



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF DESERVIRE S.R.L. v. MOLDOVA

(Application no. 17328/04)

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 Deservire S.R.L. 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 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. 17328/04) 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 company registered in Moldova, Deservire SRL (“the applicant company”), on 2 April 2004.

2. The applicant company 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 company alleged, in particular, that the proceedings in its case had been excessively long, that the courts had not given sufficient reasons for their judgments, and that no effective remedies existed to speed up the proceedings.

4. On 6 November 2007 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

1. The creation of the applicant company and the original proceedings concerning its assets

6. On 13 October 1992 the local authorities of Briceni decided to split the State-owned Regional Association for Production and Services (“the Association”) into two companies, one of which was the applicant company. On 28 December 1992 the applicant company was officially registered with the authorities as a private company and was subsequently assigned certain assets belonging to the Association.

7. The applicant company operated until 3 December 1993, when the local authorities sealed its premises in order to recover State property allegedly held by it. On 16 December 1993 the local authorities decided to create a State-owned company (“the State company”) with a similar name to that of the applicant company and to transfer to it the Association's assets which had been assigned to the applicant company in 1992.

8. The applicant company claimed that its own property had been seized on 3 December 1993 together with the property that had formerly belonged to the Association and had been assigned to it in 1992. It also claimed that it had paid for the property assigned to it in 1992 and that therefore the seizure of 3 December 1993 had been unlawful. When the State company refused to return the seized assets, the applicant company initiated court proceedings.

9. On 12 May 1994 the Briceni District Court allowed the applicant company's claims. On 1 June 1994 the Supreme Court of Justice quashed that judgment and ordered a full rehearing of the case.

10. On 15 February 1995 the Briceni District Court discontinued the proceedings on the ground that the arbitration courts were competent to examine such cases. On 22 March 1995 the Supreme Court of Justice upheld that decision.

11. On an unknown date in 1995 the applicant company initiated proceedings before the Arbitration Court. On 27 November 1995 the Arbitration Court partly allowed the applicant company's claims. On the same day the court issued an enforcement order, which was amended on 19 December 1995.

12. On 5 February 1996 the enforcement of the decision of 27 November 1995 was suspended pending an appeal before the Supreme Court of Justice.

13. On 2 July 1996 the decision of 27 November 1995 was amended by the Arbitration Court, reducing the amount awarded to the applicant company.

14. On 1 July 1997 the Arbitration Court of the Republic of Moldova annulled all the previous judgments and ordered a full rehearing of the case.

15. On 26 September 1997 the Chişinău Arbitration Court partly allowed the applicant company's claims.

16. On 14 November 1997 the applicant company complained to various authorities, including the Supreme Council of the Judiciary, of unnecessary delays in the proceedings. The complaints were forwarded to the court examining the case.

17. On 16 January 1998 the Appeals Chamber of the Arbitration Court of Moldova quashed the judgment of 26 September 1997 and ordered a full rehearing of the case.

18. On 23 March 1998 the Chişinău Arbitration Court partly allowed the applicant company's claims. On the same day the court issued an enforcement order. No appeal was lodged and the judgment became final fifteen days later.

2. Annulment of the final court judgment and the subsequent proceedings

19. On 4 May 1998 the Prosecutor General's Office lodged an application for annulment of the final judgment and asked the Supreme Court of Justice to reopen the proceedings. On 3 June 1998 the Supreme Court of Justice allowed the request and quashed the final judgment of 23 March 1998, ordering a full rehearing of the case.

20. The Chişinău Arbitration Court scheduled some thirty-one court hearings in the months that followed, almost all of which resulted in decisions to adjourn the proceedings and summon the parties for another date, because more evidence was necessary, or one of the parties was absent, or because a connected set of proceedings to determine who should represent the State company was in progress. This period lasted from 23 September 1998 until 25 March 1999.

21. During one of the hearings, on 8 October 1999, the court noted that there was a disagreement between the parties as to the correct valuation of the disputed property and concluded that an expert valuation was necessary. It therefore suspended the proceedings and ordered an expert report on the companies' accounts, to be paid for by the applicant company. The report, dated 18 May 2000, confirmed that the State company owed the applicant company 778,877 Moldovan lei (MDL). According to the Government, the report was submitted to the court on 21 July 2000.

22. On 15 December 2000 the applicant company sought leave to pay the court fees by instalments, referring to its poor financial state. The Court accepted the request, noting, *inter alia*, that the proceedings had started

in 1995, that the case had been sent for a fresh examination and that the examination of the case had already lasted for a long time.

