



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF GODOROZEA v. MOLDOVA

(Application no. 17023/05)

JUDGMENT

STRASBOURG

6 October 2009

FINAL

06/01/2010

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 Godorozea 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,

David Thór Björgvinsson,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 15 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 17023/05) 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, Mrs Maria Godorozea (“the applicant”), on 26 April 2005.

2. The applicant was represented by Mr V. Nagacevschi from Lawyers for Human Rights, a non-governmental organisation based in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicant alleged, in particular, that the Supreme Court of Justice had adopted a judgment in her absence, contrary to the requirements of Article 6 of the Convention.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). On 11 February 2008 the President of a Chamber of that Section decided to give notice of 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 1958 and lives in Chişinău.

6. The applicant is a shareholder in a private company (M.). On 20 July 1999 she and five other shareholders initiated court proceedings against a company (L.) which also held shares in M., asking for the annulment of a number of contracts and decisions adopted by the shareholders' association.

7. On 10 January 2001 the Grigoriopol District Court allowed the claims made by the plaintiffs in part. No appeal was lodged and the judgment became final fifteen days later.

8. The applicant sought enforcement of the judgment and claims that a number of measures were taken with a view to having it enforced.

9. In a letter signed 30 November 2001 (but apparently lodged with the court on 6 December 2001) L. appealed against the judgment of 10 January 2001. L. claimed that it had not received a copy of the judgment until the middle of November. The representative for the applicant and the other five plaintiffs asked the court to reject the appeal as lodged out of time and argued that, in his opinion, L. had known about the judgment of 10 January 2001 since April 2001. He submitted, in particular, that on 25 May 2001 he had personally handed a copy of the judgment to L.'s president in the presence of all the shareholders.

10. On 30 April 2002 the Chişinău Regional Court allowed L.'s appeal in part, without taking any decision in respect of the fifteen-day time-limit for lodging an appeal.

11. In an appeal in cassation, the applicant emphasised L.'s failure to lodge its appeal within the time-limit set by law.

12. On 11 July 2002 the Court of Appeal sent the case back to the Chişinău Regional Court for a decision on the payment of court fees.

13. On 3 September 2002 the Chişinău Regional Court decided that the applicant and the other plaintiffs were to pay the court fees.

14. On 28 January 2003 the Court of Appeal rejected the applicant's appeal in cassation and upheld the judgment of 30 April 2002.

15. At the applicant's request, on 14 April 2003 the Deputy Prosecutor General lodged a request with the Supreme Court of Justice asking for the reopening of the case. One of the reasons given was that, in lodging its appeal on 6 December 2001, L. had missed the fifteen-day time-limit for lodging an appeal and had also failed to comply with the statutory requirement to apply to the court for a decision holding that the reasons for missing the time-limit were acceptable. Moreover, the Chişinău Regional Court had examined the case in the applicant's absence, depriving her of her procedural rights.

16. On 4 June 2003 the Supreme Court of Justice granted the request and ordered a rehearing of the case by the Court of Appeal. It noted that L. had lodged its appeal on 6 December 2001, outside the time-limit for lodging appeals. The court also noted that the examination of the appeal in the absence of the applicant's representative had amounted to a failure to respect the rights of all the parties to the proceedings, “especially given that a new judgment was adopted”.

17. On 24 September 2003 the Chişinău Court of Appeal rejected L.'s appeal against the judgment of 10 January 2001. The court found that L. had missed the fifteen-day time-limit for lodging an appeal. Even if L. had stated the truth when it declared, in its appeal, that it had not found out about the judgment of 10 January 2001 until the middle of November 2001, it should have lodged its appeal by the end of November, and not on 6 December 2001 as it had done. Moreover, no reasons had been adduced to convince the court that the time-limit had been missed for acceptable reasons.

18. On 3 March 2004 the Supreme Court of Justice quashed the judgment of 24 September 2003 and ordered a rehearing, finding that the lower court had not taken the correct procedural decision in respect of its finding that the time-limit had been missed by L. The court also noted that under domestic law the fifteen-day time-limit started running – for parties not present when the court read out the judgment – from the date when a copy of the operative part of the judgment was served on the parties. There was no evidence in the case file that L. had been shown the contents of the judgment of 10 January 2001.

19. On an unspecified date thereafter, L. lodged a request with the Court of Appeal for a decision considering as acceptable the reasons for missing the fifteen-day time-limit for lodging the appeal.

20. On 17 June 2004 the Chişinău Court of Appeal granted that request, finding that there was no evidence that L. had seen the operative part of the judgment before November 2001. On the same day the court dismissed L.'s appeal and upheld the judgment of 10 January 2001. L. appealed.

21. On 11 November 2004 the Supreme Court of Justice quashed the judgments of 10 January 2001 and 17 June 2004 and adopted a new judgment, allowing L.'s appeal and rejecting all of the applicant's claims.

22. The court noted that the applicant was not present at the hearing but that she and the other participants had been properly summoned. The applicant claims that she never received a summons. The judgment of 11 November 2004 was final.

II. RELEVANT DOMESTIC LAW AND PRACTICE

23. The relevant provisions of the Code of Civil Procedure read as follows:

“Article 105. Service of the summons...”

(1) The summons ... shall be sent by registered mail with confirmation of delivery or through a person authorised by the court. The date of service of the summons ... shall be written on the summons, as well as on the receipt, which shall be returned to the court.

...

(5) The summons ... addressed to a natural person shall be served on him or her personally and shall be countersigned on the receipt. ...”

