



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

1959 · 50 · 2009

THIRD SECTION

CASE OF PANZARI v. MOLDOVA

(Application no. 27516/04)

JUDGMENT

STRASBOURG

29 September 2009

FINAL

01/03/2010

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 Panzari v. Moldova,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President*,
Elisabet Fura, *appointed to sit in respect of Moldova*,
Corneliu Bîrsan,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Egbert Myjer,
Luis López Guerra, *judges*,

and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 8 September 2009, delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 27516/04) 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 Moldovan national, Ms Larisa Panzari (“the applicant”), on 15 June 2004.

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

3. The applicant alleged, in particular, that the proceedings in her case were excessively long, that the court adopted incorrect decisions and that the Supreme Court of Justice accepted a cassation request lodged by the other party to the proceedings outside the legal time-limit.

4. The application was allocated to the Fourth Section of the Court. On 21 May 2007 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.

5. On 4 November 2008 the Chamber delivered a judgment in which it unanimously declared the application partly admissible and held unanimously that there had been a violation of Articles 6 § 1 and 13 of the Convention concerning the length of proceedings.

6. On 6 April 2009, pursuant to a request by the applicant dated 22 January 2009, a panel of the Grand Chamber decided that the above-mentioned case be re-examined by one of the Court's Sections in a different composition. Subsequently, the application was allocated to the Third Section of the Court.

7. Judge Poalelungi, the judge elected in respect of Moldova, withdrew from sitting in the case (Rule 28 of the Rules of Court). On 22 April 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 16 June 2009, the President appointed Judge Fura to sit in the case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1968 and lives in Chişinău.

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

10. The applicant worked as a carpet maker for Floare-Carpet SA, a company registered in Chişinău ("the employer"). On 29 November 1999 she was declared to be a person with second degree disabilities by a specialised medical commission, which recommended that the applicant should stop working as a carpet maker as her working conditions were damaging her health.

11. Having submitted the relevant certificate to her employer, on 30 December 1999 the applicant was dismissed from her job on the grounds that she was no longer able to work as a result of her invalidity. She disagreed with the reason for her dismissal, claiming that this was not a valid legal reason. She asked her employer to issue her with a record of employment (*carnet de muncă*) giving a different reason for her dismissal, a document which she would have to produce if she applied for another job. On 31 January 2000 the employer issued her with a record of employment, which she claims was in the old format, contrary to the law.

12. On 7 February 2000 the applicant initiated court proceedings against the employer, asking for a modification of the reason for her dismissal, the issuing of a new record of employment and the payment of her salary and compensation for the entire period during which she had not been issued with a new record of employment.

13. On 11 February 2000 the Botanica District Court left her action without examination. On 10 May 2000 the Chişinău Regional Court quashed that decision and ordered the examination of her action.

14. On 15 June 2000 the Botanica District Court found against the applicant. On 15 November 2000 the Chişinău Regional Court quashed that judgment and adopted a new one, partly admitting the applicant's claims and awarding her compensation. On 31 January 2001 the Court of Appeal

quashed the judgments of the lower courts and ordered a full re-trial of the case.

15. On 31 March 2001 the Botanica District Court found for the applicant and awarded her compensation. On 9 September 2003 the Chişinău Court of Appeal partly quashed that judgment and adopted a new one, ordering the employer to issue the applicant with a new record of employment, and in addition to pay her compensation in the amount of 26,817 Moldovan lei (MDL) (1,755 euros (EUR) at the time).

16. On 7 November 2003 the employer lodged an appeal in cassation, asking the court to reject the applicant's claims. It also requested the court to accept its right to lodge the appeal despite having missed the 15-day time-limit established by law, because it had not participated at the court hearing of 9 September 2003 and had only been informed of the judgment by mail on 16 October 2003.

17. On 4 February 2004 the Supreme Court of Justice accepted the employer's appeal and quashed the lower courts' judgments, rejecting all of the applicant's claims. The court found that there was clear evidence of the applicant's refusal to take her record of employment on the day of her dismissal (30 December 1999), as well as of the fact that on 31 January 2000 she had taken her record of employment. The employer had therefore not been responsible for any delay in issuing her record of employment.

II. RELEVANT DOMESTIC LAW

18. The relevant provisions of the new Code of Civil Procedure read:

“Article 192

(1) Court actions shall be examined by the first-instance court within a reasonable time. The criteria for determining the reasonable length of the proceedings include: the complexity of the case, the conduct of the parties to the proceedings and the conduct of the court. The observance of the reasonable time requirement in examining cases shall be ensured by the court. In examining a specific case, the observance of the reasonable time requirement shall be verified by the higher courts when examining the case in the relevant form of appeal.

(2) Court actions regarding ... work related claims ... shall be examined urgently and on a priority basis.”