23. On 19 November 2002 the Chişinău Arbitration Court partly allowed the applicant company's claims.

24. On 12 February 2003 the Supreme Court of Justice decided to assign the case to the Chişinău Court of Appeal in view of the fact that all the judges of the Appeals Chamber of the Economic Court had already examined the case earlier.

25. On 3 June 2003 the Chişinău Court of Appeal upheld the judgment of 19 November 2002.

26. On 23 October 2003 the Supreme Court of Justice quashed the lower courts' judgments and adopted a new one, rejecting all the applicant company's claims as unfounded. It found, in particular, that it had not been proved with sufficient certainty that the applicant company had acquired any property of its own in addition to the property which had been assigned to it in 1992 and which it had had to return to the State company. Several items which the applicant company had proved to be its own property had been returned by the State company or compensation had been paid. The creation of the applicant company, with State property but in private ownership, had been contrary to the law, and a number of its claims concerning its financial dealings with the State company could not be verified because the original documents had been destroyed after the expiry of the relevant time-limits for keeping them. The judgment of the Supreme Court of Justice was final.

27. On 28 March 2008 the Appeals Chamber of the Economic Court of Moldova decided to put the applicant company into liquidation for non-payment of debts.

THE LAW

28. The applicant company complained under Article 6 § 1 of the Convention of the excessive length of the proceedings, the quashing of the final judgment of 23 March 1998, and the insufficient reasons in the judgment adopted by the Supreme Court of Justice on 23 October 2003.

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 ...”

29. The applicant company also complained under Article 1 of Protocol No. 1 to the Convention of the loss of its property as a result of the judgments adopted by the domestic courts. Article 1 of Protocol No. 1 to the Convention 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.”

30. Finally, it complained that it did not have any effective remedies in respect of its complaint regarding the length of the proceedings, contrary to Article 13 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

31. In its initial application, the applicant company had complained under Article 6 § 1 of the Convention of the quashing of a final judgment in its favour. However, in its observations on the admissibility and merits, it asked the Court not to proceed with the examination of this complaint. The Court therefore finds no reason to examine it.

32. The Court has examined the applicant company's complaints under Article 6 § 1 of the Convention, concerning the insufficient reasons given by the Supreme Court of Justice, and under Article 1 of Protocol No. 1 to the Convention, concerning the loss of property. However, having regard to all the material in its possession, it finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

33. The Court considers that the applicant company's complaint under Article 6 § 1 of the Convention (concerning the length of the proceedings) and the complaint under Article 13 of the Convention raise questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits, and that no 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 OF THE CONVENTION

34. The applicant company complained that the proceedings in its case, which had lasted for over nine years, six of which fell within the Court's jurisdiction *ratione temporis*, had been excessively long. It added that the case was not very complex, involving only two parties, and that there had been only one necessary delay - the nine months needed for the expert to

assess the value of the relevant property. Moreover, there were unexplained decisions by the courts to adjourn proceedings for two to four months, and other unexplained delays, such as the three-month delay between the court's granting of the State company's request of 12 March 2001 to hear an expert and the hearing of that expert on 6 June 2001. The court made two other three-month adjournments at the State company's request, on 16 July 2001 and 18 July 2002. It took the court more than four months to begin the examination of the State company's appeal of 4 December 2002, and almost four months passed before the Supreme Court of Justice began its examination of the appeal in cassation lodged by the State company on 18 June 2003. The applicant company also referred to the annulment of a final judgment in the present case by the Supreme Court of Justice on 3 June 1998.

35. The Government submitted that the length of the proceedings should be calculated from the date on which Moldova ratified the Convention, that is, 12 September 1997. They considered that the proceedings were rather complex, requiring expert reports and several re-examinations of the case. Moreover, the proceedings had taken place against the background of Moldova's emergence as an independent State, and an evolving legal order based on new values, which required time to settle.

36. According to the Government, the applicant company had requested the adjournment of the case on seventeen separate occasions, and the resulting delays had amounted to two years. On eight other occasions the State company had not been present, which the applicant company had considered to be an obstacle to the court's examination of the case. This had resulted in another nine-month delay, for which the applicant company had been responsible, in addition to another adjournment for the examination of a challenge to a judge. Another ten adjournments had been requested by the defendant or ordered by the courts in order to obtain additional evidence. The Government thus submitted that the delays in the proceedings had been reasonable given the complexity of the case and that the applicant company had been responsible for a significant number of those delays.

37. 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 *Cravcenco v. Moldova*, no. 13012/02, § 44, 15 January 2008).

