



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

FOURTH SECTION

CASE OF AVRAM v. MOLDOVA

(Application no. 2886/05)

JUDGMENT

STRASBOURG

9 December 2008

FINAL

05/06/2009

This judgment may be subject to editorial revision.

In the case of Avram 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 18 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 2886/05) 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, Ms Natalia Avram (“the applicant”), on 14 December 2004.

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

3. The applicant alleged, in particular, that the belated compliance by the authorities with a final judgment dated 9 June 2004 in her favour had violated her rights guaranteed by Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

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 1935 and lives in Grigorești.

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

7. In 1996 the applicant received from the local authority in the village of Alexandreni a plot of land which she still uses. She was not, however, given title to the land, so in December 2003 she requested the local authority to transfer title to her.

8. On 20 February 2004 her request was turned down. She then brought court proceedings for the annulment of that decision and an order requiring the local authority to grant her title to the land. She explained that she continued to use it but needed a document proving her ownership.

9. On 9 June 2004 the Sîngerei District Court granted her request and ordered the local authority to transfer title to her. No appeal was lodged and the judgment became final and enforceable 15 days later.

10. The applicant obtained a warrant of execution which she lodged with the Decisions Enforcement Department of the Ministry of Justice ("the Department") on 19 July 2004. On 26 July 2004 the Department requested the local authority to comply with the warrant.

11. According to documents submitted by the Government, on 27 July 2004 the local authority annulled its decision of 20 February 2004 and granted the applicant title to the land. According to the applicant, she was not informed of that decision.

12. On 16 February 2005 the applicant's representative asked for the Department's assistance in enforcing the judgment of 9 June 2004.

13. In a letter to the applicant dated 21 March 2005, the Department informed her that on 10 January 2005 the warrant of execution had been served on the Alexandreni local authority, but that the authority had still not complied with the judgment. The Department also informed the applicant that it was preparing documents with a view to inviting the court to penalise those responsible for the failure to comply with the judgment.

14. On 20 September 2005 the applicant's representative again asked for the Department's assistance in enforcing the judgment of 9 June 2004. It is unclear whether he received any answer.

15. On 14 December 2005 the Sîngerei branch of the Bălți Territorial Cadastral Office issued the applicant with the cadastral plan of the land. On 26 December 2005 the applicant paid for the registration of her title at the Territorial Cadastral Office in Bălți.

16. Following a request on 22 May 2006, the applicant obtained registration of her title to the land on 30 May 2006.

17. On 15 February 2007 the Department asked the Sîngerei Cadastre Office for information about the date and number of the registration of the applicant's title to the land.

II. RELEVANT DOMESTIC LAW

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

19. In addition, the relevant provisions of the Enforcement Code (no. 443 of 22 December 2004, which has been in force since 1 July 2005) read as follows:

Article 79 – Discontinuance of enforcement proceedings.

“Enforcement proceedings shall be discontinued when:

(a) the judgment has been enforced...”

Article 80 – Manner of suspending or discontinuing enforcement proceedings.

“(1) Decisions to suspend or discontinue enforcement proceedings shall be taken by the head of the enforcement office, after the creditor and debtor have been notified. The absence of the creditor or debtor shall not prevent the adoption of such decisions.

... (3) The decision to suspend or discontinue the enforcement proceedings shall, within three days from its adoption, be served on the parties and the authority which issued the warrant of execution...”

THE LAW

20. The applicant complained that the failure to enforce the final judgment of 9 June 2004 within a reasonable time had violated her rights, as guaranteed by Article 6 § 1 of the Convention, the relevant part of which reads:

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

I. ADMISSIBILITY

21. The Court considers that the applicant's complaint under Article 6 § 1 of the Convention raises questions of law which are sufficiently serious for their determination to depend on an examination of the merits. No grounds for declaring this complaint inadmissible have been established.

The Court therefore declares it 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 this complaint.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

22. The applicant complained that the delay in complying with the judgment of 9 June 2004 had amounted to a violation of Article 6 § 1 of the Convention. She had not been informed of the decision of 27 July 2004 and neither had the enforcement authorities.

