



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

FOURTH SECTION

CASE OF RUSU v. MOLDOVA

(Application no. 3479/04)

JUDGMENT

STRASBOURG

15 January 2008

FINAL

15/04/2008

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 Rusu v. Moldova,

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

Nicolas Bratza, *President*,

Josep Casadevall,

Giovanni Bonello,

Kristaq Traja,

Stanislav Pavlovschi,

Ján Šikuta,

Päivi Hirvelä, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 11 December 2007,

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

PROCEDURE

1. The case originated in an application (no. 3479/04) 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 Valeriu Rusu (“the applicant”), on 11 December 2003.

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

3. The applicant complained that the failure to enforce a final judgment in his favour had infringed his right to have his civil rights determined by a court within a reasonable time, 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 13 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.

5. The applicant and the Government each filed observations on admissibility, merits and just satisfaction.

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1956 and lives in Edineț.

7. In 1949 the Soviet authorities implemented their collectivisation policy and the applicant's grandparents were deprived of their land.

8. On 11 April 2002 the applicant's father sought from the Fetești Local Council ("the Local Council") the allocation of a plot of land, as provided for by the Land Code. His request having been refused, on an unspecified date in April 2002 he brought an action against the Local Council.

9. On 25 April 2002 the Edineț District Court ruled in favour of the applicant's father and ordered the Local Council to allocate him a plot of land measuring 1.09 hectares. The judgment was not challenged and after fifteen days it became final and enforceable.

10. On 20 May 2002, on behalf of his father, the applicant wrote a letter to the Fetești Local Council, seeking compliance with the judgment of 25 April 2002. On 28 May 2002 the Local Council replied that the judgment could not be complied with due to lack of available land.

11. On 22 May 2002, on behalf of his father, the applicant wrote a letter to the Edineț District Court and complained about the Council's non-compliance with the judgment of 25 April 2002. The applicant alleged that the District Court had sent the letter to the bailiff, who had not replied.

12. On 4 February 2003 the applicant's father died. On 8 May 2003 a public notary issued an inheritance certificate in respect of the applicant, according to which he had inherited his father's plot of land, as provided for by the judgment of the Edineț District Court.

13. On 8 May 2003 the applicant lodged a request with the Local Council seeking the allocation of land measuring 1.09 hectares, in accordance with the judgment of 25 April 2002 and the inheritance certificate. The Local Council did not reply.

14. On an unspecified date in 2003 the applicant initiated proceedings against the Local Council, seeking compensation for the value of the crops he could have obtained from cultivating his land in 2002.

15. On 11 August 2003 the Edineț District Court ruled in favour of the applicant and ordered the Local Council to pay him compensation in the amount of 5,000 Moldovan Lei (MDL) (324.12 euros (EUR) at the time). The Local Council lodged an appeal against the judgment.

16. On 6 November 2003 the Bălți Court of Appeal upheld the appeal, quashed the judgment of 11 August 2003 and dismissed the applicant's action. The Court of Appeal found that since the applicant's father had died and the applicant had inherited the land only in May 2003, the latter could not seek compensation for the year 2002. The applicant lodged an appeal in cassation.

17. On 13 April 2005 the Supreme Court of Justice gave a final judgment and dismissed the applicant's action.

18. The judgment of 25 April 2002 has not been enforced to date.

II. RELEVANT DOMESTIC LAW

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

20. In addition, the relevant provisions of the Land Code read as follows:

Article 20. Documents which confirm the rights of owners of land

“The documents which confirm the rights of owners of land are the following: the title deed of ownership of a plot of land (*titlul de autentificare a dreptului deţinătorului de teren*), issued by the local administrative authorities ..., the inheritance certificate ... as well as other [documents]...”

Article 21. Inability to use the land until the delimitation of its borders

“The owners of land do not have the right to use it ... until the Local Council ... has delimited its borders...”

THE LAW

21. The applicant complained that the failure to enforce the final judgment of 25 April 2002 had infringed his rights as guaranteed by Article 6 § 1 of the Convention. The relevant part of Article 6 reads as follows:

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

22. He also complained that the failure to enforce the judgment had also infringed his 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 OF THE COMPLAINTS

23. In their observations on the admissibility and merits of the case, the Government submitted that although the applicant had been provided with a

power of attorney to represent his father before the domestic courts, neither the applicant nor his father had requested to be issued with a warrant of execution and to initiate enforcement proceedings, as provided for by Articles 338 and 343 of the Code of Civil Procedure. They requested the Court to reject the application on the ground that the non-compliance with the judgment of 25 April 2002 was due to the applicant's and his father's conduct.

The Government also argued that in view of the fact that neither the applicant nor his father had been issued with a title deed of ownership over the land, as provided for by the Land Code (see Relevant law part above) there had been no violation of the provisions of the Convention.

24. 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 been set in motion immediately after the judgment of 25 April 2002 became final.

