



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

FOURTH SECTION

CASE OF CAZACU v. MOLDOVA

(Application no. 40117/02)

JUDGMENT

STRASBOURG

23 October 2007

FINAL

23/01/2008

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 Cazacu v. Moldova,

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr K. TRAJA,

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 2 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 40117/02) 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 Vasile Cazacu, (“the applicant”) and his family members (“the other applicants”), on 19 September 2002. The applicants were represented before the Court by Ms L. Iabangi from “The Helsinki Committee for Human Rights”, a non-governmental organisation based in Chişinău.

2. The Moldovan Government (“the Government”) were represented by their Agent at the time, Mr V. Pârlog.

3. The applicants complained that the refusal of Mr Cazacu's employer to pay his redundancy payments and the domestic courts' acceptance of this refusal notwithstanding clearly contrary provisions of the law had violated his rights guaranteed by Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

4. The application was allocated to the Fourth Section of the Court. On 15 November 2005 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1950 and lives in Cimişlia.

6. The facts of the case, as submitted by the parties, may be summarised as follows.

7. From 1986 the applicant was employed by the Bureau of Architecture, Projects and Production of the Chief Architect of Cimişlia Region ("the Cimişlia Bureau"), a State service. In 1993 the Bureau adopted new by-laws, which were approved by the Ministry of Architecture and Construction. Under these by-laws, the Bureau was registered as an independent legal person with the rights of a State company and governed by the Regulations of State companies. It was created within the organs of local public administration and on the basis of municipal property but was financed exclusively from the income it generated from selling a variety of services to the local administration and to the population.

8. On 16 December 1999 Lăpuşna County Council decided to merge several bureaux, including the Cimişlia Bureau, into one service at the County level. The Lăpuşna Bureau thus became the legal successor of the Cimişlia Bureau in which the applicant had worked. Before this merger, the Cimişlia Bureau decided to reduce the number of personnel employed and as a result the applicant was made redundant by an order of 29 December 1999.

9. On 12 January 2000 he acknowledged the dismissal notice in writing, as requested by law. In accordance with the relevant labour legislation, he requested redundancy payments (namely redundancy compensation worth one month's average salary, his average monthly salary during the three months when he would be looking for a new job, payment for unused leave for 1999 and payment of his salary for December 1999 and part of January 2000).

10. The employer refused to pay because it had set aside no money for redundancy payments. According to a certificate issued by the Cimişlia employment office on 9 June 2000, the applicant had been unemployed from 21 January 2000 to the date of the issue of the certificate.

11. The applicant initiated court proceedings, claiming redundancy payments, namely one month's salary on dismissal, the continuing payment of his salary for the three subsequent months when he would be looking for another job and monetary compensation for untaken leave. On 5 July 2000 the Cimişlia District Court partly accepted his claims. He appealed and the Cahul Regional Court quashed that judgment, ordering a full re-hearing of the case.

12. On 27 April 2001 the Cimişlia District Court rejected all his claims as unfounded.

13. On 14 August 2001 the Cahul Regional Court upheld that judgment. It found, among other things, that the applicant had missed the two-month deadline for making his claim against the Cimişlia Bureau, since the decision to reorganise the bureau had been published in January 2000 and the complaint had been lodged in May 2000.

14. Notwithstanding the fact that the applicant had missed the above-mentioned time-limit, on 26 April 2002 the Court of Appeal examined the substance of his appeal and upheld the judgment of the Regional Court. The court reasoned that no compensation was due because the Cimişlia Bureau, in which the applicant had worked, was self-financed; it had not set aside any resources for compensation but had distributed all the money obtained from its activity to its employees, after paying taxes. Since it had been an independent legal person, its legal successor, the Lăpuşna Bureau, could not be held liable for any outstanding debts. The court also found that the applicant had not offered any new services after October 1999 and thus could not claim his salary for November-December 1999. He had been warned in April 1999 of impending dismissal and instructed to complete all outstanding work by 29 December 1999. Finally, the court found that he had not registered with the Lăpuşna employment office as unemployed and could therefore not claim redundancy compensation.