“Article 434

An appeal in cassation may be lodged within 15 days from the date when the judgment was adopted or, in case of subsequent drafting of the text, from the date when the parties have been informed in writing about the signing of the drafted judgment. An appeal in cassation lodged within 2 months from the date of adoption of the judgment or of informing the parties about it shall be considered as lodged within the time-limit. ”

19. Article 305 of the old Code of Civil Procedure, in force before 12 June 2003, reads as follows:

“The time-limit for lodging an appeal in cassation is 15 days from the date of the judgment, if the law does not provide otherwise”.

THE LAW

20. The applicant complained of a violation of the rights guaranteed to her by Article 1 of the Convention because “the national courts and the defendant State have not observed the applicant's rights under the Convention”.

Article 1 reads as follows:

“The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention.”

21. The applicant also complained of the excessive length of the proceedings in her case, the examination of an appeal in cassation lodged by the employer outside the legal time-limit and the adoption of incorrect judgments by the domestic courts, 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 within a reasonable time by an independent and impartial tribunal established by law.”

22. The applicant further complained of a breach of Article 13 taken in conjunction with Article 6 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.”

23. The applicant finally complained of a violation of Article 14 of the Convention and of Protocol No. 12 thereto resulting from a discriminatory application of the law to her case. 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.”

Article 1 of Protocol No. 12 to the Convention reads as follows:

“1. The enjoyment of any right set forth by law 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.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.”

I. ADMISSIBILITY

24. The applicant complained of a breach of Article 1 of the Convention. The Court considers that this complaint is merely a generalisation of the applicant's other complaints. It will not examine this complaint separately.

25. The applicant also complained of the incorrect application of the law by the domestic courts. The Court reiterates that while Article 6 § 1 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see, *mutatis mutandis*, *Schenk v. Switzerland*, 12 July 1988, § 46, Series A no. 140, and *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). It does not find any reason to find that the judgments in the present case were tainted by arbitrariness. 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.

26. The applicant further complained of the examination by the Supreme Court of Justice of the appeal in cassation which was lodged outside the legal time-limit of 15 days. The Court notes that while the old Code of Civil Procedure provided for a 15-day time-limit for lodging an appeal in cassation (see paragraph 19 above), the law in force at the time when the applicant's employer lodged its appeal in cassation provided for a two-month time-limit (see paragraph 18 above). That appeal was lodged after less than a month and was therefore within the legal time-limit. In such circumstances, the Court finds that the appeal was examined in full compliance with the domestic law. 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.

27. The applicant also complained about a discriminatory application of the law in her regard, by refusing to apply the law correctly in her case and ignoring self-evident facts. The Court considers that this complaint merely reiterates that made under Article 6 regarding the fairness of the proceedings as a whole and, as such, is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

28. In so far as the applicant's complaint under Article 6 of the Convention regarding the length of the proceedings is concerned, as well as the complaint under Article 13, the Court considers that they 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 OF THE CONVENTION

29. The applicant complained that the proceedings in her case, which lasted for four years despite clear legal provisions giving such cases priority, had been excessively long.

30. The Government submitted that the applicant had herself contributed to the length of the proceedings by asking on 12 occasions for a postponement of court hearings. Moreover, the case was somewhat complex and there was no significant period of inactivity of the courts in examining the case.

31. 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 *Cravcenko v. Moldova*, no. 13012/02, § 44, 15 January 2008).

32. As concerns the complexity of the case, the Court notes that the domestic courts did not ask for an expert's report, technical evidence or other evidence of a time-consuming nature. The evidence on which the courts eventually relied (documents and two witness statements) were available to the courts from the very beginning and referred to the rather straightforward issue as to whether the applicant had refused to accept the record of employment from her employer. The Court concludes that the length of the proceedings cannot be explained in terms of their complexity.

33. As for the applicant's conduct, the Court notes that the Government did not submit any evidence to support their contention that the applicant had repeatedly asked for a postponement of the hearings. However, even assuming that such requests were indeed made, they could not, in themselves, explain the four-year delay in examining the case.

34. 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, it was considered by the courts on three occasions (see paragraphs 13 and 14 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).

35. As to what was at stake for the applicant, the Court notes that the proceedings concerned a very important issue for the applicant, namely her employment. The legislator confirmed the particular importance of such proceedings to employees by expressly providing in the legislation for the urgent examination of employment disputes on a priority basis (see paragraph 18 above). The Court reiterates that an employee who considers that he or she has been wrongly suspended or dismissed by his or her employer has an important personal interest in securing a judicial decision on the lawfulness of that measure promptly, since employment disputes by their nature call for expeditious decision, in view of what is at stake for the person concerned, who through dismissal loses his means of subsistence (see, among other authorities, *Guzicka v. Poland*, no. 55383/00, § 30, 13 July 2004; *Orel v. Slovakia*, no. 67035/01, § 58, 9 January 2007; and *Cravcenco v. Moldova*, cited above, § 57).

