



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

FOURTH SECTION

CASE OF BULAVA v. MOLDOVA

(Application no. 27883/04)

JUDGMENT

STRASBOURG

8 January 2008

FINAL

08/04/2008

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 Bulava v. Moldova,

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

Nicolas Bratza, *President*,

Josep Casadevall,

Stanislav Pavlovski,

Lech Garlicki,

Ljiljana Mijović,

Ján Šikuta,

Päivi Hirvelä, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 4 December 2007,

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

PROCEDURE

1. The case originated in an application (no. 27883/04) 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 two Moldovan nationals, Mrs Elena Bulava and Mr Nicolai Bulava (“the applicants”), on 18 June 2004.

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

3. The applicants complained that the belated compliance by a State-owned company with final judgments in their favour had violated their right to have their civil rights determined by a court, as guaranteed by Article 6 of the Convention, and their right to the peaceful enjoyment of their 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 29 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 applicants 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 applicants, Mrs Elena Bulava and Mr Nicolai Bulava, a married couple, were born in 1957 and 1954, respectively, and live in Soroca.

7. They were employees of a State-owned water-supply company ("the company"). Between 2000 and 2004 the company was at a standstill on several occasions and the applicants were not paid their salaries. They brought several actions against the company for the payment of their salaries.

A. Mrs Bulava's actions

8. By final judgments of 26 March and 29 September 2003 the Soroca District Court ordered the company to pay Mrs Bulava 1,820 Moldovan lei (MDL) (approximately 118.86 euros (EUR) at the time).

9. By a final judgment of 22 March 2004 the Soroca District Court found that the company's failure to comply with the judgments of 26 March and 29 September 2003 in favour of the applicant violated her rights and ordered the company to pay the applicant MDL 8,981 (approximately EUR 576.75 at the time), which represented a penalty of 5% of MDL 1,820 for each day of default and MDL 1,820 for non-pecuniary damage. A bailiff received the enforcement warrant on 18 May 2004.

10. By a final judgment of 29 March 2004 the Soroca District Court ordered the company to pay her MDL 2,452 (approximately EUR 161.5 at the time). A bailiff received the enforcement warrant on 20 April 2004.

11. By a final judgment of 15 July 2004 the Soroca District Court ordered the company to pay the applicant MDL 5,460 (approximately EUR 369.2 at the time). A bailiff received the warrant of execution on 10 August 2004.

12. By a final judgment of 13 September 2004 the Soroca District Court ordered the company to pay the applicant MDL 13,286 (approximately EUR 897.38 at the time). A bailiff received the warrant of execution on 13 October 2004.

B. Mr Bulava's actions

13. By a final judgment of 10 July 2003 the Soroca District Court ordered the company to pay Mr Bulava MDL 10,938.50 (approximately EUR 682.25 at the time). A bailiff received the warrant of execution on 3 February 2004.

14. By a final judgment of 26 April 2004 the Soroca District Court ordered the company to pay him MDL 4,360 (approximately EUR 306.83 at the time). A bailiff received the warrant of execution on 11 May 2004.

15. By a final judgment of 13 September 2004 the Soroca District Court ordered the company to pay the applicant MDL 13,375 (approximately EUR 903.39 at the time). A bailiff received the warrant of execution on 5 October 2004.

C. Enforcement proceedings

16. By a letter of 27 December 2004 a bailiff informed the applicants, *inter alia*, that the assets of the company which had been seized by the bailiff remained unsold after auction. The applicants were also informed by the bailiff that the judgments would be enforced as soon as the company had assets.

17. On 12 May 2005 the applicants informed the Court that all the judgments in their favour had been enforced on 29 April 2005.

II. RELEVANT DOMESTIC LAW

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

19. The relevant parts of the Civil Code of 12 June 2003 read as follows:

Article 619. Default interest

“(1) Default interest is payable for delays in the discharge of pecuniary obligations. Default interest shall be 5% above the interest rate provided for in Article 585 [the National Bank of Moldova 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 not be admissible.”

20. Article 256 of the Code of Civil Procedure of 12 June 2003 reads as follows:

“Judgments and court orders shall be immediately enforceable if they require the defendant:

... (2) to pay [a] salary or other amounts which arise from labour relations ..., in the amount of an average salary;

21. In addition, the Labour Code of 29 July 2003 states:

Article 330. Obligation of the employer to compensate for damage suffered as a result of unlawful dismissal

“...(3) In the event of a delay in the payment of salary by the employer ..., the employee shall be paid 0.1 per cent in addition to the amount due for each day of delay.”

THE LAW

22. The applicants complained that the belated compliance with the final judgments in their favour had violated their rights under Article 6 § 1 of the Convention 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. ADMISSIBILITY OF THE COMPLAINTS

A. Victim status

23. In their observations on the admissibility and merits of the case, the Government submitted that the final judgments in favour of the applicants had been fully enforced on 29 April 2005. Accordingly, the applicants had lost their “victim” status.

24. The applicants submitted that the final judgments in their favour had been complied with only after an unreasonable delay. They argued that the national authorities had neither acknowledged the breach of the Convention nor paid them any compensation for the late compliance with the judgments.