II. RELEVANT DOMESTIC LAW

15. The relevant provisions of the Labour Code of 25 May 1973, in force until 28 March 2003, read as follows.

“Article 3. Sphere of application of labour legislation.

The labour legislation regulates work relations of employees employed in enterprises, institutions and organisations on the territory of Moldova, regardless of the type of property and form of management ...

Article 6. Nullity of contract clauses making the conditions of employees worse.

Contractual clauses making the conditions of employees worse than those provided for by law are null and void.

...

Article 45/3. Indemnities and compensation for employees made redundant.

Employees made redundant by enterprises, institutions and organisations because of a reduction of the number of personnel or status of personnel:

1) shall be paid a redundancy indemnity worth one month's average salary;

2) shall continue to receive the average salary during the period needed to find a new job, but for no longer than two months from the date of redundancy, taking into account the payment of the redundancy indemnity;

3) exceptionally, shall continue to receive the average salary during the third month from the date of redundancy, based on a decision of the employment office, subject to the employee's timely request to that authority (within two weeks of redundancy) and if not offered a job in the meantime.

...

Article 80. Prohibition of granting of monetary compensation in lieu of untaken leave

It is prohibited to grant monetary compensation in lieu of untaken leave, save in the case of dismissal of an employee who has not used his or her leave days”.

16. The relevant provisions of the Code of Civil Procedure (in force until 12 June 2003) read as follows:

“Article 296. Scope of appeal proceedings.

The court which examines the appeal shall verify whether the first-instance court's judgment is lawful and well-grounded, on the basis of the information in its possession, as well as any new written evidence submitted to the court.

The court may re-evaluate the evidence in its possession and examine any new evidence submitted by the parties in accordance with the present Code.

The court shall deal with each ground of appeal invoked.”

THE LAW

17. The applicant and his family complained that their rights guaranteed under Article 6 of the Convention had been violated because of the alleged lack of impartiality of the courts which had examined the case. They also complained, under the same Article, that the applicant's appeal had worked to their detriment.

Article 6 § 1 of the Convention, in so far as relevant, provides:

“1. In the determination of his civil rights and obligations ... everyone is entitled to a fair hearing ... within a reasonable time by an independent and impartial tribunal...”

18. They also complained that the domestic courts had refused to follow the clear provisions of the law regarding the right to redundancy payments, contrary to Article 1 of Protocol No. 1 to the Convention.

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

1. Standing of the members of the applicant's family

19. The members of the applicant's family complained in their own names about alleged violations of their rights under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention. They submitted that the inability of the applicant to obtain redundancy payments had caused serious damage to the entire family as he was its only breadwinner.

20. The Court notes that the applicant could personally complain in the courts about the refusal to pay him redundancy payment and about any procedural violations of his rights, as he in fact did. While the difficult financial situation in which the applicant's family was allegedly placed by the failure to make redundancy payments could reasonably be considered to have affected his entire family, this does not constitute a sufficiently distinct interference with the family's rights to give them a separate standing in the proceedings before the Court (see, *a contrario*, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, and *Çakıcı v. Turkey* [GC], no. 23657/94, ECHR 1999-IV). The Court may, however, take into account any such additional damage when dealing with any claims for just satisfaction, if it finds a violation in the present case.

Accordingly, the complaint lodged by the members of the applicants' family must be rejected as being incompatible *ratione personae* with the provisions of the Convention in accordance with Article 35 §§ 3 and 4.

2. The Government's preliminary objection

21. The Government contended that the application had not been properly submitted by the applicant but rather by a lawyer who claimed to be associated with the Helsinki Committee for Human Rights in Moldova. No evidence was produced to prove such an association with that non-governmental organisation. In addition, the applicant's authority to act had been issued to the Helsinki Committee and not to any specific lawyer and there was nothing in the file to show that the latter had been authorised by the Helsinki Committee to represent the applicant.

