



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF FEDOTOV v. MOLDOVA

(Application no. 6484/05)

JUDGMENT

STRASBOURG

15 December 2009

DÉFINITIF

15/03/2010

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 Fedotov 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,

Ján Šikuta,

Päivi Hirvelä, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 24 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 6484/05) 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, Mr Eduard Fedotov (“the applicant”), on 21 December 2004.

2. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicant alleged, in particular, that his rights guaranteed under Articles 6, 13 and Article 1 of Protocol No. 1 to the Convention had been violated as a result of the failure to enforce a final judgment in his favour in due time.

4. On 14 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 of the Convention).

5. Judge Poalelungi, the judge elected in respect of Moldova, withdrew from sitting in the case (Rule 28 of the Rules of Court). On 25 June 2009, the Government, pursuant to Rule 29 § 1 (a), informed the Court that they were content to appoint in his stead another elected judge and left the choice of appointee to the President of the Chamber. On 14 September 2009, the President appointed Judge Šikuta to sit in the case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1937 and lives in Chişinău.

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

8. The applicant used to work for the Ministry of Internal Affairs (“the Ministry”). On his retirement in 1984 he received a State pension. On 23 June 1993 the Parliament enacted an Act establishing the manner of calculating the pensions of certain categories of military and affiliated personnel (no.1544-XIII) (“the 1993 Act”), which also applied to the applicant's case. On 21 February 1994 the Government adopted Decision no. 78 regarding the calculation of years worked and the payment of pensions (“the 1994 Decision”). In the applicant's opinion, the 1994 Decision unlawfully reduced the amount of pension he was entitled to receive under the 1993 Act.

9. In 1998 the applicant asked for a recalculation of his pension on the basis of the 1993 Act. Following the Ministry's refusal of his request, he initiated court proceedings. On 18 June 1999 the Centru District Court rejected his claims.

10. In September 2000 the applicant again asked for a recalculation of his pension, considering that the 1994 Decision had unlawfully changed the provisions of the 1993 Act by reducing the amount of pension payable to persons in his situation. He claimed 9,656 Moldovan lei (MDL) (920 euros (EUR) at the time), which constituted the difference between the amount of his pension and the amount to which he was entitled by law, with effect from 1 July 1993.

11. On 22 October 2001 the Chişinău Court of Appeal allowed the applicant's claim and ordered the Ministry to recalculate his pension from 1 July 1993, in accordance with the 1993 Act. No appeal was lodged and the judgment became final and enforceable fifteen days later.

12. On 28 August 2002 the Decisions Enforcement Department of the Ministry of Justice (“the Department”) informed the applicant that on 15 November 2001 it had registered his request to have the judgment enforced. On 10 June 2002 the Department set a time-limit for the Ministry to comply with the judgment. On 15 August 2002 the Ministry replied that the applicant's pension had been calculated correctly. The Department requested the Ministry to submit the “calculation sheets showing the sums on the basis of which the pension was calculated”. The Department promised to keep the applicant informed.

13. On 5 September 2002 the Department sent the applicant a similar letter.

14. On 17 April 2003 the Ministry informed the applicant that the judgment in his favour had been enforced. In the same letter the Ministry stated that the applicant's pension had been calculated on the basis of the 1993 Act and the 1994 Decision up to 1998. From 5 February 1998 his pension had been calculated on the basis of amendments to the 1993 Act adopted in 1997. His pension was recalculated again on the basis of a Government decision adopted in 2000. The Ministry also informed the applicant that 710 warrants awaited enforcement, in a total sum of MDL 5,100,000. Since the Ministry's budget for 2003 did not provide for such a substantial sum to be paid for these purposes, payment on the basis of the enforcement warrants, including the applicant's, would be made after amending the 2003 State Budget Act and, progressively, as enforcement warrants were submitted to the Treasury of the Ministry of Finance.

15. On 18 April 2003 the Department informed the applicant that on 26 November 2001 it had set a time-limit for the Ministry to comply with the judgment of 22 October 2001 and that in its reply the Ministry had stated that the judgment had been fully enforced. An annex was included in the letter, showing the amount of pension paid to the applicant between January and June 2003.

16. The applicant complained to various State authorities, including the President and the Ministry of Justice, claiming that the judgment had not been enforced. On 2 June 2003 the Ministry of Justice informed the applicant that the debtor had informed it that it had fully complied with the judgment and that no sums were outstanding.

17. In reply to a request by the applicant to initiate criminal proceedings against persons responsible for the failure fully to enforce the judgment of 22 October 2001, the Prosecutor General's Office informed him that the judgment had been complied with. The documents in the file showed that his pension had been recalculated for the period 1998-2003.