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 judgments have now been enforced, the Government have neither acknowledged, nor afforded adequate redress for, the delay in compliance. In such circumstances, the applicants can continue to claim to be “victims” of a violation of their Convention rights resulting from the lengthy failure to comply with the final judgments in their favour (see *Dumbrăveanu v. Moldova*, no. 20940/03, § 22, 24 May 2005).

B. Exhaustion of domestic remedies

27. 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 applicants could have brought an action against the bailiff under Article 20 of the Constitution and under Article 619 of the Code of Civil Procedure (“the CCP”).

28. 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.

29. 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 applicants 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.

30. 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 *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 arrangement for making payment should have been put in place immediately after the judgments became final.

C. Conclusion on admissibility

31. The Court therefore considers that the applicants' 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 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

32. The Government submitted that in view of the enforcement of the judgments in favour of the applicants, there had been no violation of Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention.

33. The Court has repeatedly held that proceedings concerning reinstatement are of "crucial importance" to plaintiffs and that, as such, they must be dealt with "expeditiously" (see *Guzicka v. Poland*, no. 55383/00, § 30, 13 July 2004); this requirement is reinforced in States where domestic law itself provides that all such cases must be resolved with particular urgency (see *Borgese v. Italy*, judgment of 26 February 1992, Series A no. 228-B, § 18). This is particularly so when a judgment has already been adopted and the authorities have only to comply with it. The Court notes that the particular hardship to which employees are undoubtedly subjected when they are unlawfully deprived of their salary, even for a short period, has been taken into account by the domestic legislator in Article 256 of the CCP (see paragraph 20 above), which makes court orders for reinstatement and the payment of part of the salary immediately enforceable (see *Ungureanu v. Moldova*, no. 27568/02, § 26, 6 September 2007).

34. It is to be noted that the final judgments in respect of Mrs Bulava were issued on 26 March and 29 September 2003, 22 March 2004, 29 March 2004, 15 July 2004 and 13 September 2004. In so far as those judgments were fully enforced on 29 April 2005, the periods of non-compliance were twenty-five months and three days, nineteen months, thirteen months and seven days, thirteen months, nine months and fourteen days and seven months and sixteen days, respectively.

35. It is to be noted that the final judgments in respect of Mr Bulava were issued on 10 July 2003, 26 April 2004 and 13 September 2004. The periods of non-compliance were therefore twenty-one months and nineteen days, twelve months and three days and seven months and sixteen days, respectively.

36. The Court 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 complying with final judgments (see, among other authorities, *Prodan v. Moldova* and *Lupacescu and Others v. Moldova*, cited above).

37. Accordingly, the Court finds, for the reasons given in those cases, that the failure to comply with the final judgments in favour of the applicants 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

38. 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

39. Mrs Bulava claimed MDL 271,529.42 (EUR 16,033) and Mr Bulava claimed MDL 179,426.31 (EUR 10,594.56) in compensation for pecuniary damage suffered as a result of the delays in complying with the judgments in their favour.

40. The Government argued that the amounts claimed by the applicants were excessive. Relying on Article 330 of the Labour Code (see paragraph 21 above) the Government asserted that Mrs Bulava should receive MDL 3,500.64 (EUR 200) and Mr Bulava MDL 3,628.80 (EUR 208) in respect of pecuniary damage.

41. The Court considers that the applicants must have suffered pecuniary damage because of their inability to use their money as a result of the delays in payment of the sums due to them under the judgments in their favour. Taking into account the line of approach in *Prodan* (cited above, § 73), and the domestic legislation concerning the calculation of default interest (see paragraph 19 above), the Court awards Mrs Bulava EUR 440 and Mr Bulava EUR 457 for the pecuniary damage suffered as a result of the authorities' failure to comply with the judgments in their favour within a reasonable time.

B. Non-pecuniary damage

42. The applicants claimed compensation for non-pecuniary damage suffered as a result of the violation of their rights, without specifying the amount sought.

43. The Government argued that the applicants had not adduced any evidence of stress or anxiety.

44. The Court takes the view that the applicants must have been caused a certain amount of stress and frustration as a result of the delays in payment, which cannot be made good by the mere finding of a violation (see *Dumbrăveanu*, cited above, § 48). Making its assessment on an equitable basis, it awards Mrs Bulava EUR 1,000 and Mr Bulava EUR 800 in compensation for non-pecuniary damage.

C. Costs and expenses

45. The applicants did not claim any costs and expenses for the Convention proceedings.

D. Default interest

46. 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, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention:
 - to Mrs Elena Bulava – EUR 440 (four hundred and forty euros) for pecuniary damage and EUR 1,000 (one thousand euros) for non-pecuniary damage;
 - to Mr Nicolai Bulava – EUR 457 (four hundred and fifty-seven euros) for pecuniary damage and EUR 800 (eight hundred euros) for non-pecuniary damage;
 - (b) that the above amounts shall 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;

(c) 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 applicants' claims for just satisfaction.

Done in English, and notified in writing on 8 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President