22. The applicant's lawyer submitted a delegation issued by the Helsinki Committee on 12 June 2002 authorising the applicant's lawyer to present the applicant's case to the Court. She also submitted a letter to the Court dated 16 May 2006 and signed by both the applicant and his lawyer, in which they expressed their intention not to settle the case.

23. The Court notes that at no time did the applicant state that Ms Iabangi had acted without his proper authorisation. Moreover, he subsequently co-signed documents signed by her (see the preceding paragraph). Since the authority to act signed by the applicant clearly mentioned his intention to lodge a complaint before the Court, and because even subsequent confirmation of a particular person's actions in representing an applicant before the Court may dispel any doubts regarding the initial application (see *Popov v. Moldova (no. 2)*, no. 19960/04, § 2, 6 December 2005), the Court sees no reason to consider that the lawyer in the present case had not been authorised by the applicant to lodge the application on his behalf.

Accordingly, this objection must be rejected.

3. Complaint concerning the domestic courts' lack of impartiality

24. The applicant complained of the alleged lack of independence and impartiality of the judges who had examined his case in view of the fact that the other party was a State service. He considered that after the 2001 changes in the system of appointment of judges the judiciary had become dependent on the executive, thus worsening a situation already made difficult by the economic dependence of the judiciary on the Ministry of Justice.

25. The Government considered that this complaint was manifestly ill founded and should be rejected.

26. The Court considers that the applicant has not submitted evidence capable of showing that the entire judicial system in Moldova and the particular courts which examined his case were dependent on the executive and that judges were biased against him.

27. Accordingly, the Court concludes that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and should be rejected under Article 35 § 4 thereof.

4. Complaint about equality of arms

28. The applicant also complained under Article 6 of the Convention that his position had been prejudiced even though he was the only party to lodge an appeal.

29. The Government considered that this complaint was manifestly ill-founded and should be rejected.

30. The Court notes that Article 296 of the Code of Civil Procedure (see paragraph 16 above) expressly provides for the court's power when hearing an appeal to examine all the evidence in its possession and to adopt different views from those of the lower court should it consider that necessary. It follows that the deterioration of an appellant's position is not against the law. Neither does the Court see any problem in this respect under Article 6 of the Convention.

31. Accordingly, the Court concludes that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected under Article 35 § 4 thereof.

6. Complaint under Article 1 of Protocol No. 1 to the Convention

32. The applicant complained about a violation of his rights guaranteed by Article 1 of Protocol No. 1 to the Convention.

33. Although the Government argued that the applicant's complaint under Article 1 of Protocol No. 1 to the Convention was manifestly ill-founded, the Court considers that it raises questions of fact and law which are sufficiently serious for its determination to depend on an examination of its merits. No grounds for declaring it inadmissible have been established. The Court therefore declares this complaint admissible.

34. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will now consider the merits of the admissible complaint.

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

35. The applicant considered that the domestic courts' failure to award him redundancy payments as clearly stipulated in the law had amounted to a violation of Article 1 of Protocol No. 1 to the Convention.

36. The Government disagreed. They argued that the applicant had received his salary and that no provisions had been made in the Cimişlia Bureau's budget for redundancy payments. Moreover, the applicant had not effectively worked during November and December 1999 and could not therefore expect a salary for those months. In addition, he received unemployment benefit during the six months following the registration of his dismissal. Finally, the Government considered that Article 1 of Protocol No. 1 to the Convention could not apply to the present case because the relations between the applicant and the Cimişlia Bureau were of a labour-law nature.

37. The Court points out that Article 1 of Protocol No. 1 to the Convention does not guarantee the right to acquire property (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX, and *Van der Musselle v. Belgium*, judgment of 23 November 1983, Series A no. 70, p. 23, § 48).

