CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF CROITORU v. MOLDOVA

(Application no. 18882/02)

JUDGMENT

STRASBOURG

20 July 2004

FINAL

20/10/2004

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 Croitoru v. Moldova,

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

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mr J. CASADEVALL,
Mr S. PAVLOVSCHI,
Mr J. BORREGO BORREGO,
Mrs E. FURA-SANDSTRÖM,
Mrs L. MIJOVIĆ, *judges*,
and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 29 June 2004,

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

PROCEDURE

1. The case originated in an application (no. 18882/02) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Moldovan national, Mrs Iulia Croitoru ("the applicant"), on 14 March 2002.

2. The applicant was represented by Mrs L. Iabangi, acting on behalf of "Helsinki Committee for Human Rights in Moldova", a non-governmental organisation based in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr V. Pârlog.

3. The applicant complained that the failure to enforce the judgment of 30 October 2000 violated her right to have her civil rights determined by a court guaranteed by Article 6 of the Convention and her right to peaceful enjoyment of her possessions guaranteed by Article 1 of Protocol 1 to the Convention.

4. The application was allocated to the Fourth Section of the Court. On 4 February 2003 a Chamber of that Section decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Mrs Iulia Croitoru, is a Moldovan national, who was born in 1938 and lives in Chişinău.

6. In 2000 she lodged with the Chişinău District Court a civil action against the Ministry of Finance. She sought compensation in connection

with her parents' deposits in the Savings Bank on the basis of a decision of Parliament of 29 July 1994 to revalue the savings of citizens in the Savings Bank in compensation for losses caused by inflation.

7. On 30 October 2000 the Rîşcani District Court awarded the applicant compensation in the amount of 2,940 Molodvan lei (MDL) (the equivalent of 287.51 euros (EUR) at the time). No appeal was lodged and the judgment became final. On the same day, the court issued an enforcement warrant and sent it to the State Treasury for enforcement. However, enforcement was refused because of a lack of funds in the account of the Ministry of Finance.

8. Throughout 2001 the applicant complained about the non-enforcement of the judgment to the Rîşcani District Court and the Ministry of Justice. In a letter of 26 January 2001 the Ministry requested the District Court to enforce the judgment and to inform the applicant about the outcome of the enforcement proceedings. In a letter of 26 March 2001 the President of the Rîşcani District Court informed the applicant that the enforcement warrant issued in respect of its judgment of 30 October 2000 had been forwarded to the Ministry of Finance for enforcement. On 9 February 2001 the Vice-Minister of Finance informed the President of the District Court that the judgment could not be enforced, as no funds had been provided for the enforcement of judgments in the annual State budget.

9. The judgment of 30 October 2000 was enforced on 22 April 2003, following communication of the application to the Government by the Court on 4 February 2003.

II. RELEVANT DOMESTIC LAW

10. The relevant provisions of the Code of Civil Procedure, in force at the material time, stated:

> **"Article 336. The decisions of the courts and other authorities susceptible to enforcement**
>
> The following are the acts which have to be enforced in accordance with the provisions of the present Code: 1) Civil law judgments, orders and decisions adopted by the courts...
>
> **Article 338. The issuance of the enforcement warrant**
>
> The enforcement warrant is issued by the court to the creditor, after the judgment has become final, except for cases of immediate enforcement, when the enforcement warrant is issued immediately after the delivery of the judgment.
>
> **Article 343. The request to start the enforcement procedure**
>
> The bailiff starts the enforcement procedure at the request of the persons enumerated in Article 5 of the present Code. In cases provided for in the second

paragraph of this article, the bailiff starts the enforcement procedure following the judge's order.

Article 349. The supervision of enforcement of judgments

The supervision of the correct and prompt enforcement of judgments is conducted by the Department of Judgment Enforcement of the Ministry of Justice."

THE LAW

11. The applicant complained that her right to have her civil rights determined by a court was violated by the authorities' failure to enforce the judgment of 30 October 2000. She relied on Article 6 § 1 of the Convention, which in so far as relevant, reads as follows:

"1. In the determination of his civil rights and obligations ... everyone is entitled to a fair hearing ... by a tribunal ...."

12. The applicant further complained under Article 1 of Protocol 1 that, because of the non-enforcement of the judgment, her right to peaceful enjoyment of her possessions was violated. Article 1 of Protocol No. 1 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.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

I. ADMISSIBILITY OF THE COMPLAINTS

13. The Court considers that the applicant's complaints under Articles 6 § 1 and 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, and no other 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

14. The applicant maintained that the failure of the authorities to execute the judgment of 30 October 2000 violated Article 6 § 1 of the Convention. The Government did not dispute this.

15. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal; in this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 (see the *Hornsby v. Greece* judgment of 19 March 1997, *Reports* 1997-II, p. 510, § 40).

16. 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 (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74, ECHR 1999-V). In the instant case, the applicant should not have been prevented from benefiting from the success of the litigation, which concerned the payment of compensation.

17. The Court notes that the judgment favourable to the applicant remained unenforced for a period of two years and a half (until after the case had been communicated to the Government by the Court, on 4 February 2003).

18. By failing for some two and a half years to take the necessary measures to comply with the final judgment in the instant case, the Moldovan authorities deprived the provisions of Article 6 § 1 of the Convention of all useful effect.

19. 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

20. The applicant maintained that the failure of the authorities to execute the judgment of 30 October 2000 violated Article 1 of Protocol 1 to the Convention. The Government did not dispute this.

21. The Court reiterates that a "claim" can constitute a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention if it is sufficiently established to be enforceable (see the *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, § 59).

22. The Court notes that the applicant had an enforceable claim deriving from the judgment of 30 October 2000. It follows that the impossibility for the applicant to obtain the execution of the judgment until 22 April 2003, constituted an interference with her right to peaceful enjoyment of her possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 to the Convention.

23. By failing to comply with the final judgment the national authorities prevented the applicant from having her compensation paid and from enjoying the possession of her money. The Government have not advanced any justification for this interference and the Court considers that lack of funds cannot justify such an omission (see, *mutatis mutandis, Ambruosi v. Italy*, no. 31227/96, §§ 28-34, 19 October 2000).

24. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed EUR 98.36 for the pecuniary damage suffered as a result of the failure of the authorities to enforce the judgment. She maintained that this amount resulted from the devaluation of the amount awarded due to the high inflation rate between 2000 and 2003, when the judgment was enforced.

27. The Government considered excessive the amount claimed and left the appreciation of the pecuniary damage to the Court's discretion.

28. The Court considers that the applicant must have suffered pecuniary damage as a result of the non-execution of the judgment of 30 October 2000 and the devaluation of the non-enforced amount due to the high inflation rate of the national currency. It awards the applicant EUR 98.36 in this respect, plus any tax that may be chargeable.

B. Non-pecuniary damage

29. The applicant also claimed EUR 4,000 for non-pecuniary damage suffered as a result of the failure of the authorities to enforce the judgment.

30. The Government disputed her claim, arguing that it was excessive in light of the case-law of the Court. They stated that in some cases the mere fact of finding a violation was considered sufficient just satisfaction and that, in any event, in the case of *Burdov v. Russia* (no. 59498/00, ECHR 2002-III), the applicant was awarded EUR 3,000 for non-pecuniary damage.

31. In making awards for non-pecuniary damage, the Court takes into consideration such factors as the applicant's age, personal income, the period during which the judgment was not enforced and other relevant aspects.

32. 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, particularly given her precarious state of health as well as that of her husband (recognised being a "first degree" invalid) and the fact that her only income – the monthly state pension – was four times smaller than the non-enforced amount. It awards the applicant EUR 800 under this heading, plus any tax that may be chargeable.

C. Costs and expenses

33. The applicant claimed reimbursement in the sum of EUR 56.64 for legal fees and other relevant expenses. She presented a breakdown of these costs including the number of hours spent on her case by her legal representative. She also asked for compensation for the translation of her observations sent to the Court (5 pages at EUR 2.5 per page). The total costs and expenses claimed thus amounted to EUR 69.14.

34. The Government disputed this claim, stating that it was excessive and that the applicant had failed to prove the alleged legal costs or expenses. They also questioned the inclusion of the translation expenses into the compensation sought.

35. The Court recalls that in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for

example, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII).

36. According to Rule 60 § 2 of the Rules of Court, itemised particulars of all claims made are to be submitted, failing which the Chamber may reject the claim in whole or in part.

37. In the present case, the Court has noted the itemised list of costs submitted together with the relative lack of complexity of the case, it considers the level of cost claimed to be reasonable as to quantum and, accordingly, awards the applicant EUR 69.14, plus any tax that may be payable.

D. Default interest

38. 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 a violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds*
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 98.36 for pecuniary damage, EUR 800 for non-pecuniary damage, and EUR 69.14 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's claim for just satisfaction.

Done in English, and notified in writing on 20 July 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELENS-PASSOS	Nicolas BRATZA
Deputy Registrar	President