



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

FOURTH SECTION

CASE OF BOBOC v. MOLDOVA

(Application no. 27581/04)

JUDGMENT

STRASBOURG

4 November 2008

FINAL

04/02/2009

This judgment may be subject to editorial revision.

In the case of Boboc v. Moldova,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Ján Šikuta,

Mihai Poalelungi,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 7 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 27581/04) 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 Alexei Boboc (“the applicant”), on 2 July 2004.

2. The applicant was represented by Mr T. Ghetivu, a lawyer practising in Cahul. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicant alleged, in particular, that the proceedings in his case had been excessively long and that he had not had an effective remedy in respect of his complaint concerning the length of the proceedings.

4. The application was allocated to the Fourth Section of the Court. On 30 November 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.

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

5. The applicant was born in 1933 and lives in Cahul.

6. The facts of the case, as submitted by the parties, may be summarised as follows.

7. In 1983 the applicant bought a house. The Cahul municipality subsequently allocated to the applicant the plot of land on which his house stood. In 1995, E., the applicant's neighbour, moved the fence separating their respective plots and thus reduced the size of the applicant's land.

8. The applicant brought court proceedings against E., seeking the removal of all impediments on the part of E. to his use of his land. On 29 May 1995 the Cahul District Court found in favour of the applicant. No appeal was lodged and the judgment became final. Following a request by the Prosecutor General's Office, on 13 October 1995 the Supreme Court of Justice quashed the judgment of 29 May 1995 and ordered a full re-hearing. On 24 May 1996 the Cahul District Court rejected the applicant's claims.

9. In parallel, the applicant requested the municipality to determine the boundary between his land and that of E. This was carried out on an unknown date in 1996. E. challenged the municipality's actions in court but her complaint was rejected on 4 May 1996 by the Cahul District Court. There was no appeal and the judgment became final.

10. The applicant requested the municipality to establish his title to the land. On 26 February 1997 the municipality did so, determining the area of the land respectively owned by E. and the applicant. E. challenged that decision in court. Her request was rejected by the Cahul District Court on 8 August 1997. That judgment was upheld by the Cahul Regional Court on 13 November 1997 and the Court of Appeal on 17 March 1998. The judgment thus became final.

11. On 4 February 1999 the municipality annulled its own decision of 26 February 1997 and granted the applicant title to a smaller parcel of land. The applicant challenged the 1999 decision in court and sought an order for the removal of all impediments to his use of his land. On 20 September 1999 the Cahul District Court annulled the 1999 municipality's decision. That judgment was upheld by the Comrat Regional Court on 2 May 2000 and the Court of Appeal on 7 September 2000. That judgment was final.

12. The applicant requested the Cahul District Court to issue an enforcement warrant, which was apparently refused. He made a number of complaints in this respect to various State authorities such as the Parliament, the Supreme Court of Justice, the municipality (for instance, in November 2000, September 2001, April and June 2002, January and March 2003) and was informed that during the period 1995-2000 no enforcement warrant in his name had been submitted for execution. On 19 December 2001 he was informed by the Ministry of Justice that it was not necessary to issue any enforcement warrant since the court in its judgment of 8 August 1997 had rejected E.'s claims and thus the municipality's decision of 26 February 1997 remained in force.

13. On 8 October 2001 E.'s representative C.M. lodged a separate appeal against the judgment of 20 September 1999. On 5 December 2001 the Supreme Court of Justice decided that the appeal by E.'s representative

should be examined by the Chişinău Regional Court, since most of the judges in the Cahul District Court had already sat in the case. On 18 April 2002 the Chişinău Regional Court dismissed the appeal on grounds of *res judicata*. There was no appeal and the judgment became final.

14. On 6 August 2002 E. initiated new proceedings asking the court to determine the rights over the land (both hers and the applicant's). The applicant argued that there was no need to examine the case since all outstanding issues had been settled by the various municipality and court decisions adopted earlier. On 30 May 2003 he asked for an expert report to be made concerning the feasibility of using the land in any other manner than that in which it had been allocated by the municipality in 1997.

15. On 11 July 2003 the Cahul District Court rejected E.'s claim and found that the land should be divided in accordance with the municipality's decision of 26 February 1997. That judgment was upheld by the Cahul Court of Appeal on 9 April 2004 and by the Supreme Court of Justice on 26 May 2004.

16. On 26 May 2004 the applicant was issued with an enforcement warrant ordering the delimitation of the border between the applicant's land and that belonging to E.

II. RELEVANT DOMESTIC LAW

17. Article 192 of the Code of Civil Procedure reads:

“(1) Court actions shall be examined by the first-instance court within a reasonable time. The criteria for determining of the reasonable length of the proceedings include: the complexity of the case, the conduct of the parties to the proceedings, the conduct of the court. The observance of the reasonable time requirement in examining cases shall be ensured by the court. In examining a specific case, the observance of the reasonable time requirement shall be verified by the higher courts when examining the case on the relevant form of appeal.”