38. The Court agrees with the parties that the period to be taken into consideration in the present case started on 12 September 1997. The resulting period therefore amounts to six years and forty-one days.

1. Complexity of the case

39. The Court notes that the domestic courts considered it necessary to order an expert report on the value of the disputed property, which suggests a certain degree of complexity. However, such complexity cannot, in itself, explain the total length of the proceedings, particularly in the light of the fact that the expert took nine months to complete the report and no further time-consuming procedural actions appear to have taken place.

2. The applicant company's conduct

40. The Court notes the Government's submission that the applicant company was responsible for almost three years of the total delay in the proceedings. It also notes that this includes the nine months it took the expert to prepare his report. The Court observes that the domestic court had noted a disagreement between the parties as to the correct valuation of the disputed property and ordered the expert report accordingly (see paragraph 21 above). The Court cannot, in such circumstances, accept that the delay was due to the applicant company, since it was the court which considered the report necessary in order to resolve a disagreement on a point on which the court lacked the necessary technical competence (valuation of property). Moreover, the Supreme Court of Justice eventually chose not to follow the findings of that report in its final judgment, which would suggest that the lower courts' request for such a report may not have been necessary.

41. From the materials submitted by the parties the Court finds that the applicant company is responsible for delays totalling approximately ten months, most of which were spent gathering additional evidence, calling for experts, or challenging in court evidence adduced by the other party in the form of administrative decisions. This represents a good faith exercise of procedural rights by the applicant company.

42. The Court also notes the Government's argument that the applicant company considered it impossible for the case to be examined in the absence of the State company's representative, and that any resulting delays could also be attributed to the applicant company. However, the Court considers that it is first for the domestic courts to decide whether or not to adjourn proceedings, and they can do so regardless of the position of any of the parties to the proceedings. At the same time, had the applicant company asked the courts to proceed in the absence of the defendant, it risked seeing the case sent back for a re-trial because examination in the absence of the parties was a formal ground for re-trial. Finally, the applicant company cannot be considered to have been complacent or indifferent as to the length of the proceedings, since it made an appropriate complaint (see paragraph 16 above).

43. The Court considers that even though the applicant company is responsible for delays of approximately ten months as a result of using its procedural rights, this cannot explain the overall length of the proceedings.

3. Conduct of the authorities

44. As to the conduct of the judicial authorities, the Court reiterates that it is for the Contracting States to organise their legal systems in such a way that their courts can guarantee to everyone the right to a final decision within a reasonable time in the determination of his or her civil rights and obligations (see *Frydlender v. France* [GC], no. 30979/96, § 45, ECHR 2000-VII). The manner in which a State provides for mechanisms to comply with this requirement – whether by way of increasing the numbers of judges, or by automatic time-limits and directions, or by some other method – is for the State to decide. If a State lets proceedings continue beyond the “reasonable time” prescribed by Article 6 of the Convention without doing anything to advance them, it will be responsible for the resultant delay (see *Price and Lowe v. the United Kingdom*, nos. 43185/98 and 43186/98, § 23, 29 July 2003).

45. The Court notes that while numerous hearings were scheduled in the present case, many of them had to be postponed, usually for a one-month period. Some hearings were postponed for three or even four months, without any explanation (see the applicant company's submissions concerning some of those postponements in paragraph 34 above, and the Government's explanation that the courts had had a heavy workload).

46. The Court further notes that the protracted length of the proceedings was also due to the re-examination of the case. It observes that, whilst the case cannot be said to involve issues of any particular complexity apart from the valuation of the disputed property, it was considered by the courts on three occasions (see paragraphs 14, 17 and 19 above). Although the Court is not in a position to analyse the quality of the case-law of the domestic courts, it considers that, since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings discloses a serious deficiency in the judicial system (see, for instance, *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003; *Pavlyulynets v. Ukraine*, no. 70767/01, § 51, 6 September 2005; and *Cravcenco*, cited above, § 50).

47. The Court also notes that the case was once decided by a final court judgment on 23 March 1998. The proceedings were subsequently re-opened (see paragraph 19 above) through an extraordinary procedure of a type that is in itself contrary to Article 6 of the Convention (see, for instance, *Brumărescu v. Romania* [GC], no. 28342/95, § 65, ECHR 1999-VII and *Roșca v. Moldova*, no. 6267/02, § 29, 22 March 2005). The applicant company lodged its complaint in this respect outside the six-month period established in Article 35 of the Convention. However, it remains true that,

following the reopening of a final court judgment, the judicial authorities need to take particular care to ensure a swift conclusion to the reopened proceedings. The Court assumes that since a final judgment was adopted in the case, the factual and legal issues had largely been resolved. Unless new important facts are discovered and form the ground for the reopening, the courts do not have difficult issues to examine in any reopened proceedings. However, in the present case, most of the delays occurred after the quashing of the final judgment.

