



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

FOURTH SECTION

CASE OF COGUT v. MOLDOVA

(Application no. 31043/04)

JUDGMENT

STRASBOURG

4 December 2007

FINAL

04/03/2008

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 Cogut 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,

Mr J. ŠIKUTA, *judges*,

and Mrs F. ARACI, *Deputy Section Registrar*,

Having deliberated in private on 13 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 31043/04) 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 Vadim Cogut ("the applicant"), on 1 July 2004.

2. The applicant was represented by Mr Valeriu Pelin, a lawyer practising in Chişinău. The Moldovan Government ("the Government") were represented by their Agent at the time, Mr Vitalie Pârlog, and by Ms Lilia Grimalschi, Head of the Government Agent's Directorate.

3. The applicant complained that the belated enforcement of the 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 the 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 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 1949 and lives in Chişinău.

7. On 17 March 1999, after 27 years of military service, the applicant was transferred to the reserve. As he did not obtain a two-roomed apartment from the Ministry of Defence (“the Ministry”) to which he was entitled, he brought an action against it.

8. By a final judgment of 23 November 2000 the Supreme Court of Justice ruled in favour of the applicant and ordered the Ministry to provide him with a two-roomed apartment.

9. Since the Ministry did not have apartments available, on an unspecified date in 2001 the applicant lodged an action with the Centru District Court seeking a change in the manner of enforcement of the judgment of 23 November 2000. In particular, he claimed money from the Ministry in lieu of an apartment.

10. On 18 May 2001 the Centru District Court decided to change the manner of enforcement of the judgment of 23 November 2000 and ordered the Ministry to pay the applicant 83,000 Moldovan lei (MDL) (the equivalent of 7,133 euros (EUR) at the time). The Ministry appealed.

11. On 4 July 2001 the Chişinău Regional Court upheld the appeal, quashed the judgment of 18 May 2001 and discontinued the proceedings aimed at modifying the manner of enforcement of the judgment of 23 November 2000.

12. Following a request from the applicant, the Deputy Prosecutor General lodged a request for annulment of the judgment of 4 July 2001. The request for annulment was upheld by a judgment of the Supreme Court of Justice of 5 June 2002 and the judgment of 18 May 2001 therefore became final.

13. On 25 June 2002 the applicant requested the Centru District Court to issue an enforcement warrant.

14. On 19 July 2002 a bailiff requested the Ministry to comply with the judgment in favour of the applicant.

15. On 13 September 2002 the Ministry replied that the judgment could not be enforced because of lack of money.

16. On 21 January 2003 a bailiff issued a payment order in respect of the Ministry in the amount of MDL 83,000. On 18 April and 25 July 2003 the bailiff informed the applicant that the Ministry had refused to comply with the requests to enforce the judgment and therefore administrative proceedings had been instituted against those responsible for non-enforcement of the final judgment.

17. By a judgment of 26 February 2004 the Chişinău Court of Appeal discontinued the administrative proceedings against the Minister of Defence. It found that although the judgment in favour of the applicant had not been enforced, the Minister was not to be held responsible for the Government's failure to allocate money for that purpose.

18. Between 2002 and 2003 the applicant unsuccessfully lodged complaints about the non-enforcement of the judgment.

19. On 15 March 2005 the applicant was paid MDL 83,000.

II. RELEVANT DOMESTIC LAW

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

21. The Civil Code of 12 June 2003 reads, *inter alia*, as follows:

Article 619. Default interest

“(1) Default interest is payable for delayed execution of pecuniary obligations. Default interest shall be 5% above the interest rate provided for in Article 585 [NBM refinancing interest rate] unless the law or the contract provides otherwise. Proof that less damage has been incurred shall be admissible.

(2) In non consumer-related situations default interest shall be 9% above the interest rate provided for in Article 585 unless the law or the contract provides otherwise. Proof that less damage has been incurred shall be inadmissible.”

THE LAW

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

Article 6 § 1 of the Convention, in so far 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

23. 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 enforced on 15 March 2005. Accordingly, the applicant had lost his “victim” status.

24. The applicant submitted that the final judgment of 18 May 2001 had been enforced only after an unreasonable delay. He argued that the national authorities had not paid him any compensation for the late enforcement of the judgment.