THE LAW

18. The applicant complained of the excessive length of the proceedings in his case, contrary to Article 6 of the Convention which reads, in so far as relevant:

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

19. The applicant also complained of a breach of Article 13 taken in conjunction with Article 6 of the Convention. Article 13 reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

I. ADMISSIBILITY

20. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared 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 OF THE CONVENTION

21. The applicant complained that the proceedings in his case, which lasted for nine years, had been excessively long.

22. The Government submitted that there had been four different sets of proceedings in the applicant’s case, each with its own, separate object and involving different parties. Each of the four sets of proceedings had finished within a reasonable time. Moreover, the applicant had himself contributed to the length of the proceedings by asking on several occasions for a postponement of court hearings, by failing to object to requests for postponement by the other party to the proceedings and by asking for an expert report, which further delayed the proceedings.

23. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities, and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII, and *Cravenco v. Moldova*, no. 13012/02, § 44, 15 January 2008).

1. Period to be taken into consideration

24. The Court notes that Moldova ratified the Convention on 12 September 1997. Accordingly, the period of time during which the initial set of proceedings took place, up until that date, falls outside the Court’s jurisdiction *ratione temporis*. However, the stage of proceedings reached by that date may be taken into consideration in accordance with the Court’s case-law (see, for example, *Foti and Others v. Italy*, 10 December 1982, § 53, Series A no. 56, and *Styranowski v. Poland*, 30 October 1998, § 46, *Reports of Judgments and Decisions* 1998-VIII).

25. The Court takes note of the Government's submission that the proceedings in the applicant's case consisted of four separate court actions, which should not be considered as one set of uninterrupted proceedings. However, it finds that the object of all the proceedings, in which the applicant participated, was the same: the delimitation of his land from that of his neighbour and the issuing of the relevant documents to confirm such delimitation. Since the domestic courts referred, as late as 2004, to the municipality's decision of 1997, and this had been the subject of the two other previous sets of proceedings within the Court's jurisdiction, between the parties or between one of the parties and the municipality, the Court is satisfied that the dispute between the applicant and E. over the allocation of their land, with the involvement of the municipality, was the subject of all four actions examined by the courts.

26. It appears from the documents in the file that the dispute between the applicant and E. only truly ended when the enforcement warrant issued on 26 May 2004 was enforced (see paragraph 16 above). The Court reiterates that "execution of a judgment given by any court must ... be regarded as an integral part of the 'trial' for the purposes of Article 6" (see the *Hornsby v. Greece* judgment of 19 March 1997, § 40, *Reports* 1997-II, and *Prodan v. Moldova*, no. 49806/99, § 52, ECHR 2004-III (extracts)). The parties did not inform the Court of the date when the order of 26 May 2004 was enforced, which leads the Court to presume that it was enforced shortly after its adoption.

27. The Court, accordingly, considers that all four sets of proceedings relate to the same subject matter. It will therefore consider the period as a whole for the purposes of its Article 6 § 1 analysis, from 12 September 1997 (see paragraph 24 above) until 26 May 2004, that is six years and eight months and 14 days.

2. Complexity of the case

28. As concerns the complexity of the case, the Court notes that the domestic courts at one point ordered an expert report to be made, upon the applicant's request of 30 May 2003 (see paragraph 14 above). The court that ordered that report gave its judgment by 11 July 2003 (see paragraph 15 above), which implies that the report had been made without any delay and did not contribute in any significant manner to the length of the proceedings.

The parties did not inform the Court of any other time-consuming act during the proceedings which could have explained the overall length of the proceedings.

3. *Conduct of the applicant*

29. As to the applicant's conduct, the Court notes that the Government submitted evidence that the applicant had asked on four occasions for a postponement of the hearings, including at least once because of the need to submit evidence requested by the court in respect of one of his claims. In the court's view, the applicant was exercising his procedural rights and the delay caused by these postponements cannot be considered as seriously affecting the overall length of the proceedings.

30. The Government submitted that the applicant's failure to object to postponements of the hearings prevented him from claiming a violation of Article 6 of the Convention (see *Ciricosta and Viola v. Italy*, 4 December 1995, § 32, Series A no. 337-A). However, the Court considers that the circumstances of the present case are distinct from the special situation obtaining in *Ciricosta*. In that case the Court noted that a remedy for delays in proceedings had recently been introduced and that at the time of its judgment it was too early to verify its effectiveness (§ 31). This was not so in the present case. Moreover, the total number and duration of postponements in *Ciricosta* were so extensive as to affect the duration of the proceedings seriously, while the Government submitted evidence of only several such postponements in the present case and these were not capable of affecting the overall length of the proceedings. The Court concludes that the applicant did not contribute in any significant manner to the length of the proceedings.

4. *Conduct of the authorities*

31. The Court notes that all three actions examined by the domestic courts after Moldova's ratification of the Convention concerned, essentially, the manner in which the land had been allocated by the municipality's decision of 26 February 1997. While the lawfulness of that decision was confirmed by a final court judgment on 17 March 1998 (see paragraph 10 above), the State authorities (the municipality) attempted to annul that decision in 1999 in spite of the fact that the matter was *res judicata* (see paragraph 11 above). It follows that this additional delay was caused by actions of the State authorities.