48. Finally, the Court notes that the domestic courts were aware that the proceedings had been protracted, and even mentioned that in their decisions (see paragraph 22 above). Nonetheless, it took the Chişinău Arbitration Court almost two years to adopt a judgment in the case, even after acknowledging the excessive length of the proceedings.

4. Conclusion

49. The Court considers that the present case was not very complex and that the applicant company was responsible for only a relatively small number of the delays. Some of the delays which had been expressly acknowledged by the judicial authorities remained unexplained. Moreover, after the case was resolved by a final court judgment, its reopening called for a swift determination of the outstanding issues, rather than a lengthy fresh examination. In the light of the above, 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

50. The applicant company complained of a lack of effective remedies in respect of its complaint concerning the length of the proceedings.

51. The Government considered that the applicant company had not submitted sufficient arguments in respect of this complaint and asked the Court to reject it, given also that no violation of its rights under Article 6 of the Convention had taken place. They also referred to the power of the higher courts to verify compliance with the reasonable-time requirement, as expressly provided for in Article 192 of the Code of Civil Procedure (as cited in *Boboc v. Moldova*, no. 27581/04, § 17, 4 November 2008).

52. The Court observes that the applicant company's complaint regarding the excessive length of the proceedings contrary to Article 6 of the Convention was undoubtedly an arguable one (see paragraph 49 above). The applicant company 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 company.

53. The Court notes the Government's argument concerning the remedies available to the applicant company under the domestic law. However, it observes that it has already rejected a similar argument in *Boboc* (cited above, § 41). It finds, in particular, that the applicant company complained to various authorities, including the Supreme Council of the Judiciary (see paragraph 16 above), and that a court had expressly noted the excessive length of the proceedings (see paragraph 22 above) without however accelerating the proceedings or awarding any compensation. The Court therefore finds that the applicant company did not have at its disposal effective remedies in respect of its complaint about the length of the proceedings.

54. 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

55. 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

56. The applicant company claimed 85,301 euros (EUR) for pecuniary damage, which included the sums awarded by the first and second-instance courts before the judgment of the Supreme Court of Justice of 23 October 2003, and statutory interest.

57. The Government challenged the applicant company's claims as unfounded and excessive.

58. The Court notes that it has found a violation of Article 6 of the Convention in respect of the excessive length of the proceedings in the applicant company's case and also a violation of Article 13 taken in conjunction with Article 6. However, no other violation has been found and since the domestic courts rejected all the applicant company's claims as unfounded, it could not expect to obtain the sums awarded by the judgments which were subsequently annulled, or any late-payment interest.

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

B. Non-pecuniary damage

60. The applicant company claimed EUR 20,000 for non-pecuniary damage, claiming that its activities had been paralysed for many years, which eventually led to the company's liquidation.

61. The Government considered that there was no causal link between the alleged violations and the claims under this head, which had, moreover, not been substantiated by clear evidence.

62. The Court considers that the applicant company's administration must have been caused a certain level of stress and frustration as a result of the excessive length of the proceedings, during which it was unclear whether and to what extent the company would obtain compensation for property which it claimed to own. Considering the above and the total length of the proceedings, and deciding on an equitable basis, the Court awards the applicant company EUR 600 for non-pecuniary damage.

C. Costs and expenses

63. The applicant company claimed EUR 1,575 for legal costs and EUR 50 for translation services.

64. The Government disagreed and considered the amount claimed to be exaggerated when compared to the fees charged at domestic level. They also questioned the number of hours needed to prepare the observations in this relatively simple case.

65. The Court reiterates that in order for costs and expenses to be reimbursed under Article 41, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see *Croitoru v. Moldova*, no. 18882/02, § 35, 20 July 2004).

66. In the present case, regard being had to the relative lack of complexity of the case and the issues involved, but also to the volume of the materials which had to be dealt with, the Court awards the applicant company EUR 1,000 for costs and expenses.

D. Default interest

67. 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* inadmissible the applicant company's complaints under Article 6 § 1 (concerning reasons for judgments) and Article 1 of Protocol No. 1 to the Convention, and the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the length of the proceedings;
3. *Holds* that there has been a violation of Article 13 taken in conjunction with Article 6 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 600 (six hundred euros) in respect of non-pecuniary damage and EUR 1,000 (one thousand euros) for 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 company'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