36. In the light of the above, including the repeated re-examination of the case in the absence of any particular complexity, taking into account the overall length of the proceedings in an employment case, and having regard to what was at stake for the applicant, 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

37. The applicant complained of a lack of effective remedies in respect of her complaint concerning the length of the proceedings.

38. The Government considered that the applicant had not submitted sufficient arguments in respect of this complaint and asked the Court to reject it. They also referred to the power of the higher courts to verify the observance of the reasonable time requirement, as expressly provided for in Article 192 of the Code of Civil Procedure (see paragraph 18 above). The applicant did not ask the courts to carry out such verification.

39. The Court observes that the effect of Article 13 is to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their obligations under this provision (see *Chahal v. the United Kingdom*, 15 November 1996, § 145, *Reports of Judgments and Decisions* 1996-V). The remedy required by Article 13 must be “effective”, both in practice and in law. However, such a remedy is required only for complaints that can be

regarded as “arguable” under the Convention (see *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 137, ECHR 2001-XII).

40. The Court observes that the applicant's complaint regarding the excessive length of the proceedings contrary to Article 6 of the Convention was undoubtedly arguable (see paragraph 36 above). The applicant 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.

41. The Court notes that despite the power of the higher courts to verify observance of the reasonable time requirement, referred to by the Government, none of them exercised that power. The Court does not see the wording of Article 192 of the Code of Civil Procedure, cited above, as subjecting the courts' power of review of the reasonable time requirement to a party's request, and the Government did not submit any examples of domestic case-law to support such a view. It follows that, despite the existence of legal provisions allowing the courts to take action, nothing was done in the applicant's case and she did not have at her disposal any means for accelerating the proceedings or obtaining compensation. The Court therefore finds that the applicant did not have at her disposal an effective remedy in respect of her complaint about the length of the proceedings.

42. There has, accordingly, been a violation of Article 13 taken in conjunction with Article 6 § 1 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed MDL 1,581,726.65 (EUR 95,543) in compensation for pecuniary damage because she did not obtain her record of employment which would have allowed her to apply for another job and because she did not receive the compensation due to her upon her dismissal, plus a penalty for the delay in paying her the compensation.

45. The Government considered that the applicant should not be awarded any compensation for pecuniary damage.

46. The Court recalls that it has found a violation of Article 6 of the Convention in respect of the excessive length of the proceedings in the applicant's case and also a violation of Article 13 in conjunction with

Article 6. It did not find that the judgments adopted by the domestic courts had been arbitrary and did not question the final solution to the case given by the Supreme Court of Justice. Since the domestic courts rejected all of the applicant's claims as unfounded, the applicant could not have had an expectation of obtaining the compensation or other benefits which she had claimed domestically and on which she relies in making her claim for pecuniary damage before the Court.

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

B. Non-pecuniary damage

48. The applicant claimed MDL 500,000 (EUR 30,202) in compensation for non-pecuniary damage. She submitted that she felt humiliated, having to attend numerous court hearings and see several reversals of the decisions made in her case. She was made unemployed with small children to support and was not in a fit state to withstand a long court battle.

49. The Government disagreed and considered that the applicant had not adduced any evidence to support her claim. Any damage caused to her was the result of her own actions. In any event, a finding of a violation of any Articles of the Convention would offer sufficient just satisfaction.

50. The Court considers that the applicant must have been caused a certain amount of stress and frustration as a result of the delay in the proceedings, considering the importance of the proceedings to her. Deciding on an equitable basis, the Court awards her EUR 1,000 for non-pecuniary damage.

C. Costs and expenses

51. The applicant claimed MDL 33,000 (EUR 1,993) for legal costs and MDL 2400 (EUR 145) for translation expenses. She relied on a contract with her lawyer concerning the domestic proceedings and another one concerning the proceedings before the Court.

52. The Government considered that these amounts were exaggerated and unsubstantiated, given the absence of any documentary evidence of actual payment to the applicant's lawyer and of the not very complex character of the case.

53. The Court recalls 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). According to Rule 60 § 2 of the Rules of Court, itemised particulars of claims made are to be

submitted, failing which the Chamber may reject the claim in whole or in part.

54. In the present case the Court takes note of the contracts concluded by the applicant with her lawyer, according to which she is obliged to pay for her representation. It also notes that the lawyer has carried out work on the case and submitted observations. However, it considers that the amount claimed is excessive. Regard being had to the relative lack of complexity of the case and the issues dealt with, but also to the volume of the materials which had to be dealt with, the Court awards the applicant EUR 745 for costs and expenses.

D. Default interest

55. 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* admissible the applicant's complaints under Articles 6 § 1 and 13 of the Convention concerning the length of proceedings, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 of 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 and EUR 745 (seven hundred and forty-five 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 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 29 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Deputy Registrar

Josep Casadevall
President