



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

FOURTH SECTION

CASE OF TIBERNEAC v. MOLDOVA

(Application no. 18893/04)

JUDGMENT

STRASBOURG

16 October 2007

FINAL

31/03/2008

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 Tiberneac 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:

PROCEDURE

1. The case originated in an application (no. 18893/04) 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, Mrs Olga Țiberneac (“the applicant”), on 27 April 2004.

2. The applicant was represented by Mr Victor Marcu, a lawyer practising in Edineț. The Moldovan Government (“the Government”) were represented by their Agent, Mr Vitalie Pârlog.

3. The applicant complained that the failure to enforce a final judgment 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 peaceful enjoyment of her 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 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. The President also decided to give priority to the case under Rule 41 of the Rules of Court in view of the applicant's advanced age and poor state of health.

5. The applicant 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 applicant who was born in 1923 and lives in Terebna.

7. In 1949 the applicant and her parents had been persecuted by the communist authorities. Their property was confiscated and they were exiled to Siberia. In 1989 they were rehabilitated.

8. On an unspecified date in 2003 the applicant brought an action against the Edineț Department of Finances, seeking compensation for the confiscated property.

9. On 24 December 2003 the Edineț District Court ruled in favour of the applicant and ordered the defendant to pay her 63,885 Moldovan lei (MDL) (the equivalent of 3,901 euros (EUR) at the time). The judgment was not appealed against and after fifteen days it became final and enforceable.

10. On 23 February 2004 a Bailiff received the enforcement warrant.

11. The judgment has not been enforced to date.

II. RELEVANT DOMESTIC LAW

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

THE LAW

13. The applicant complained that the failure to enforce the final judgment of 24 December 2003 had violated her rights as guaranteed 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 to the Convention 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. ADMISSIBILITY OF THE COMPLAINTS

14. The Court considers that the applicant's complaints under Article 6 § 1 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, 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 these complaints.

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

15. The applicant maintained that the failure of the authorities to enforce the judgment of 24 December 2003 had violated Article 6 § 1 of the Convention.

16. She also contended that that non-enforcement had violated her right to property as guaranteed by Article 1 of Protocol No. 1 to the Convention.

17. In their observations on the admissibility and merits of the case the Government submitted that the Edineț Local Council had taken all reasonable steps to ensure the enforcement of the judgment in favour of the applicant. Since the Bailiff had received the enforcement warrant only on 23 February 2004, the judgment could not be enforced in view of the numerous other judgments in favour of politically repressed persons and the lack of funds to enforce them.

18. The Court recalls that it is not open to a State authority to cite lack of funds as an excuse for not honouring a final judgment debt. Admittedly, a delay in the execution of a judgment may be justified in particular circumstances. But the delay may 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 the “property” right which a final judgment debt generates in favour of an applicant (see *Roșca v. Moldova*, no. 6267/02, § 31, 22 March 2005). In the instant case, the applicant should not have been prevented over a period of more than three years from benefiting from the success of her litigation.

19. The issues raised under Article 6 § 1 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 *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). There is no reason to depart from those findings in the present case.

20. There has, accordingly, been a violation of Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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 and costs and expenses

22. In her initial application, the applicant claimed the payment of MDL 63,885 representing the award which had not been enforced. She also claimed EUR 10,000 in compensation for non-pecuniary damage.

23. The Court notes that the applicant submitted her observations on the merits of the case and her just satisfaction claims outside the time-limit set and that no extension of time was requested by her lawyer. The Court therefore makes no award.

24. However, in view of its finding that the authorities have not taken the necessary steps to ensure the enforcement of the judgment in the applicant's favour and given that the judgment has still not been enforced, the Court finds that the applicant is still entitled to recover the judgment debt awarded in the domestic proceedings (EUR 3,901).

B. Default interest

25. 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 3,901 (three thousand nine

hundred and one euros) in respect of pecuniary damage, to be converted into the 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 amount 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