



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

FOURTH SECTION

CASE OF BUCURIA v. MOLDOVA

(Application no. 10758/05)

JUDGMENT

STRASBOURG

5 January 2010

DÉFINITIF

05/04/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Bucuria 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 1 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 10758/05) 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 company registered in Moldova, Bucuria Inc. (“the applicant company”), on 4 January 2005.

2. The applicant company was represented by Mr O. Dorogan, a lawyer practising in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicant company alleged, in particular, that it had not been summoned to the hearing of the Supreme Court of Justice and that, as a result, it had suffered damage after losing the case.

4. The application was allocated to the Fourth Section of the Court. On 5 December 2006 a Chamber of that Section decided to give notice of the application to the Government. It 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.

6. On 25 November 2002 the applicant company dismissed M. from his job. On 20 December 2002 M. initiated court proceedings seeking his reinstatement.

7. After numerous postponements of the hearing at M.'s request, the Buiucani District Court found in his favour on 5 February 2004.

8. The applicant company appealed. On 22 April 2004 the Court of Appeal quashed the first-instance judgment and adopted a new one, rejecting all of M.'s claims. The court found that M. had not submitted any evidence to support his claim that on 1 November 2002, when he was absent from work, he had been at a close relative's funeral.

9. M. lodged an appeal in cassation. The first hearing before the Supreme Court of Justice was scheduled for 23 June 2004. On 18 June 2004 the applicant company informed the court that its representative would be away for the day and asked for a postponement of the hearing.

10. According to the applicant company, it did not hear from the court and thus did not submit its written reply to M.'s appeal, as it was waiting for a summons for a new date. On 15 July 2004 it enquired about the new date of the hearing. In response, it was informed that M.'s appeal had been examined on 7 July 2004 and fully allowed.

11. In its judgment, the court relied, *inter alia*, on evidence of M.'s presence at a close relative's funeral and on the trade union association's opposition to the dismissal.

12. Having examined the materials in the file, the applicant company found that its request for a postponement had been accepted by the court on 23 June 2004 and a new date for the hearing had been set for 7 July 2004. There was also a summons for that date, which had been signed only by M.

13. The applicant company lodged a request for revision of the judgment of the Supreme Court of Justice. It informed the court that it had not received any summons for 7 July 2004 and drew the court's attention to the absence in the file of any evidence regarding the delivery of the summons. It invoked Article 6 of the Convention.

14. On 27 October 2004 the Supreme Court of Justice rejected the request. It found that the court had sent the summons to the applicant company's address on 24 June 2004 and that the applicant company had failed to appear at the hearing on 7 July 2009 without informing the court. The court did not see any reason to believe that the applicant company had not received the summons since the stub from the summons proved that it

had been sent out and since “there was no evidence that the summons had not been received”. It added that, under Article 444 § 2 of the Code of Civil Procedure (CCP, see below), the failure of one of the parties to appear did not prevent the court from examining the case and that, under Article 449 CCP, the examination of the case in the absence of a party was not a ground for the revision of the judgment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. 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. The summons ... addressed to a legal person shall be served on the authorised employee and shall be countersigned on the receipt; if such a person is absent, the summons shall be served on another employee in the same conditions...”

“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 parties 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.”

16. 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.

17. In the following judgments adopted by the Supreme Court of Justice on 30 January 2008 (no. 2ra-3/08), 4 June 2008 (no. 2ra-1097/08) and 25 June 2008 (no. 2r-156/08), that 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

18. The applicant company complained of a violation of its 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.”

19. The applicant company also complained under Article 1 of Protocol No. 1 to the Convention that it had incurred losses as a result of the judgment of the Supreme Court of Justice adopted in its absence.

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. ...”

I. ADMISSIBILITY

20. The Court considers that the applicant company's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention raise 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 § 1 OF THE CONVENTION

21. The applicant company submitted that, despite the Government's arguments and evidence that the Supreme Court of Justice had sent it a summons, it had never received such a summons for the hearing of 7 July 2004, nor was there any evidence to that effect. The law provided, however, for an express obligation to serve the summons personally on the applicant company's representative (see paragraph 15 above).

22. The Government submitted that the applicant company had been properly summoned to the hearing, as confirmed by the documents concerning the sending of the letter by the Supreme Court of Justice. Moreover, it was for the applicant company to prove that it had not received the letter, and not for the authorities to prove that it had been received.

23. 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 clear legal provisions as interpreted by the Supreme Court of Justice itself (see paragraphs 15-17 above), the Court considers that the applicant company in the present case was not properly summoned to the hearing of 7 July 2004.

24. The Court also notes that the Supreme Court of Justice did not simply confirm the findings of the lower court, but overturned a judgment in favour of the applicant company. In such circumstances, it was important to hear the applicant company's representative, also in the light of the fact that the parties disagreed on a number of factual issues such as the presence of legitimate reasons for the employee's absence from work and the existence of a decision of the trade union regarding the dismissal (see paragraph 11 above).

25. In the light of the above, the Court concludes, for the reasons given in *Russu* (cited above, § 27), that the applicant company was not given an opportunity to fully present its case to the Supreme Court of Justice.

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

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

27. The applicant company also contended that its rights guaranteed by Article 1 of Protocol No. 1 to the Convention had been violated as a result of the decision of the Supreme Court of Justice of 7 July 2004.

28. The Government considered that the applicant company had not been deprived of its property, since the damages which it was eventually ordered to pay to its employee resulted from its own illegal actions.

29. The Court cannot speculate on the outcome of the proceedings had the Supreme Court of Justice heard the applicant company's representative. In this respect the present case must be distinguished from other cases where the courts fail to follow clear rules which leave no room for discretion (such as time-limits for various procedural acts, compare *Dacia SRL v. Moldova*, no. 3052/04, §§ 75 et seq., 18 March 2008).

30. There has, therefore, been no violation of Article 1 of Protocol No. 1 to the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant company claimed 38,798 Moldovan lei (2,482 euros (EUR)) for the pecuniary damage it had suffered as a result of the violation of its rights. It referred to the sums it had been ordered to pay by virtue of the judgments adopted against it.

33. The Government contended that the outcome of the proceedings, even with the participation of the applicant company's representative, could not be foreseen. There was therefore no causal link between the allegation of a failure to summon the applicant company to the hearing and the outcome of the proceedings.

34. The Court refers to its findings of a violation of Article 6 of the Convention in respect of the failure to summon the applicant company to the hearing of the Supreme Court of Justice. As it has already stated above, the Court will not speculate as to what the outcome of the hearing before the Supreme Court of Justice might have been if the applicant company had been properly summoned.

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

B. Non-pecuniary damage

36. The applicant company claimed EUR 10,000 in respect of non-pecuniary damage caused to it as a result of the gravity of the violations of its rights and the length of time during which its money had been withheld.

37. The Government disagreed and considered that the applicant company had not adduced any evidence to support its claim. Any damage caused to it had been the consequence of its own actions. In any event, a finding of a violation of any Articles of the Convention would offer sufficient just satisfaction.

38. The Court considers that the applicant company's management must have been caused a certain amount of stress and frustration as a result of the failure to summon its representative to the hearing of the Supreme Court of Justice. Deciding on an equitable basis, the Court awards the applicant company EUR 1,000 for non-pecuniary damage.

C. Costs and expenses

39. The applicant company did not claim any compensation on this account.

D. Default interest

40. 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 no violation of Article 1 of Protocol No. 1 to 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 1,000 (one thousand 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;
 - (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 5 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President