18. The applicant initiated two new sets of court proceedings against the Ministry. In the first proceedings he asked the court to order the correct calculation of his pension from 1 June 1993 and to award him MDL 1,556, as well as damages of MDL 300,000. In the second proceedings he asked for the enforcement of the judgment of 22 October 2001 and the payment of damages of EUR 300,000.

19. In the first set of proceedings, on 11 October 2004 the Chişinău Court of Appeal partly upheld his claims and found that the judgment of 22 October 2001 had not been fully enforced. The court awarded him MDL 7,245 of withheld pension for the period from 1 July 1993 until 5 February 1998. On 8 December 2004 the Ministry of Internal Affairs transferred that sum to the Savings Bank in order to pay the applicant.

20. In the second set of proceedings, on 8 December 2003 the Chişinău Court of Appeal left this claim unexamined as it dealt with the same issue as the one dealt with in the first court proceedings pending before the Centru

District Court. On 21 April 2004 the Supreme Court of Justice quashed that decision and specified that the applicant's claims in the two sets of proceedings were distinct. On 3 June 2004 the Chişinău Court of Appeal left his claim unexamined in respect of the request to enforce the judgment, since that could not be the subject of new court proceedings. The applicant was informed of his right to request the enforcement of the judgment of 22 October 2001 within the enforcement proceedings. On 3 November 2004 the Supreme Court of Justice rejected an appeal lodged by the applicant as unfounded.

II. RELEVANT DOMESTIC LAW

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

THE LAW

22. The applicant complained under Articles 6 § 1 and 13 of the Convention, as well as under Article 1 of Protocol No. 1 to the Convention, of the failure to enforce the final judgment in his favour in due time. 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 ... by [a] ... tribunal ...”.

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.”

The relevant part of 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.

...”

23. The applicant finally complained, under Article 14, that he was not given translations into Russian of certain documents, such as the judgment of 8 December 2003. Article 14 reads as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

I. ADMISSIBILITY

24. The Government submitted that the applicant had abused his right of individual petition. On 8 December 2004 he had been informed of the fact that the money for the enforcement of the judgment of 11 October 2004 was available in a bank account, but had preferred to lodge his application on 21 December 2004 and receive his money two days later.

25. With regard to the Government's submission concerning the alleged abuse, the Court considers that an application would not normally be rejected as abusive under Article 35 § 3 of the Convention unless it was knowingly based on untrue facts (see *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X; *Rehak v. the Czech Republic* (dec.), no 67208/01, 18 May 2004; and *Popov v. Moldova* (no. 1), no. 74153/01, § 49, 18 January 2005). On the basis of the material in its possession, the Court is unable to conclude that the applicant has based his allegations on information which he knew to be untrue. In fact, he could still complain of the failure to enforce a final judgment in his favour within six months from the date of enforcement, provided that the delay prior to such enforcement had been sufficiently long to raise an issue under Article 6 of the Convention. Accordingly, this objection must be rejected.

26. The applicant complained of discrimination contrary to Article 14 of the Convention as a result of the refusal to give him translations into Russian of the decision of 8 December 2003 and of other documents. The Court notes, however, that this complaint was lodged on 21 December 2004, that is, more than a year after he was allegedly not given translations of the relevant documents. This complaint was thus introduced outside the time-limit set by Article 35 § 1 of the Convention and must be rejected as inadmissible pursuant to Article 35 § 4 of the Convention.

27. The Court considers that the applicant's complaints under Articles 6 § 1 and 13 of the Convention, as well as under Article 1 of Protocol No. 1 to the Convention, raise questions of law which are sufficiently serious that their determination should depend on an examination of the merits. 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 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

28. The applicant complained that the failure to comply with the judgment of 22 October 2001 in due time had amounted to a violation of

Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention.

29. The Government submitted that the authorities had taken all the necessary steps to enforce the judgment and had duly informed the applicant that the judgment had in fact been enforced (see paragraphs 15-17 above). The second judgment in favour of the applicant (adopted on 11 October 2004), was enforced even before the applicant had sent the warrant for enforcement on 11 January 2005. There could be no doubt, in view of the number of the enforcement warrant mentioned in the payment made on 23 December 2004, that it was that judgment that had been enforced on that date. Moreover, a new Enforcement Code had entered into force on 1 July 2005, describing in detail the enforcement process and not allowing any derogation or delay in the process.

