



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

FOURTH SECTION

CASE OF BECCIU v. MOLDOVA

(Application no. 32347/04)

JUDGMENT

STRASBOURG

13 November 2007

FINAL

13/02/2008

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 Becciu v. Moldova,

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

Mr J. CASADEVALL, *President*,

Mr G. BONELLO,

Mr K. TRAJA,

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 16 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 32347/04) 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 Alexandra Becciu (“the applicant”), on 4 August 2004.

2. The applicant was represented by Ms Natalia Mardari, a lawyer practising 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 the final judgment in her favour violated her right to have her civil rights determined by a court as guaranteed by Article 6 § 1 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 4 March 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.

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 1951 and lives in Ștefan Vodă.

7. In March 1999 the applicant's apartment was burgled. The police caught the burglars and recovered most of the stolen goods, which were deposited at the Ștefan Vodă Police Station as evidence.

8. In 1999 the applicant's goods were stolen from the police station.

9. On 24 July 2000 the applicant brought an action against the Ministry of the Interior ("the Ministry"), seeking compensation for the stolen goods.

10. By a judgment of 26 September 2003 the Căușeni District Court ruled in favour of the applicant and ordered the Ministry of the Interior to pay her 183,752 Moldovan lei (MDL) (the equivalent of 11,960 euros (EUR) at the time). The judgment was not appealed against and after fifteen days it became final and enforceable. The District Court issued an enforcement warrant which was received by a Bailiff on 5 November 2003.

11. On 26 April 2004 a Bailiff informed the applicant that on 14 November, 25 November, 8 December 2003 and 20 February 2004 the Ministry had been ordered to comply with the judgment. The Bailiff also informed her that administrative proceedings had been instituted against the Minister of the Interior for non-enforcement of the final judgment in favour of the applicant.

12. On 27 May 2004 the Ministry informed the applicant that it had not received the enforcement warrant and that the enforcement would be possible only after having received funds for that purpose.

13. On 29 December 2004 the applicant received MDL 30,993 (EUR 1,825), on 26 January 2005 she received MDL 7,336 (EUR 450) and on 19 September 2005 she received MDL 72,700 (EUR 4,722). On 13 December 2005 the applicant received the last part of the judgment debt of MDL 72,723 (EUR 4,767).

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 belated enforcement of the final judgment in her favour had violated her 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. ADMISSIBILITY OF THE COMPLAINTS

A. Exhaustion of domestic remedies

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. 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. It has dealt with a similar objection in *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

and does not consider it necessary to depart from its conclusion reached in that case.

B. Victim status

19. In their observations on the admissibility and merits of the case, the Government submitted that the final judgment in favour of the applicant had been fully enforced on 13 December 2005. Accordingly, the applicant had lost her “victim status”.

20. The applicant submitted that the final judgment in her favour had been enforced only after an unreasonable delay. She argued that the national authorities had neither acknowledged the breach of the Convention nor paid her any compensation for the late enforcement of the judgment.

21. The Court reiterates 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 1995, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36; and *Dalban v. Romania*, judgment of 28 September 1999, *Reports* 1999-VI, § 44).

22. In the present case, the Court considers that, while the relevant judgment has now been enforced, the Government have neither acknowledged nor afforded adequate redress for the delay in enforcement. In such circumstances, the applicant can continue to claim to be a “victim” of a violation of her Convention rights resulting from the lengthy non-enforcement of the final judgment in her favour (see *Dumbrăveanu v. Moldova*, no. 20940/03, § 22, 24 May 2005).

C. Conclusion on admissibility

23. 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

24. The Government submitted that as the judgment of 26 September 2003 had been enforced before the Court had communicated the case, there

had been no violation of Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention.

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

26. It is to be noted that the final judgment in the present case was given on 26 September 2003 and the enforcement warrant was received by the Bailiff on 5 November 2003. Although the Ministry partially complied with the judgment and paid the applicant MDL 30,993 on 29 December 2004, which was after one year one month and twenty-four days, the Court notes that most of the judgment debt remained unpaid until September and December 2005 because of lack of funds for that purpose (see paragraph 12 above).

27. 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).

28. In the instant case, by failing for two years to fully comply with the final enforceable judgment in the applicant's favour the domestic authorities breached the applicant's right of access to a court and prevented her from peacefully enjoying her "possession" (see *Prodan*, cited above, §§ 56 and 62; *Lupescu and Others*, cited above, § 24; and *Shmalko v. Ukraine*, no. 60750/00, § 46, 20 July 2004).

29. There has accordingly been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1.

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 MDL 60,124 (EUR 3,537) in respect of pecuniary damage, representing the loss of interest suffered as a result of the belated enforcement of the judgment in her favour.

32. The Government argued that the amount claimed by the applicant was excessive. Referring to the case of *Osoian v. Moldova* (dec.),

no. 31413/03, they considered the period of non-enforcement until 29 December 2004 as being reasonable and therefore requested the Court to calculate the interest only for the amount which remained unpaid after that date. They employed the method of calculation used in *Prodan v. Moldova*, cited above, and asserted that the applicant should receive MDL 13,909 (EUR 845) in respect of pecuniary damage.

33. Taking into account the approach taken in *Prodan*, cited above, § 73, the Court awards the applicant EUR 3,537, representing the loss of interest suffered as a result of the failure of the authorities to enforce the judgment in her favour within a reasonable time.

B. Non-pecuniary damage

34. Given that the final judgment in favour of the applicant was eventually enforced, the applicant claimed EUR 3,000 for non-pecuniary damage suffered as a result of its belated enforcement.

35. The Government disagreed with the amount claimed by the applicant, arguing that it was excessive in light of the case-law of the Court.

36. 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 judgment and awards her EUR 600.

C. Costs and expenses

37. The applicant claimed EUR 1,004 for costs and expenses. She submitted a detailed time-sheet according to which the lawyer had spent 25 hours working on the case at an hourly rate of EUR 40.

38. The Government did not agree with the amount claimed, stating that it was excessive and that the applicant had failed to prove the alleged representation expenses.

39. The Court reiterates 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 (see, for example, *Amihalachioaie v. Moldova*, no. 60115/00, § 47, ECHR 2004-...).

40. In the present case, regard being had to the itemised list submitted and the follow-up nature of the case, the Court awards the applicant EUR 600 for costs and expenses.

D. 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;
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 3,537 (three thousand five hundred and thirty-seven euros) in respect of pecuniary damage, EUR 600 (six 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 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 13 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Josep CASADEVALL
President