23. The Government submitted that the judgment in the applicant's favour had been complied with on 27 July 2004. The fact that her title to the land had not been registered until 30 May 2006 was fully attributable to her own failure to apply for registration following the local authority's decision of 27 July 2004.

24. The Court reiterates that "Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the 'right to a court', of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect". Moreover, "[e]xecution 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*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II, and *Prodan v. Moldova*, no. 49806/99, § 52, ECHR 2004-III (extracts)).

25. The Court considers that the decision of 27 July 2004 (see paragraph 11 above) constituted formal compliance with the judgment of 9 June 2004. However, it also finds that in practical terms compliance was complete only when the applicant was informed of that decision and was thus able to apply for the registration of her title. Indeed, that was the sole purpose of the court proceedings initiated by the applicant. The Court will therefore examine whether the applicant was informed in a timely manner of the decision to comply with the court judgment.

26. The Court notes that there is nothing in the case file to confirm that the applicant was informed of the decision of 27 July 2004. On the contrary, her representative asked for the Department's assistance in enforcing the judgment as late as September 2005 (see paragraph 14 above). Moreover, it appears that the Department itself was not aware of the decision until February 2007 (see paragraph 17 above). While the discontinuance of enforcement proceedings required a formal decision to that effect both under the Enforcement Code (see paragraph 19 above) and in accordance with the practice followed before the entry into force of that Code, no evidence of such a decision exists in the case file. There is, moreover, no mention of either the decision of 27 July 2004 or any decision to discontinue the enforcement proceedings in the letters from the Department

in response to the complaints lodged by the applicant's representative in 2005. The Department would not have prepared the documents with a view to penalising the local authority's representatives in 2005 (see paragraph 13 above) had it been aware of the decision of 27 July 2004. This conclusion is supported by the Department's decision to serve the warrant of execution in January 2005 (see paragraph 13 above).

27. The above leads the Court to conclude that the applicant was unaware of the existence of the decision of 27 July 2004 until December 2005, when she applied for registration of her title (see paragraph 15 above).

28. In view of its conclusions in the preceding paragraph and in paragraph 25 above, the Court considers that the judgment of 9 June 2004 was not fully complied with for a period of approximately 18 months. It notes that although a decision was taken in purported compliance with the judgment in the applicant's favour, it was not brought to her attention or to the attention of the Department. It also appears that, apart from serving the warrant of execution and preparing documents with a view to penalising the local authority's representatives, the Department did not take any effective action to secure compliance. Had it done so, it would undoubtedly have found out about the decision of 27 July 2004.

29. The Court therefore concludes that there were no valid factual reasons for the delay in fully enforcing the judgment by informing the applicant of the decision of 27 July 2004 and that the sole cause of that delay was the failure by the various State authorities to perform their functions properly.

30. The Court notes that it has found violations of Article 6 § 1 of the Convention in numerous cases concerning delays in complying with or enforcing final judgments (see, among other authorities, *Prodan*, cited above, § 56 and *Luntre and Others v. Moldova*, nos. 2916/02, 21960/02, 21951/02, 21941/02, 21933/02, 20491/02, 2676/02, 23594/02, 21956/02, 21953/02, 21943/02, 21947/02 and 21945/02, § 36, 15 June 2004).

Having examined the material submitted to it, the Court notes that the file does not contain any element which would allow it to reach a different conclusion in the present case.

31. Accordingly, for the reasons given in the cases cited above, the Court finds that the failure to enforce the judgment of 9 June 2004 within a reasonable time constitutes a violation of Article 6 § 1 of 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.”

33. The applicant submitted her claims for just satisfaction outside the time-limit set by the Court. Accordingly, and in view of the fact that she has been able to use her land throughout the proceedings, the Court considers that no award under Article 41 of the Convention is warranted in the present case.

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. *Dismisses* the applicant’s claim for just satisfaction.

Done in English, and notified in writing on 9 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President