30. The Court observes that the parties disagree as to whether or when the judgment of 22 October 2001 was fully enforced. It notes that, in accordance with that judgment, the Ministry of Internal Affairs was obliged to recalculate the applicant's pension with effect from 1 July 1993 and until the date of adoption of the judgment (see paragraph 11 above). It also notes that in one of the court actions which the applicant lodged subsequently he asked for the correct calculation of his pension for the same period and that the court partly allowed his claim and made a monetary award in his favour (see paragraph 19 above). The Court considers that had the judgment of 22 October 2001 been fully enforced, as argued by the Government, the applicant would have obtained the entire amount due to him for the period starting on 1 July 1993. However, the fact that a court had to make an additional award for the same period and in respect of the same pension rights in 2004 confirms that the applicant did not obtain his entire pension before the judgment of 2004. This conclusion is consistent with the letter from the debtor itself sent on 17 March 2003, according to which the Ministry did not have sufficient money in its accounts to enforce the applicant's warrant (see paragraph 14 above). Finally, the Government expressly acknowledged that enforcement of the judgment of 22 October 2001 had taken place on 23 December 2004 (see paragraph 29 above).

31. The Court concludes that the judgment in favour of the applicant was not fully enforced at least until 23 December 2004.

32. The Court notes that it has found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to 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).

33. 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. In particular, it reiterates the principle stated in *Prodan* (cited above, § 53) that:

“it is not open to a State authority to cite lack of funds ... as an excuse for not honouring a judgment. Admittedly, a delay in the execution of a judgment may be justified in particular circumstances. But the delay may not be such as to impair the essence of the right protected under Article 6 § 1 of the Convention”

34. Accordingly, for the reasons given in the cases cited above, the Court finds that the failure to enforce the judgment of 22 October 2001 within a reasonable time constitutes a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 TAKEN IN CONJUNCTION WITH ARTICLE 6 § 1 OF THE CONVENTION

35. The applicant further complained that he had no effective remedies in respect of his complaint under Article 6 § 1 of the Convention.

36. The Government argued that the applicant had at his disposal remedies in respect of his complaint under Article 13, such as requesting the initiation of administrative or criminal proceedings against the person responsible for non-enforcement.

37. The Court observes that the applicant's complaints to the effect that the refusal to enforce the judgment in his favour infringed his rights under Article 6 were undoubtedly arguable (see paragraph 34 above). The applicant was therefore entitled to an effective remedy within the meaning of Article 13. Accordingly, the Court will examine whether such a remedy was available to the applicant.

38. The Court notes that the judgment in favour of the applicant was not enforced until more than three years after it had been adopted. The debtor in this case was a Ministry. Moreover, despite the many attempts by the applicant to speed up the enforcement of the judgment and to have those responsible for the failure to enforce prosecuted, there was no improvement in the situation for over three years.

39. It is thus apparent that the applicant had no remedy to either prevent the continuation of the violation of his rights guaranteed under Article 6 § 1 of the Convention or to obtain compensation. There has accordingly been a violation of Article 13 taken together with that Article (see *Romashov v. Ukraine*, no. 67534/01, § 47, 27 July 2004; *Voytenko v. Ukraine*, no. 18966/02, § 43, 29 June 2004; and *Botnari v. Moldova*, no. 19981/02, § 26, 19 June 2007).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed MDL 103,892 (approximately EUR 6,500) for pecuniary damage incurred as a result of the delay in obtaining his money.

42. The Government considered that the applicant could not claim any compensation in the absence of a violation of his Convention rights. In particular, since on 23 December 2004 he had obtained the remainder of the sum due to him under the judgment of 22 October 2001, he could no longer claim any additional compensation.

43. The Court notes that the Government acknowledged that the award in favour of the applicant was not enforced until more than three years after the date on which it became due (see the preceding paragraph). However, no compensation was paid to the applicant for the period during which he could not use his money. Accordingly, it awards him EUR 250 for the pecuniary damage caused.

B. Non-pecuniary damage

44. The applicant claimed EUR 300,000 in compensation for the non-pecuniary damage incurred as a result of the non-enforcement of the judgment in his favour. He stated that he had become ill and had suffered as a result of the constant need to ask the authorities for their cooperation.

45. The Government considered that the amount claimed was excessive in the light of the Court's case-law.

46. The Court considers that the applicant must have been caused a certain amount of stress and frustration as a result of the non-enforcement of the judgment, the more so given that he was deprived of a part of his pension, which constituted his only income. However, the amount claimed is excessive. Ruling on an equitable basis, the Court awards the applicant EUR 1,800 for non-pecuniary damage.

C. Costs and expenses

47. The applicant also claimed compensation for the costs and expenses incurred before the Court, leaving that issue to the Court's discretion.

48. The Government considered that no compensation was due.
49. The Court awards the applicant EUR 250 for costs and expenses.

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* inadmissible the complaint under Article 14 of the Convention, and the remainder of the application admissible;
2. *Holds* that there has been a violation of Articles 6 § 1 and 13 of the Convention, as well as of Article 1 of Protocol No. 1 to the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Moldovan lei at the rate applicable at the date of settlement:
 - (i) EUR 250 (two hundred and fifty euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 1,800 (one thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) EUR 250 (two hundred and fifty euros) in respect of costs and expenses;
 - (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 15 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President