As to the second objection raised by the Government, the Court considers that neither the applicant nor his father could have obtained a title deed in respect of their rights over a plot of land which had not yet been allocated to them as provided by the judgment of 25 April 2002. A title deed should have been issued to conclude the enforcement proceedings. A similar situation in which the State authorities had to issue an applicant with a document so that the latter obtained the full enjoyment of his or her possessions has already been found by the Court in *Lozan and Others v. Moldova* (no. 20567/02, §§ 16, 24 and 38, 10 October 2006) to be in breach of the provisions of the Convention. Accordingly, this objection should also be dismissed.

25. 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

26. The applicant complained that the non-compliance with the judgment of 25 April 2002 in his favour had infringed his rights under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention.

27. The Government reiterated their view that the non-compliance with the judgment of 25 April 2002 was due to the applicant's and his father's conduct.

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

29. In considering the length of the period of non-compliance with the final judgment in this case, the Court notes that the domestic courts had ordered the allocation of a plot of land to the applicant's father (see paragraph 9 above). It also observes that the applicant had acted as his father's representative before the domestic authorities and subsequently inherited the plot of land, as provided for by the judgment of the Edineț District Court (see paragraph 12 above).

The Court reiterates that enforcement proceedings are the second stage of civil proceedings and that the civil right asserted does not actually become effective until enforcement of the final judgment given. In so far as the applicant has manifested his intention to continue the proceedings as the heir of a “beneficiary” of a judgment debt, he can complain of the entire length of the enforcement proceedings, and therefore the period of non-compliance with the final judgment of 25 April 2002 has to be calculated from that date (see, *mutatis mutandis*, *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 88 and 113, ECHR 2006-...). Accordingly, the period of non-enforcement amounts to five years and seven months.

30. The issues raised under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention are identical to those found to give rise to violations of those Articles in *Prodan* (cited above, §§ 56 and 62) and *Sîrbu and Others v. Moldova* (nos. 73562/01, 73565/01, 73712/01, 73744/01, 73972/01 and 73973/01, §§ 27 and 33, 15 June 2004). There is no reason to depart from those findings in the present case.

31. There has, accordingly, been a violation of Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. Without submitting any evidence the applicant sought MDL 21,000 (EUR 1,237), representing the value of a plot of land measuring 1.09 hectares. In addition, he claimed MDL 62,575.93 (EUR 3,686) for the value of the crops he could have obtained from cultivating the land which the authorities had failed to allocate to him. He contended that he could have obtained an income of MDL 5,000 per year plus annual interest.

34. The Government contested the amounts sought by the applicant. According to a certificate issued by the National Land and Cadastre Agency (*Agenția Relații Funciare și Cadastru*) the value of the applicant's land was MDL 20,513.20 (EUR 1,217). They further submitted that the claim regarding pecuniary damage for the value of the crops he could have obtained and its method of calculation were totally unsubstantiated.

35. Concerning the compensation sought by the applicant, the Court reiterates that it has found violations of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention on account of the non-enforcement of the final judgment ordering the authorities to return a plot of land to the applicant. Therefore, only pecuniary damage having a causal link with this violation can be taken into account.

36. In assessing the value of the disputed plot of land the Court notes that the amount requested by the applicant has no basis in fact, whereas the Government have submitted a certificate from a competent authority showing the value of the land. The Court therefore awards the applicant EUR 1,217.

37. As to the value of the crops he could have obtained from cultivating his land, the Court notes that the applicant's method of calculation is substantially different than the method employed in *Prodan* (cited above, §§ 73 and 74) and that he had not submitted any evidence in support of his claims. Furthermore, the calculation provided by the applicant cannot be accepted by the Court because it does not constitute a realistic determination of the value of each crop which could have been grown by him, but represents the alleged value of an annual crop plus interest.

In the absence of any evidence, the Court will not speculate as to the value of the annual crop which could have been grown by the applicant between 2002 and 2007 and, therefore, will not make an award under this

head (see *Dragne and Others v. Romania* (just satisfaction), no. 78047/01, § 18, 16 November 2006).

B. Non-pecuniary Damage

38. The applicant claimed MDL 250,725 (EUR 14,770) for non-pecuniary damage suffered as a result of the non-enforcement of the final judgment in his favour.

39. The Government disagreed with the amount claimed by the applicant.

40. 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 his favour. It awards the applicant the total sum of EUR 1,800 for non-pecuniary damage.

C. Costs and expenses

41. The applicant claimed EUR 30 in respect of costs and expenses incurred before the Court. He submitted copies of receipts for the letters sent to the Court and for the court fees paid during the domestic proceedings.

42. The Government disagreed with the amount claimed by the applicant.

43. 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-III).

44. In the present case, regard being had to the evidence submitted by the applicant, the Court awards him EUR 30 in respect of costs and expenses.

D. Default interest

45. 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, the following amounts, 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:
 - (i) EUR 1,217 (one thousand two hundred and seventeen euros) in respect of pecuniary damage;
 - (ii) EUR 1,800 (one thousand eight hundred euros) in respect of non-pecuniary damage;
 - (iii) EUR 30 (thirty euros) in respect of costs and expenses;
 - (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 15 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President