Moreover, “an applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions related to his “possessions” within the meaning of this provision. “Possessions” can be either “existing possessions” or assets, including claims, in respect of which the applicant can argue that he or she has at least a “legitimate expectation” of obtaining effective enjoyment of a property right. By way of contrast, the hope of recognition of a property right which it has been impossible to exercise effectively cannot be considered a “possession” within the meaning of Article 1 of Protocol No. 1, nor can a conditional claim which lapses as a result of the non-fulfilment of the condition” (see *Kopecký*, cited above, § 35; *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, §§ 82-83, ECHR 2001-VIII; and *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, § 69, ECHR 2002-VII).

38. The Court also observes that “in each case the issue that needs to be examined is whether the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest protected by Article 1 of Protocol No. 1” (see *Broniowski v. Poland* [GC], no. 31443/96, § 129, ECHR 2004-V; *Iatridis v. Greece* [GC], no. 31107/96, § 54, ECHR 1999-II; and *Beyeler v. Italy* [GC], no. 33202/96, § 100, ECHR 2000-I). The Court has, moreover, “to consider whether there was [...] a sufficient legal basis in support of the applicant's claim to warrant its being regarded as an ‘asset’” (*Kopecký*, cited above, § 53).

39. In the present case the Court notes that two of the applicant's claims were rejected by the domestic courts because he had not complied with the relevant requirements: he had not done any new work after October 1999 and could therefore not claim a salary for that period; and he had not registered with the employment office in order to be able to claim redundancy compensation for an extra (third) month after his dismissal (see paragraph 14 above and Article 45 (3) of the Labour Code, paragraph 15 above). The Court considers that in respect of these claims the applicant did not have a “legitimate expectation” of enjoying a property right within the meaning of Article 1 of Protocol No. 1 to the Convention.

40. However, the applicant's other claims (for a one-off redundancy payment equal to his monthly salary, the continuation of payment of his salary for two months after his redundancy and compensation for untaken leave) were based on clear provisions of the law giving him the right to obtain all these payments (see Articles 45 and 80 of the Labour code, paragraph 15 above). The Court observes that these Articles did not subject their application to any conditions such as registering with the employment office. They applied to all “[e]mployees made redundant by enterprises, institutions and organisations because of a reduction of the number of personnel or status of personnel” by virtue of the redundancy itself. The

Government have not claimed that the applicant was not in that exact situation.

41. Moreover, there is no mention in Articles 45 and 80 of an employer's discretion as to whether or not to set aside money for making the relevant payments. Even assuming that the Cimişlia Bureau in the present case adopted some internal regulation or included a clause in the contract with the applicant to the effect that no redundancy payments would be made because of the full redistribution of the Cimişlia Bureau's revenues amongst its employees (see paragraph 14 above), any such provisions would automatically lose all legal value in view of the express prohibition contained in Article 6 of the Labour Code (see paragraph 15 above).

42. The Court also notes that none of the domestic courts found that the applicant did not qualify for the claimed payments. Rather, they implicitly acknowledged the Cimişlia Bureau's duty to make such payments when finding that its successor (the Lăpuşna Bureau) could not be held liable for debts to the applicant. They limited their analysis to a finding that the Cimişlia Bureau had not set aside any money for the purpose of redundancy payments (see paragraph 14 above).

43. It follows that the applicant qualified fully for the redundancy payments provided for in Articles 45 and 80 of the Labour Code, and therefore had a "legitimate expectation" for the purposes of Article 1 of Protocol No. 1 to the Convention of obtaining the payments referred to in paragraph 40 above (compare and contrast the position in *Kopecký v. Slovakia* [GC], no. 44912/98, § 58, ECHR 2004-IX). Accordingly, the domestic courts' refusal to award him these amounts constituted an interference with his rights under that Article.

44. The Court notes that none of the courts found that the Cimişlia Bureau had been unable to pay its debts before merging with the Lăpuşna Bureau, which makes it unnecessary to determine whether the latter could be held liable for the debts of the former. Accordingly, the only reason for dismissing the applicant's claims referred to in paragraph 40 above and mentioned in the courts' judgment was the failure by the employer to provide for redundancy payments.

