



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

FOURTH SECTION

CASE OF MARCU v. MOLDOVA

(Application no. 17359/04)

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 Marcu 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. 17359/04) 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 Mihail Marcu (“the applicant”), on 24 March 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 at the time, Mr Vitalie Pârlog.

3. The applicant complained that the failure to enforce a final judgment in his favour 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 13 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 was born in 1920 and lives in Edineț.

7. In 1949 the applicant was persecuted by the communist authorities. His property was confiscated and he was exiled to Siberia for fifteen years.

8. In 1989 he was rehabilitated.

9. On an unspecified date in 2003 he brought an action against the Edineț Department of Finances, seeking compensation for the confiscation of his property.

10. On 25 September 2003 the Edineț District Court ruled in favour of the applicant and ordered the defendant to pay him 80,000 Moldovan lei (MDL) (the equivalent of 5,198 euros (EUR) at the time). The judgment was not appealed against and after fifteen days it became final and enforceable.

11. On 27 October 2003 a Bailiff received the enforcement warrant.

12. On 28 January 2005 the Bailiff sent the enforcement warrant to the President of Edineț County, without having enforced it.

13. The judgment of 25 September 2003 has not been enforced to date.

II. RELEVANT DOMESTIC LAW

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

THE LAW

15. 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.

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

16. 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”).

17. 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)*, no. 74153/01, § 32, 18 January 2005). The Court does not see any reason to depart from that conclusion in the present case.

18. 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 the 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 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).

19. 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).

20. 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

21. The applicant complained that the non-enforcement of the 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.

22. 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).

23. Accordingly, the Court finds, for the reasons detailed in those judgments, that the failure to enforce the final judgment of 25 September 2003 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

24. 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

25. The applicant claimed EUR 10,000 for non-pecuniary damage suffered as a result of the non-enforcement of the final judgment in his favour. He argued that the failure to enforce the final judgment for a long period of time had caused him stress and anxiety. He did not submit any claim in respect of pecuniary damage or costs and expenses.

26. The Government disagreed with the amount claimed by the applicant and argued that the finding of a violation would constitute sufficient just satisfaction.

27. 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 5,198).

28. The Court also takes the view that the applicant has suffered some non-pecuniary damage as a result of the violations found which cannot be made good by the Court's mere finding of a violation. The particular amount claimed is, however, excessive. Making its assessment on an equitable basis the Court awards the applicant EUR 1,600.

B. Default interest

29. 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 5,198 (five thousand one hundred and ninety-eight euros) in respect of pecuniary damage and EUR 1,600 (one thousand six 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