



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

FOURTH SECTION

CASE OF DELIUCHIN v. MOLDOVA

(Application no. 14925/03)

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 Deliuchin 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 K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ, *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. 14925/03) 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, Ms Teodora Deliuchin (“the applicant”), on 17 December 2002. The applicant was represented by Mr V. Nagacevski, from “Lawyers 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 applicant complained that the failure to enforce the final judgment of 22 August 2002 in her favour had violated her right to have her civil rights determined by a court within a reasonable time, 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 FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1946 and lives in Chişinău.

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

7. In 1997 a criminal investigation was initiated in respect of the applicant. She was detained in the remand centre of the Ministry of Internal Affairs between 18 June and 15 July 1998. She was again detained between 30 September and 31 October 1998 in the remand centre of the Ministry of Justice. The applicant allegedly complained to the prison authorities about the harsh conditions of detention in the remand centre of the Ministry of Internal Affairs.

8. By its final judgment of 20 May 1999 the Court of Appeal acquitted her of all the charges against her.

9. The applicant initiated civil proceedings claiming damages for unlawful detention and related acts on the part of the prosecution and the courts.

10. On 26 December 2001 the Ciocana District Court found in her favour and awarded her 12,258 Moldovan lei (MDL, equal to 1,065 euros (EUR) at the time) in compensation for the pecuniary damage suffered and MDL 100,000 (EUR 8,688) for non-pecuniary damage.

11. On 19 March 2002 the Chişinău Regional Court upheld that judgment.

12. On 22 August 2002 the Court of Appeal partly quashed that judgment, reducing the compensation for non-pecuniary damage to MDL 10,000 (EUR 752). It upheld the award of compensation for the pecuniary damage suffered. That judgment was final and enforceable.

13. The Prosecutor General requested the annulment of all previous judgments and the reduction of the award for non-pecuniary damage, as part of an extraordinary procedure. On 19 March 2003 the Supreme Court of Justice rejected that request.

14. On 21 November 2003 the Ministry of Finance transferred the amount corresponding to the compensation due to the Decisions Enforcement Department. According to that department, the applicant received the money on 26 February 2004. The applicant had submitted the enforcement warrant to the department on 23 October 2002.

II. RELEVANT DOMESTIC LAW

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

THE LAW

16. The applicant complained that the failure to enforce the final judgment of 22 August 2002 had violated her rights as guaranteed by Article 6 § 1 of the Convention.

The relevant part of Article 6 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”

17. She also complained that the failure to enforce the judgment had also violated her rights under Article 1 of Protocol No. 1 to the Convention. That Article 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

A. The complaints under Articles 3, 6, 8 and 13 of the Convention

18. In her initial application, the applicant also submitted complaints under Articles 3, 6 (access to justice regarding her complaint under Article 3), 8 and 13 of the Convention. However, in her observations on the admissibility and merits she asked the Court not to proceed with the examination of these complaints. The Court finds no reason to examine them.

B. The Government's preliminary objection

19. The Government submitted that since the award made on 22 August 2002 in the applicant's favour had been paid on 21 November 2003 the applicant could no longer claim to be a victim of a violation of her rights under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention.

20. The applicant disagreed, stating that she retained her victim status.

21. The Court notes that it has already dismissed a similar objection raised by the respondent Government because “the payment ... did not involve any acknowledgement of the violations alleged” (see, for example,

Prodan, cited above, § 47). Moreover, no compensation for delayed enforcement was paid.

22. In these circumstances, the Court considers that the applicant may claim to be a victim of a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention.

23. 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 OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

24. The applicant complained that the non-enforcement of the judgment of 22 August 2002 in her favour had violated her rights under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention.

25. The Government submitted that the applicant's rights had not been violated in view of the fact that she had received the entire amount awarded to her within a reasonable time. Moreover, a major part of the delay in enforcing the judgment was due to the annulment proceedings initiated by the Prosecutor General (see paragraph 13 above).

26. 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 *Koltsov v. Russia*, no. 41304/02, § 16, 24 February 2005; *Petrushko v. Russia*, no. 36494/02, § 18, 24 February 2005; and *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). It therefore concludes that the enforcement proceedings should have begun immediately after the judgment became final on 22 August 2002.

27. The Court also considers that the date on which the applicant received the compensation due is the only relevant date for determining the end of the enforcement proceedings, and not any previous date on which one State authority transferred funds to another for the purpose of enforcement. It therefore considers that the judgment of 22 August 2002 was enforced on 26 February 2004 (see paragraph 14 above).

28. The judgment therefore remained unenforced for approximately eighteen months. The Court recalls that it has found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention in numerous cases concerning delays in enforcing final judgments (see, among other authorities, *Prodan*, cited above, and *Luntre and Others v. Moldova*,

nos. 2916/02, 21960/02, 21951/02, 21941/02, 21933/02, 20491/02, 2676/02, 23594/02, 21956/02, 21953/02, 21943/02, 21947/02 and 21945/02, 15 June 2004).

Having examined the material submitted to it, the Court notes that the file does not contain any element which would allow it to reach a different conclusion in the present case. In particular, it finds irrelevant, for the purposes of determining the reasonableness of the length of the enforcement proceedings, the fact that an extraordinary remedy was being pursued to challenge the final judgment. Such remedies, apart from in truly exceptional circumstances which do not appear to apply to the present case, are in themselves contrary to the Convention (see *Brumărescu v. Romania* [GC], no. 28342/95, ECHR 1999-VII, and *Roșca v. Moldova*, no. 6267/02, 22 March 2005).

29. Accordingly, the Court finds, for the reasons given in the cases cited above, that the failure to enforce the judgment of 22 August 2002 within a reasonable time constitutes a violation of Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed EUR 303 for pecuniary damage, relying on the base rates of the National Bank of Moldova.

32. The Government contested these calculations and considered that it had not been proved that the applicant had suffered pecuniary damage.

33. The Court considers that the applicant suffered pecuniary damage as a result of the failure to enforce the judgment of 11 April 2001 within a reasonable time. On the basis of the materials in the file, the Court accepts the applicant's claim in full.

B. Non-pecuniary damage

34. The applicant also claimed EUR 1,500 for non-pecuniary damage. She referred to her advanced age (for Moldova) and to her suffering resulting from the belated enforcement of the final judgment in her favour.

35. The Government considered that the amount claimed was excessive, unsubstantiated and lacked a causal link with the alleged violation.

36. The Court considers that the applicant must have been caused a certain amount of stress and frustration as a result of the non-enforcement of the judgment in her favour within a reasonable time, in particular given the nature of the award, which provided compensation for unlawful detention. However, the amount claimed is excessive. Ruling on an equitable basis, the Court awards the applicant EUR 800 for non-pecuniary damage.

C. Costs and expenses

37. The applicant claimed EUR 300 for costs and expenses. Her lawyer expressly reduced his fees to account for the complaints withdrawn by the applicant.

38. The Government considered that the amount claimed was excessive and had not actually been incurred.

39. Having regard to the materials in the file and to its case-law on the matter at issue, the Court accepts this claim in full.

D. Default interest

40. 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 of the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 303 (three hundred and three euros) in respect of pecuniary damage, EUR 800 (eight hundred euros) for non-pecuniary damage and EUR 300 (three hundred 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;

5. *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