32. Moreover, following the adoption of the final judgment in these proceedings on 7 September 2000, the applicant was not able to obtain an enforcement warrant enabling the physical delimitation of his land from that of E. until 2004. Throughout this period, the applicant complained of E.'s refusal to return the land to him in accordance with the municipality's decision, as ordered by the courts. This delay is attributable to the State.

33. Furthermore, and again in spite of the *res judicata* principle, it took the courts a further six months before an appeal in cassation lodged by one of E.'s representatives was finally dismissed, even though it was clear that

the case had been decided by a final judgment based on E.'s own appeal (see paragraphs 11 and 13 above).

34. Finally, the courts accepted for examination a new action lodged by E. in 2002. The courts ordered the allocation of the land in accordance with the municipality's decision of 26 February 1997. However, it appears that this issue had already been decided in the 1999 proceedings.

35. The Court considers that the delay in the proceedings has resulted in part from the domestic courts' willingness to examine repeated and essentially similar claims between the parties to the proceedings (see, *mutatis mutandis*, *Gjonbocari and Others v. Albania*, no. 10508/02, §§ 65-67, 23 October 2007).

5. What was at stake for the applicant

36. The case concerned the land around the applicant's house. The inability to use all of it in an unimpeded manner must have affected the enjoyment of his property and was thus of a certain importance for him and his family. This warranted a certain need for the case to be dealt with expeditiously.

6. Conclusion

37. In the light of the above circumstances, including the repeated examination of essentially the same case and in the absence of any particular complexity, taking into account the overall length of the proceedings, and having regard to what was at stake for the applicant, the Court concludes that the requirement of a "reasonable time" laid down in Article 6 § 1 of the Convention was not complied with in the present case. There has therefore been a breach of that provision.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

38. The applicant complained of a lack of effective remedies in respect of his complaint concerning the length of the proceedings.

The Government considered that the applicant had not submitted sufficient arguments in respect of this complaint and asked the Court to reject it. They also referred to the power of the higher courts to verify observance of the reasonable time requirement, as expressly provided for in Article 192 of the Code of Civil Procedure (see paragraph 17 above). The applicant did not ask the courts to carry out such verification.

39. The Court reiterates that the effect of Article 13 is to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their obligations

under this provision (see *Chahal v. the United Kingdom*, 15 November 1996, § 145, *Reports* 1996-V). The remedy required by Article 13 must be “effective”, both in practice and in law. However, such a remedy is required only for complaints that can be regarded as “arguable” under the Convention (see *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 137, ECHR 2001-XII).

40. The Court observes that the applicant’s complaint regarding the excessive length of the proceedings contrary to Article 6 of the Convention was undoubtedly arguable (see paragraph 37 above). The applicant was therefore entitled to an effective domestic remedy within the meaning of Article 13. Accordingly, the Court will examine whether such a remedy was available to the applicant.

41. The Court notes that despite the power of the higher courts to verify observance of the reasonable time requirement, as referred to by the Government, none of them exercised that power. The Court does not see the wording of Article 192 of the Code of Civil Procedure, cited above, as subjecting to a party’s request the courts’ power to review that requirement, and the Government did not submit any examples of domestic case-law to support such a view. It is plain from the wording of Article 191 that no separate court action was required, and the applicant complained to various authorities, including courts, about the delays in enforcing the judgment and also submitted that there had been no need to accept the fourth court action for examination since the issue had already been decided by a final court judgment. This gave sufficient opportunities to the courts to take measures designed to speed up the proceedings, but they failed to do so. It follows that, despite the existence of legal provisions allowing the courts to take action, nothing was done in the applicant’s case and he did not have at his disposal any means of accelerating the proceedings. In addition, the Government did not indicate any legal provision which would have allowed the applicant to obtain compensation for the delay in the proceedings. The Court therefore finds that the applicant did not have at his disposal effective remedies in respect of his complaint about the length of the proceedings.

42. There has, accordingly, been a violation of Article 13 taken in conjunction with Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed 450 euros (EUR) in compensation for pecuniary damage caused to him, without giving any further details.

45. The Court considers that there is no causal link between the violations it has found in the present case and the applicant’s claims for compensation for the unspecified pecuniary damage. This claim must therefore be rejected.

B. Non-pecuniary damage

46. The applicant claimed EUR 18,000 in compensation for non-pecuniary damage caused by the excessive length of the proceedings, claiming that he had experienced suffering and distress as a result.

47. The Government disagreed and considered that the applicant had not adduced any evidence to support his claim. They referred to their position that the applicant had been involved in four different court actions and that no violation of any Convention Article had occurred.

48. The Court considers that the applicant must have been caused a certain amount of stress and frustration as a result of the delay in the proceedings, considering the importance of the proceedings to him. Deciding on an equitable basis, the Court awards him EUR 1,500 for non-pecuniary damage.

C. Costs and expenses

49. The applicant did not make any claim under this head.

D. Default interest

50. 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 13 of 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 1,500 (one thousand five 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 on that amount;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President