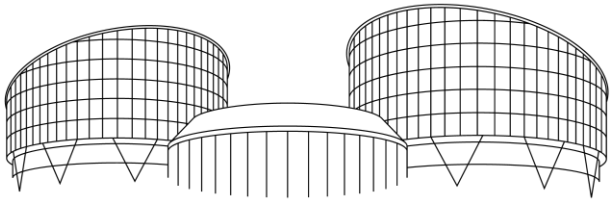

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF PANOV v. MOLDOVA

(Application no. 37811/04)

JUDGMENT

STRASBOURG

13 July 2010

FINAL

13/10/2010

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

In the case of Panov v. Moldova,

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

Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä,
Mihai Poalelungi, *judges,*

and Lawrence Early, *Section Registrar,*

Having deliberated in private on 22 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 37811/04) 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 Tatiana Panov ("the applicant"), on 18 August 2004.

2. The applicant was represented by Mr I. Manole, 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 a judgment in her favour was not enforced in breach of Articles 6 and 1 of Protocol No. 1 to the Convention.

4. The application was allocated to the Fourth Section. On 13 September 2006 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Ms Tatiana Panov, is a Moldovan national who was born in 1954 and lives in Chişinău.

6. Since the 1980s the applicant rented an apartment owned by the Municipality.

7. In 1989 the building in which the apartment was situated was damaged with the result that it was formally declared to be no longer fit for habitation. The Municipality therefore decided to provide all the inhabitants with other accommodation.

8. Between 1990 and 2000 the applicant requested the Municipality on numerous occasions to provide her with other accommodation, but to no avail.

9. On an unspecified date in 2000 the applicant instituted civil proceedings against the Municipality. On 19 February 2001 the Centru District Court granted the application and ordered that the applicant be provided with alternative accommodation. On 27 November 2001 the Court of Appeal upheld the judgment of the District Court and the judgment became final.

10. Since the final judgment was not complied with by the Municipality, the applicant lodged an action with the Centru District Court seeking a change in the manner in which the enforcement of the judgment was to be carried out. In particular, she claimed money from the Municipality in lieu of alternative accommodation.

11. On 22 July 2003 the Centru District Court upheld the applicant's action and ordered the Municipality to pay her the price of the apartment in the amount of 11,000 United States Dollars (USD). However, that decision was also not enforced. On 18 August 2004 the applicant lodged her application with the Court, complaining of the non-enforcement of the judgment of 22 July 2003. On 14 September 2004, the Centru District Court quashed the judgment of 22 July 2003 following a revision request lodged by the Municipality and reinstated the judgment of 19 February 2001.

12. The judgment of 27 November 2001 has not been enforced to date and the applicant continues to live in her old apartment.

13. According to the Government an apartment building in which the applicant's apartment will be located is currently under construction by the Chişinău Municipality.

THE LAW

14. The applicant complained that the non-enforcement of the final court judgment in her favour had violated her rights under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention.

Article 6 § 1 of the Convention, 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 ... within a reasonable time by a tribunal ...."

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. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 OF THE CONVENTION

15. On 12 October 2007 the Government submitted a unilateral declaration similar to that in the case of *Tahsin Acar v. Turkey* ((preliminary issue) [GC], no. 26307/95, ECHR 2003-VI) and informed the Court that they were ready to accept that there had been a violation of the applicant's rights under Article 6 § 1 and under Article 1 of Protocol No. 1 to the Convention. They further requested the Court to strike out the application in accordance with Article 37 of the Convention. The Government pointed out that their attempts to reach a friendly settlement with the applicant had failed.

The declaration provided as follows:

> "[The Government]:
>
> Recognise that the non-enforcement of the judgment of 19 February 2001 constituted a breach of the applicant's rights under Article 6 § 1 and Article 1 of Protocol No.1 to the Convention.
>
> ...
>
> The Government do not propose to award any pecuniary damage, having regard to the Court's relevant jurisprudence, notably its judgment in the case of *Curăraru v. Moldova*, no. 34322/02, 9 October 2007, and as the applicant lives in State-provided accommodation (even though the accommodation does not meet the necessary conditions, and as a consequence we have undertaken through the judgment concerned to ensure that the applicant be provided with alternative suitable accommodation). Moreover, the applicant has not provided evidence that she incurred pecuniary damage by renting any other accommodation during the period of non-execution.
>
> As concerns non-pecuniary damage, having regard to the Court's jurisprudence in similar cases, in particular its judgment in *Mizernaia v. Moldova*, no. 31790/03, 25 September 2007 and taking into consideration the age of the applicant, the Government propose an award of EUR 2500, which will be payable within three months of the date of a decision taken by the European Court of Human Rights to strike the application out.

As regards costs and expenses, the Government propose to award the applicant EUR 500. Furthermore, all other expenses incurred by the applicant in relation to the instant proceedings (fax, photocopy, mail) will be reimbursed to the applicant on presentation of receipts."

