



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

FOURTH SECTION

CASE OF VITAN v. MOLDOVA

(Application no. 6901/03)

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 Vitan 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,

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:

Commented [Note1]: Judges names are to be followed by a COMMA and a MANUAL LINE BREAK (Shift+Enter). The Registrar's name is not to be lined up with the judges' names (no tab to be added).

Commented [a2]: Substitute judges' names are NOT to appear.

Commented [Note3]: Indicate only the date(s) of the deliberations of the Chamber which actually adopts the judgment.

PROCEDURE

1. The case originated in an application (no. 6901/03) 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 a Moldovan national, Mrs Eugenia Vitan ("the applicant"), on 25 December 2002.

2. The applicant was represented by Mr Vanu Jereghi from the Helsinki Committee for Human Rights in Moldova, a non-governmental organisation based in Chişinău. The Moldovan Government ("the Government") were represented by their Agent at the time, Mr Vitalie Pârlog.

3. The applicant complained that the belated enforcement of two judgments in her favour violated her right to have her civil rights determined by a court as guaranteed by Article 6 of the Convention and her right to the peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention. She further complained under Article 13 of the Convention about the lack of effective remedies in respect of her complaints.

4. The application was allocated to the Fourth Section of the Court. On 7 October 2003 a Chamber of that Section decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it 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.

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THE FACTS

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I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1956 and lives in Chişinău.

7. In July 1994 the applicant concluded a contract with ASITO (a private insurance company incorporated in Moldova) whereby she paid an insurance premium in exchange for a fixed annuity of 500 Moldovan lei (MDL) (the equivalent of 122.55 United States dollars (USD) at the time) in addition to her pension (“annuity”). She started receiving her annuity in August 1996. In January 1999 ASITO stopped paying it, invoking a change in the interest rate of the National Bank of Moldova.

8. On 4 March 1999 the applicant brought an action against ASITO, seeking the payment of the annuity to date and requiring the company to abide by the contract.

9. On 21 June 1999 the Râşcani District Court ruled in favour of the applicant and ordered ASITO to pay her the pension arrears in the amount of MDL 3,421.50 (the equivalent of 282.32 euros (EUR) at the time). ASITO lodged an appeal with the Chişinău Regional Court, which dismissed it on 25 April 2000. ASITO did not appeal and the judgment became final and enforceable.

10. On 29 May 2000 the applicant lodged a request with the Râşcani District Court seeking enforcement of the judgment in her favour. The latter did not reply, but sent the enforcement warrant to a Bailiff only on 17 May 2002.

11. In the meantime, since in its judgment of 21 June 1999 the Râşcani District Court had ruled only on the payment of the pension arrears, on 24 November 2000 it issued an additional judgment in favour of the applicant and ordered ASITO to abide by the contract and to resume the monthly payments. That judgment became final.

12. Between 2000 and 2002 the applicant lodged other complaints about the non-enforcement of the judgments in her favour with the Râşcani District Court, the Bailiff, the Ministry of Justice and the Superior Council of Magistrates. On 8 May 2002 the Ministry of Justice requested the Râşcani District Court to take all necessary steps, including the sanctioning of the persons responsible, in order to enforce the judgments in favour of the applicant and to inform her about the outcome of the enforcement proceedings. The applicant did not receive any further reply; nor were any sanctions imposed on the debtor company or its employees.

13. The final judgment of 25 April 2000 and the additional judgment of 24 November 2000 were enforced on 5 September 2003.

II. RELEVANT DOMESTIC LAW

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

THE LAW

15. The applicant complained that the non-enforcement of the final judgments in her favour had violated her 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.”

16. She also complained about the lack of effective remedies in respect of her complaints, contrary to Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

I. THE GOVERNMENT’S PRELIMINARY OBJECTION

17. In their observations on the admissibility and merits of the case, the Government submitted that the final judgments in favour of the applicant had been enforced on 5 September 2003. Accordingly, the applicant had lost her “victim status”.

18. The applicant submitted that the final judgments in her favour were not enforced within a reasonable time, even though the debtor company had been solvent. She alleged that the belated enforcement of the judgments was a result of the bias of the Head of the Enforcement Department of the Ministry of Justice since he had previously been the Director of ASITO.

Commented [Note6]: Titles to be preceded by I., II., III. (all caps); then A., B., C. (bold); then 1., 2., 3. (italics); etc. (see manual).
Possible sub-titles for the alleged violation of an article: “applicability of Article ...” and “compliance with Article ...”.

Moreover, the Government had not paid her any compensation for the late enforcement of the judgments.

19. 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).

20. In the present case, the Court notes that, although the relevant judgments were enforced, the Government have neither acknowledged nor afforded adequate redress for the belated enforcement. In these circumstances, the Court considers that the applicant can continue to claim to be a “victim” of violation of her Convention rights on account of the lengthy non-enforcement of final judgments in her favour (*Dumbrăveanu v. Moldova*, no. 20940/03, § 22, 24 May 2005).