25. 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 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36 and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

26. 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 his Convention rights as a result of the lengthy non-enforcement of the final judgment in his favour (see *Dumbrăveanu v. Moldova*, no. 20940/03, § 22, 24 May 2005).

27. The Court considers that the applicant's complaints raise questions of law which are sufficiently serious that their determination should depend on an examination of the merits. No other grounds for declaring the complaints inadmissible have been established. The Court therefore declares the 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 the complaint.

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

28. The applicant argued that the authorities had failed to enforce a final judgment in his favour from 18 May 2001 until 15 March 2005, namely a period of almost four years.

29. In their observations on the applicant's claims for just satisfaction, the Government, however, submitted that on 21 January 2003 the Ministry had transferred MDL 83,000 to a bailiff and that the applicant had only come to collect his money on 15 March 2005. In their view, since the applicant had requested the enforcement warrant only on 25 June 2002 (see paragraph 13 above), the period of non-enforcement totalled seven months.

The Government considered that as the applicant had received the amount due 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.

30. 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).

31. In view of the materials before it, the Court is not persuaded by the Government's submission that the Ministry had complied with the judgment in favour of the applicant on 21 January 2003. It is to be noted in the first place that the payment order of 21 January 2003 was issued by a bailiff in respect of the Ministry and the fact that the latter had failed to comply with a final judgment was specifically mentioned in the bailiff's letters of April and July 2003 (see paragraph 16 above). Secondly, the Ministry's compliance with the judgment in favour of the applicant was the subject of domestic proceedings and it was found in those proceedings that in February 2004 the Ministry had not yet enforced it (see paragraphs 16 and 17 above). Finally, in their observations on the admissibility and merits of the case the Government submitted that the judgment in favour of the applicant had been enforced on 15 March 2005 (see paragraph 23 above). The Court therefore considers that the period of non-enforcement should be calculated from 5 June 2002, when the judgment of 18 May 2001 became final, to 15 March 2005, when the applicant received MDL 83,000. Accordingly, the applicant was not paid the judgment debt owed to him for a period of thirty-three months and ten days.

32. By failing for thirty-three months and ten days to comply with the final enforceable judgment in the applicant's favour the domestic authorities infringed the applicant's right of access to a court and prevented him from peacefully enjoying his "possession" (see *Prodan v. Moldova*, cited above, §§ 55 and 61 and *Sîrbu and Others v. Moldova*, nos. 73562/01, 73565/01, 73712/01, 73744/01, 73972/01 and 73973/01, §§ 26 and 32, 15 June 2004).

33. 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

34. 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

35. The applicant claimed MDL 446,340 (EUR 26,436) in respect of pecuniary damage suffered as a result of the belated enforcement of the final judgment in his favour. He claimed that this amount would cover the loss suffered as a result of the increase in the price of apartments in Chişinău and inflation.

36. The Government considered the amount claimed by the applicant excessive and contested his method of calculation.

37. The Court considers that the applicant must have suffered pecuniary damage because of his inability to use the money as a result of the belated enforcement of the judgment of 5 June 2002. Taking into account the line of approach in *Prodan* (cited above, § 73), and the domestic legislation concerning the calculation of default interest (see paragraph 21 above), the Court awards the applicant EUR 2,500 for pecuniary damage.

B. Non-pecuniary damage

38. The applicant claimed compensation for non-pecuniary damage suffered as a result of the infringement of his rights, without specifying the amount of compensation.

39. The Government argued that the applicant had not adduced any evidence of having suffered any stress or anxiety.

40. The Court considers that the applicant must have been caused a certain amount of stress and frustration as a result of the late enforcement of the judgment of 5 June 2002, which cannot be made good by the mere finding of a violation (see *Mihalachi v. Moldova*, no. 37511/02, § 48, 9 January 2007). Making its assessment on an equitable basis, it awards the applicant EUR 800 for non-pecuniary damage.

C. Costs and expenses

41. The applicant did not submit any claim for costs and expenses.

D. Default interest

42. 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 on account of the late enforcement of the judgment 5 June 2002;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention on account of the same belated enforcement;
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 2,500 (two thousand five hundred euros) in respect of pecuniary damage and EUR 800 (eight 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 4 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş ARACI
Deputy Registrar

Nicolas BRATZA
President