16. In a letter dated 26 January 2008 the applicant replied to the Government's unilateral declaration proposal. The applicant pointed out that the judgment of 22 July 2003 awarding her USD 11,000 was the market value of an apartment in Chişinău at the time. She therefore contended that she should be awarded the current market value of a property in Chişinău for pecuniary damage in the sum of EUR 35,005, which was the equivalent of the USD 11 000 (EUR 7,499) awarded to her by the judgment of 22 July 2003, and an additional 27,506 EUR to cover the inflated real cost of an apartment at the time of her letter. She also claimed EUR 10,000 in non-pecuniary damage. At the same time the applicant did not contest the fact that the judgment of 22 July 2003 had been quashed.

17. The Court refers to the principles established in its case-law (see, for instance, *Melnic v. Moldova*, no. 6923/03, §§ 20-31, 14 November 2006) regarding the examination of unilateral declarations. In particular, it will "depend on the particular circumstances whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (Article 37 § 1 *in fine*)".

18. The Court reiterates the principle set out in *Former King of Greece and Others v. Greece* ([GC] (just satisfaction), no. 25701/94, § 72, 28 November 2002) according to which a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach. The same principle was later reiterated in the Moldovan leading case concerning non-enforcement of final judgments (see *Prodan v. Moldova*, no. 49806/99, § 70, ECHR 2004-III (extracts). The Court is of the opinion that this principle is also applicable in cases such as the present one, where a Government seek to obtain a strike-out decision by means of a unilateral declaration.

19. In the light of the circumstances of the case, the Court is not convinced that the reparation proposed by the Government would "put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach". In particular, the Court notes that in admitting that there has been a violation of Articles 6 § 1 and 1 of Protocol No. 1 to the Convention, the Government have only proposed compensation for non-pecuniary damage and costs and expenses. As to the problem of enforcement of the judgment of 27 November 2001 they did not come up with any reasonable solution. It therefore considers that respect for human rights as defined in the

Convention and its Protocols requires the Court to continue its examination of the case (see, by contrast, *Akman v. Turkey* (striking out), no. 37453/97, §§ 23-24, ECHR 2001-VI).

20. That being so, the Court rejects the Government's request to strike the application out under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

II. ADMISSIBILITY OF THE CASE

21. The Court considers that the applicant's complaints 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 the complaints.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

22. The applicant complained that her rights guaranteed under the above Articles had been violated as a result of the failure to enforce the final court judgment in her favour.

23. The Government agreed with the applicant.

24. The Court 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 enforcing final judgments (see, among other authorities, *Prodan v. Moldova*, cited above, and *Lupacescu and Others v. Moldova*, nos. 3417/02, 5994/02, 28365/02, 5742/03, 8693/03, 31976/03, 13681/03 and 32759/03, 21 March 2006). It also found a breach of Article 1 of Protocol No. 1 in *Teteriny v. Russia*, no. 11931/03, 30 June 2005, where the State failed to enforce a judgment awarding a social tenancy to the applicants. In the light of the similarity between those cases and the present case and of the Government's admission, the Court finds that the failure to enforce the judgment of 27 November 2001 constitutes a violation of Article 6 § 1 and 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 35,005 under the head of pecuniary damage, arguing that that was the price of a two-roomed apartment in Chişinău at the time of her claim.

27. The Government disputed the applicant's claim arguing that according to the judgment of 27 November 2001 the Municipality was ordered merely to rent out alternative accommodation to the applicant but not to transfer it into her property. Moreover, the applicant failed to submit any evidence of any pecuniary damage incurred as a result of the non-enforcement of the final judgment.

28. The Court agrees with the Government that according to the final judgment of 27 November 2007, the Municipality was ordered to rent out to the applicant alternative accommodation. Therefore, the applicant's claim to be paid the value of a two-roomed apartment has no legal basis and should be dismissed.

29. The Court sees no reason to doubt that the Government will put an end to the violation found above. In this respect the Court points out that under Article 46 of the Convention the High Contracting Parties have undertaken to abide by the final judgments of the Court in any case to which they were parties, execution being supervised by the Committee of Ministers. It follows, among other things, that a judgment in which the Court finds a breach imposes on the respondent State, *inter alia*, to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects (see, by analogy, *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII). The Court therefore leaves it to the Committee of Ministers to ensure that the Moldovan Government, in accordance with its obligations under the Convention, adopts the necessary measures consistent with the Court's conclusions in the present judgment.

B. Non-pecuniary damage

30. The applicant claimed EUR 10,000 in respect of non-pecuniary damage.

31. The Government argued that the amount claimed was excessive and submitted that the applicant could only claim a maximum amount of EUR 2,000.

32. The Court considers that the applicant must have been caused a certain amount of stress and frustration as a result of the violations found above. Deciding on an equitable basis, the Court awards the applicant EUR 4,000 for non-pecuniary damage.

C. Costs and expenses

33. The applicants did not make any claim.

D. Default interest

34. 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. *Rejects* the Government's request to strike the application out of the list of cases;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

5. *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 4,000 (four thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President