



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

FOURTH SECTION

CASE OF VACARENCU v. MOLDOVA

(Application no. 10543/02)

JUDGMENT

STRASBOURG

27 March 2008

FINAL

27/06/2008

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 Vacarencu v. Moldova,

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

Nicolas Bratza, *President*,
Giovanni Bonello,
Stanislav Pavlovski,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä,
Ledi Bianku, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 4 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 10543/02) 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 Tudor Vacarencu (“the applicant”), on 16 November 2001.

2. The applicant was represented by Elena Botnari, a lawyer practicing in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. On 7 October 2003 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant, Mr Tudor Vacarencu, is a Moldovan national, who was born in 1945 and lives in the village of Sociteni.

5. In the 1970s the applicant bought from the local authorities a house that had been confiscated by the Soviet authorities from a third person after the Second World War. In 1993 the former owner claimed the house back and in accordance with Law no. 1225-XII, the local council recognised his property right over the house. The applicant was evicted from the house.

6. At the same time, the local council promised the applicant alternative accommodation, a promise which was not kept.

7. In March 2000, the applicant brought civil proceedings against the local council demanding compensation instead of the promised house.

8. On 14 November 2000, the Ialoveni District Court found in favour of the applicant and ordered the local council to pay him 52,797.00 Moldovan Lei (MDL) (approximately 5,000 euros (EUR)).

9. The Local Council appeals were dismissed by a final judgment of the Court of Appeal of 5 June 2001.

10. The applicant obtained an enforcement warrant which the bailiff failed to enforce.

11. In May 2002, the judgment of 5 June 2001 was quashed following revision proceedings and the proceedings reopened. The reopened proceedings ended with a final judgment of 13 July 2004, by which the local council was obliged to provide the applicant with accommodation. That judgment has not been enforced to date.

12. It appears from the documents submitted by the parties that the applicant has alternative accommodation in a neighbouring village, where he lives with his family.

II. RELEVANT DOMESTIC LAW

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

THE LAW

14. The applicant complained that the non-enforcement of the judgments in his favour of 5 June 2001 and 13 July 2004 had infringed his rights under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention. In a letter of 10 May 2004 he also complained under these Articles that the judgment of 5 June 2001 had been abusively quashed in May 2002.

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.”

15. The applicant also complained that the failure to execute the judgments of 5 June 2001 and 13 July 2004 infringed his rights under Article 3 and Article 8 of the Convention.

Article 3 of the Convention reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Article 8 of the Convention reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

I. ADMISSIBILITY OF THE COMPLAINTS

16. In so far as the complaint about the non-enforcement of the judgment of 5 June 2001 is concerned, the Court notes that that judgment was quashed in May 2002 as a result of revision proceedings. Having regard to its case-law on the subject (see, among other authorities, *Timofeyev v. Russia*, no. 58263/00, § 37, 23 October 2003) and to the fact that the period of non-enforcement was only approximately ten months, the Court cannot find that duration excessively long. Moreover, the applicant did not indicate any factors which could be considered to have required special diligence or speedier enforcement. Accordingly, the Court finds that the complaint does not disclose any appearance of a violation of the rights and freedoms set out under Article 6 and under Article 1 of Protocol No. 1 (see, among other authorities, *Osoian v. Moldova* (dec.), no. 31413/03, 28 February 2006).

Accordingly, this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

17. As to the complaint of abusive quashing of the judgment of 5 June 2001, the Court notes that the applicant raised it for the first time in his letter of May 2004, that is more than six months after the quashing took place. Accordingly, this complaint must also be declared inadmissible under Article 35 §§ 1 and 4 of the Convention.

18. In so far as the applicant’s complaints under Articles 3 and 8 of the Convention are concerned, in the light of all the material in its possession,

and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

19. At the same time the Court considers that the complaint concerning the non-enforcement of the judgment of 13 July 2004 raises questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits, and no other grounds for declaring it inadmissible have been established. The Court therefore declares this complaint admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 3 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 TO THE CONVENTION

20. The applicant complained that the non-enforcement of the judgment of 13 July 2004 in his favour had infringed his rights under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

21. The Government argued that the applicant had been granted a plot of land in 1992. Moreover, the local council offered to provide him with help in case he decided to build a house on that land. In the Government's view, the local council took all reasonable steps to enforce the judgment of 13 July 2004.

22. The issues raised under these Articles are identical to those found to give rise to violations of those Articles in the judgments in the cases of *Prodan v. Moldova* (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).

23. The Court cannot agree with the Government that the local council took reasonable steps to enforce the judgment of 13 July 2004. Accordingly, the Court finds, for the reasons detailed in the above judgments, that the failure to enforce the final judgment of 13 July 2004 constitutes a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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. Damage

25. The applicant claimed EUR 10,283 in respect of pecuniary damage suffered as a result of the non-enforcement of the final judgment in his favour and EUR 68,550 in respect of non-pecuniary damage.

26. The Government considered the amount claimed by the applicant excessive and unreasonable.

27. The Court considers that the applicant must have suffered pecuniary and non pecuniary damage as a result of the non-enforcement of the judgment of 13 July 2004. Taking into account the line of approach in *Prodan* (cited above, § 73), and the circumstances of the present case, the Court awards the applicant EUR 12,000.

B. Costs and expenses

28. The applicant claimed EUR 875 for the costs and expenses incurred before the Court.

29. The Government disagreed and argued that the amount claimed was excessive.

30. The Court considers the amount to be reasonable and awards it in full.

C. Default interest

31. 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* admissible the complaints under Article 6 § 1 and under Article 1 of Protocol No. 1 to the Convention concerning the non-enforcement of the judgment of 13 July 2004 and inadmissible the remainder of the application;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the non-enforcement of the judgment 13 July 2004;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention on account of the same non-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 12,000 (twelve thousand euros) in respect of pecuniary and non-pecuniary damage and EUR 875 (eight hundred and seventy-five euros) in respect of 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 27 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President