21. The Court considers that the applicant’s 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 them 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

22. The Government submitted that in view of the enforcement of the judgments on 5 September 2003, there had been no violation of Article 6 § 1 and Article 1 of Protocol No. 1. According to them, since the debtor company was a private enterprise, the State had taken reasonable steps to enforce the judgments within a reasonable time.

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

24. As to the Government’s argument that the debtor was a private company, the Court recalls that State responsibility for enforcement of a judgment against a private company extends no further than the involvement of State bodies in the enforcement procedures (*Fuklev v. Ukraine*, no. 71186/01, § 67 and §§ 90-91, 7 June 2005).

25. Furthermore, the Court recalls in this connection that the State has a positive obligation to organise a system for enforcement of judgments that is effective both in law and in practice and ensures enforcement without any undue delay. The Court notes that the applicant requested the Râșcani District Court to send the enforcement warrant to a Bailiff in May 2000.

However, it was transmitted to the Bailiff only two years later, on 17 May 2002 (see paragraph 10 above). The Government have not explained that delay.

It is also to be noted that following the request submitted by the Ministry of Justice to the Râșcani District Court on 8 May 2002, the Bailiff did not take any effective measures to enforce the judgments.

26. The final judgment of 25 April 2000 and the additional judgment of 24 November 2000 therefore remained unenforced for almost forty and thirty-four months, respectively. It is to be recalled that the Court has found a violation in cases in which the periods of non-enforcement were much shorter than in the present case (see, for example: *Pasteli and Others v. Moldova*, nos. 9898/02, 9863/02, 6255/02 and 10425/02, § 23, 15 June 2004; *Shmalko v. Ukraine*, no. 60750/00, § 46, 20 July 2004). It cannot agree with the Government that they were enforced within a reasonable time.

27. There has accordingly been a breach of Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention (*Immobiliare Saffi v. Italy* [GC], no. 22774/93, §§ 59 and 74, ECHR 1999-V and *Prodan v. Moldova*, cited above, §§ 56 and 62).

III. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLE 6 § 1 OF THE CONVENTION

28. The Government maintained that the applicant had at her disposal effective remedies provided for by domestic legislation in order to challenge the non-enforcement of the court judgments given in her favour. The Government also referred to their earlier argument that the debtor was a private company.

29. The applicant did not submit any observations on the admissibility and merits of this complaint.

30. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). It recalls that the effect of Article 13 is to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their obligations under this provision (see *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, pp. 1869-70, § 145). The remedy required by Article 13 must be “effective”, both in practice and in law. However, such a remedy is required only for complaints that can be regarded as “arguable” under the Convention (see *Metropolitan*

Church of Bessarabia and Others v. Moldova, no. 45701/99, § 137, ECHR 2001-XII).

31. The Court observes that the applicant's complaints that the belated enforcement of the judgments in her favour infringed her rights under Article 6 and Article 1 of Protocol No. 1 were undoubtedly arguable (see paragraph 27 above). The applicant was 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 applicant.

32. The Court recalls that the judgments in favour of the applicant remained unenforced for almost forty and thirty-four months, respectively. While the applicant addressed various State authorities, including domestic courts, with requests to ensure the enforcement, all his requests appear to have been disregarded (see paragraphs 10, 12 and 25 above). In such circumstances, the Court cannot but conclude that the applicant did not have an effective domestic remedy, as required by Article 13 of the Convention, to redress the damage created by the delay in enforcement.

33. Accordingly, there has been a violation of Article 13 on account of the lack of a remedy under domestic law in respect of the timely enforcement of final court judgments.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. Given that the final judgments in favour of the applicant had been enforced, the applicant claimed EUR 10,000 for non-pecuniary damage suffered as a result of their belated enforcement. She argued that she had suffered humiliation since she had had to borrow money for her husband's medical treatment.

36. The Government disagreed with the amount claimed by the applicant, arguing that it was excessive in the light of the case-law of the Court. They stated that in some cases the mere fact of finding a violation had been considered to be ample just satisfaction.

37. The Court considers that the applicant must have been caused a certain amount of stress and frustration as a result of the delayed enforcement of the judgments. It awards the applicant the total sum of EUR 800 for non-pecuniary damage.

B. Costs and expenses

38. The applicant also claimed USD 900 for the costs and expenses incurred before the Court. Her representative submitted a copy of a decision of the Helsinki Committee for Human Rights in Moldova of 30 March 2004 according to which the usual representation fee had been fixed at the equivalent of USD 900. The representative added that the amount claimed would not constitute a profit for the organisation but serve to cover in part its costs in representing the applicant.

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

40. In the circumstances of the present case the Court awards the applicant EUR 600 for costs and expenses incurred.

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 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 judgments of 25 April 2000 and 24 November 2000;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention on account of the same delayed enforcement;
4. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 6 § 1 of the Convention;
5. *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 800 (eight hundred euros) in respect of non-pecuniary damage and EUR 600 (six hundred euros) for costs and expenses, to be converted into the national currency of the

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Commented [Note13]: Option not applicable for Panel cases (judgment final by virtue of Article 5 § 4 of Protocol No. 11) and where right to request rehearing before the Grand Chamber has been waived (e.g. friendly-settlement cases).

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;

6. *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

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