her status as “victim” unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

27. In the present case, the Court considers that, while the relevant judgment has now been enforced, the Government have neither acknowledged nor afforded adequate redress for the delay in enforcement. In such circumstances, the applicants can continue to claim to be “victims” of violation of their Convention rights resulting from the lengthy non-enforcement of the final judgment in their favour (*Dumbrăveanu v. Moldova*, no. 20940/03, § 22, 24 May 2005).

28. The Court considers that the applicants' complaints raise questions of law which are sufficiently serious that their determination should depend on an examination of the merits. No other grounds for declaring the complaints inadmissible have been established. The Court therefore declares the 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 complaint.

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

29. The Government submitted that in view of the enforcement of the judgment of 9 June 2003, there had been no violation of Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention.

30. The Court observes that the general principles which apply in cases of this type are set out in *Prodan v. Moldova* (cited above §§ 52-53 and 59).

31. The applicants argued that the keys to their apartment were handed to them by a Bailiff on 28 June 2004, which, in their view, should be taken as the date of enforcement. The Government, however, claimed that the decisive date was 10 June 2004, when the third party was evicted. In view of the materials before it (see paragraph 21 above), the Court accepts the applicants' version of the facts. Accordingly, the period of non-enforcement of the judgment amounted to twelve months and twenty days.

32. The Court notes that the domestic courts ordered the enforcement proceedings to be stayed for almost one year. However, it subsequently transpired that there had been no grounds for ordering a stay (see paragraphs 11-12, 17 and 20 above).

33. In such circumstances it considers that the delay in enforcement was entirely attributable to the conduct of the domestic courts. By failing for one year and twenty days to comply with the final enforceable judgment in the applicants' favour the domestic authorities breached the applicants' right of access to a court and prevented them from peacefully enjoying their "possession" (see *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).

34. There has accordingly been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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. Non-pecuniary damage

36. The applicants claimed 64,000 euros (EUR) for non-pecuniary damage suffered as a result of the belated enforcement of the final judgment in their favour.

37. The Government disagreed with the amount claimed by the applicants, arguing that it was excessive in light of the case-law of the Court.

38. The Court considers that the applicants must have been caused a certain amount of stress and frustration as a result of the delayed enforcement of the judgment and awards them EUR 500 each.

B. Costs and expenses

39. The applicants also claimed 1,950 United States dollars for the costs and expenses incurred before the Court. In support of their claims their representatives sent the Court copies of a contract of representation and a detailed timesheet showing the number of hours spent by them on the case.

40. The Government did not agree with the amount claimed, stating that the applicant had failed to prove the alleged representation expenses.

41. The Court recalls 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 were reasonable as to quantum (see, for example, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII).

42. In the present case, regard being had to the itemised list submitted by the applicants, the above criteria and to the fact that this was a relatively straightforward case the Court awards the applicants a global sum of EUR 500.

C. Default interest

43. 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 on account of the late enforcement of the judgment 9 June 2003;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention on account of the same belated enforcement;
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 500 (five hundred euros) each in respect of non-pecuniary damage and EUR 500 (five hundred euros) in total 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 applicants' 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