45. The Court recalls that "[t]he first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph authorises deprivation of possessions only "subject to the conditions provided for by law" and the second paragraph recognises that States have the right to control the use of property by enforcing "laws". Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention" (see *Broniowski*, cited above, § 147).

46. The Court notes that all employers in Moldova were obliged by law to provide for redundancy payments (see paragraph 15 above). The

domestic courts did not refer to any legal provision or other circumstance allowing an exception to that rule in the present case and limited their reasoning to establishing the fact of the employer's failure to conform to a mandatory legal provision.

47. The Court considers that the refusal of the domestic courts to allow the applicant's claims was unlawful for the purposes of Article 1 of Protocol No. 1 to the Convention and accordingly incompatible with the applicant's right to the peaceful enjoyment of his possessions. This conclusion makes it unnecessary to ascertain whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

There has therefore been a violation of Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The applicant claimed 805 euros (EUR) in respect of pecuniary damage, including the effects of inflation on the following amounts: his salary for November 1999 to January 2000; the one-off compensation on his dismissal, including compensation for the effects of inflation on that amount (EUR 172); his average monthly salary for three months following his dismissal (EUR 517); and payment for unused leave (EUR 57).

50. The Government objected, considering that the applicant had not submitted any evidence to prove his right to any payments.

51. The Court recalls its finding that the applicant could not claim his salary for the period between November 1999 and his dismissal and for the third month after his dismissal (see paragraph 39 above). However, he was entitled by law to receive a one-off compensation equal to his monthly salary at his dismissal, to continue to receive his salary for a further two months after his dismissal and to receive payment for unused leave (see paragraph 40 above). In addition, the applicant was unable to use the relevant amounts for seven years and nine months. In the light of the materials of the case, the Court accepts in full the applicant's claims under this head.

B. Non-pecuniary damage

52. The applicant claimed EUR 3,000 in respect of non-pecuniary damage. He referred to the fact that his wife had been unemployed and he had been the family's only breadwinner when he lost his job and had not received a redundancy payment, which placed his entire family of six in a very difficult financial position. He was further humiliated during the proceedings when he tried to defend his rights in court.

53. The Government contended that the applicant had not submitted evidence to prove a causal link between the alleged violations of his rights and his alleged suffering. Moreover, the applicant's family's financial situation had been improved by paying them unemployment benefit for two years and five months after his dismissal (equal to approximately EUR 100 for the entire period) and a further payment of compensation for each minor (EUR 3 per month for each child).

54. The Court considers that the applicant must have been caused a certain amount of stress and frustration as a result of the failure to make him a redundancy payment, which put considerable pressure on his family's financial situation. However, the amount claimed is excessive. Ruling on an equitable basis, the Court awards the applicant EUR 2,000 in respect of non-pecuniary damage.

C. Costs and expenses

55. The applicant claimed EUR 1,314 for costs and expenses, of which EUR 1,305 was for his legal representation. He relied on a contract with his lawyer and an itemised list, according to which the lawyer had spent 14.5 hours working on the present case at an hourly rate of EUR 90.

56. The Government considered that the amount claimed was excessive seen against Moldovan reality. They also argued that the lawyer, as a representative of a non-governmental organisation specialising in the defence of human rights, should not have taken money from the applicant in view of the not-for-profit nature of the organisation.

57. 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 are reasonable as to quantum (*Roşca v. Moldova*, no. 6267/02, § 45, 22 March 2005). Having regard to the information in its possession and the complexity of the case, the Court awards the applicant EUR 1,000 for costs and expenses.

D. Default interest

58. 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 complaint under Article 1 of Protocol No. 1 to the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *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 805 (eight hundred and five euros) in respect of pecuniary damage, EUR 2,000 (two thousand euros) for non-pecuniary damage and EUR 1,000 (one thousand euros) 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President