“Article 441

... (2) The President of the Chamber [of the Supreme Court of Justice] shall set, within one month, the date for hearing the appeal in cassation and inform the parties accordingly. A copy of the appeal in cassation shall be sent to the other party together with a summons to attend the hearing, indicating that a written reply should be submitted to the court not later than five days before the hearing.

Article 444

... (2) The appeal in cassation shall be examined after the parties have been summoned. However, their failure to appear shall not prevent the examination of the appeal.

Article 445

(1) The court which examines the appeal in cassation has the power:

b) to allow the appeal and to quash entirely or in part the decision of the appellate court or of the first-instance court, adopting a new judgment;...”

24. On 12 December 2005 the plenary meeting of the Supreme Court of Justice adopted a decision “Regarding the application of the rules of the Code of Civil Procedure to the examination of cases by the first-instance courts”. In point 5 of that decision the court noted that examining a case in the absence of a party which had not been properly summoned was contrary to the law. It added that under Article 105 § 5 of the Code of Civil Procedure a person should be considered as lawfully summoned only if he or she had been personally served with the summons and had countersigned the receipt.

25. The applicant submitted copies of three judgments adopted by the Supreme Court of Justice on 30 January (no. 2ra-3/08), 4 June (no. 2ra-1097/08) and 25 June 2008 (no. 2r-156/08), in which the court confirmed the requirement of personal service of the summons and the counter-signature by the addressee, failing which the summons was considered as not having been properly served.

THE LAW

26. The applicant complained of a violation of her right of access to justice, contrary to Article 6 of the Convention.

The relevant part of Article 6 reads as follows:

“1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

I. ADMISSIBILITY

27. The Court considers that the applicant's complaint under Article 6 § 1 of the Convention 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 the complaint 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 4 above), the Court will immediately consider the merits of the complaint.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

28. The applicant submitted that, despite the Government's arguments and evidence that the Supreme Court of Justice had sent her a summons, she had never received such a summons for the hearing of 11 November 2004, nor was there any evidence to that effect. At the same time, the Supreme Court of Justice had repeatedly found that only serving the summons personally on the addressee and having him or her countersign was acceptable evidence of delivery of the summons (see paragraphs 24 and 25 above). The applicant's representative added that mail addressed to his organisation had occasionally been lost in transit, including mail from the Court itself.

29. Moreover, the applicant was not aware of the existence of an appeal in cassation lodged by L. and thus could not submit any comments, either in writing ahead of the hearing or at the hearing itself. She emphasised that the Supreme Court of Justice had not only dealt with procedural matters, but had decided on the merits, reversing the lower court's judgment. It was therefore essential for all the parties to be heard, which distinguished the present case from that of *Nesme v. France* (no. 72783/01, 14 December 2004), cited by the Government.

30. The Government submitted that the applicant had been properly summoned to the hearing, as evidenced by the registration of the sending of the letter to her address. Moreover, the Court had found no violation of Article 6 in *Nesme*, cited above, given that the applicant in that case was

himself to blame, having missed reasonable opportunities to submit his comments in writing ahead of the hearing.

31. The Court notes that in *Russu v. Moldova* (no. 7413/05, §§ 23-28, 13 November 2008) it has already found that “in practice the domestic courts do not accept as sufficient evidence the sending of a letter by a court and require proof of delivery”. Similarly to that case, and in view of the additional case-law submitted by the applicant and not contested by the Government (see paragraphs 24 and 25 above), the Court considers that the Government did not sufficiently demonstrate that the applicant in the present case had been properly summoned to the hearing of 11 November 2004 in accordance with domestic law and practice.

32. The Court also concludes, as it did in *Russu* (cited above, § 27), that “having had no prior notice of the hearing, the applicant was unable to organise her defence and was not represented by a lawyer”. It agrees with the applicant that this distinguishes the present case from that of *Nesme*, cited above. Given that the Supreme Court of Justice reversed the judgment of the lower court, which was favourable to the applicant, it was essential for her to be heard in person.

33. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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. Non-pecuniary damage

35. The applicant claimed 4,000 euros (EUR) in compensation for the non-pecuniary damage caused to her. She referred to her sentiment of frustration at having been sure that she had had a final judgment in her favour, in the absence of any information to the contrary from the court, only to find out later that a new judgment, dismissing all of her claims in her absence, had been adopted.

36. The Government considered that no compensation was due to the applicant and that, in any event, the amount claimed was excessive in comparison with previous case-law and unsubstantiated.

37. While the Court cannot speculate as to the outcome of the proceedings had the Supreme Court of Justice heard the applicant in person, it considers that the failure to give her the chance to state her position

caused her damage which cannot be compensated only by a finding of a violation in the present case. Accordingly, and deciding on an equitable basis, the Court awards the applicant EUR 1,000 on this account.

B. Costs and expenses

38. The applicant claimed EUR 500 for costs and expenses and EUR 30 for translation services.

39. The Government considered that the applicant had not proved her expenses since she had not submitted any contract with her lawyer or the itemised list of hours worked on the case. In any event, they considered that the amounts claimed were exaggerated and unsubstantiated.

40. The Court notes that the applicant was represented by a lawyer, who submitted all the relevant observations and has clearly worked on the case. It considers that the sum claimed is reasonable and therefore accepts the applicant's claim in full.

C. Default interest

41. 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*
 - (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 1,000 (one thousand euros) in respect of non-pecuniary damage and EUR 530 (five hundred and thirty 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President