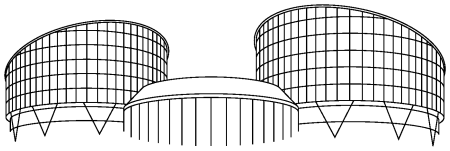

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF BOTEZATU v. THE REPUBLIC OF MOLDOVA

(Application no. 17899/08)

JUDGMENT

STRASBOURG

14 April 2015

FINAL

14/07/2015

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

In the case of Botezatu v. the Republic of Moldova,

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

Josep Casadevall, *President*,
Luis López Guerra,
Ján Šikuta,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges*,
and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 24 March 2015,

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

PROCEDURE

1. The case originated in an application (no. 17899/08) 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 Radu Botezatu ("the applicant"), on 21 March 2008.

2. The applicant was represented by Mr L. Osoian, a lawyer practising in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr L. Apostol.

3. On 10 November 2009 the application was communicated to the Government following the adoption of the pilot judgment in the case of *Olaru and others* (*Olaru and Others v. Moldova*, nos. 476/07, 22539/05, 17911/08 and 13136/07, 28 July 2009).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1978 and lives in Băcioi.

5. The applicant is a police officer and on 21 July 2004 the Centru District Court delivered a judgment obliging the Chișinău municipality to provide him and his family with social housing. This judgment was upheld by the Chișinău Court of Appeal on 19 October 2004 and became final on 4 November 2004. Enforcement proceedings were instituted on 11 May 2005.

6. After the communication of the present case to the Government, on 2 August 2011, the applicant initiated court proceedings under Law no. 87 (see paragraph 12 below) seeking enforcement of the final judgment in his favour and compensation for non-pecuniary damage in the amount of 10,000 euros (EUR), for pecuniary damage in the amount of 129,700 Moldovan lei (MDL) (equivalent to EUR 7,886) (MDL 123,200 of which represented the rent he had paid from September 2004 to December 2011 for alternative accommodation and MDL 6,500 of which represented costs and expenses before the Court), and MDL 3,950 (EUR 240) as costs and expenses in domestic proceedings. In support of his claims in respect of pecuniary damage, the applicant submitted four lease contracts, each of them concluded for periods of less than three years.

7. In court, the Ministry of Finance disputed the validity of the lease contracts, arguing that they were fictitious because the landlady and the applicant were relatives, because the landlady had not applied for commercial registration (*patenta de intreprinzator*) to earn profits from lease, and because the contracts had not been registered with the tax authorities until 2011 and had never been registered in the land register.

8. On 30 November 2011 the Rîșcani District Court acknowledged that there had been a violation of the applicant's rights under Article 6 of the Convention and of Article 1 of Protocol No. 1 to the Convention resulting from the non-enforcement of the final judgment in his favour for over seven years. The court dismissed the arguments of the Ministry of Finance, holding that the lease contracts had been concluded for periods of less than three years and were therefore not subject to mandatory registration in the land register. The court also took the view that the landlady's failure to register promptly her lease profits and her commercial activity had resulted in penalties and taxes – which had been paid – but that this failure was anyway not imputable to the applicant and did not affect the validity of the contracts. The court awarded the applicant MDL 112,000 (equivalent to EUR 7,050) in respect of non-pecuniary damage and granted his claims in respect of pecuniary damage and for costs and expenses in full. The Ministry of Finance appealed.

9. On 29 February 2012 the Chișinău Court of Appeal upheld the appeal, quashed the first-instance judgment and delivered a new judgment, acknowledging a violation of the applicant's right under Article 6 of the Convention resulting from the non-enforcement of a final judgment for a period of 78 months (from 11 May 2005 to 30 November 2011). The court awarded the applicant MDL 36,000 (equivalent to EUR 2,270) in respect of non-pecuniary damage and MDL 8,965 (EUR 565) for costs and expenses. The court dismissed the applicant's claims in respect of pecuniary damage as unsubstantiated, arguing that the lease contracts had been ineffective vis à vis the State on the grounds cited by the Ministry of Finance (see paragraph 7 above) and cited Article 876 of the Civil Code. This judgment was final.

10. On 8 August 2012 the municipality issued the applicant with an occupancy voucher (*bon de repartiție*), entitling him to move into a new flat.

11. By a letter of 15 May 2014 the Government informed the Court that the final judgment in the applicant's favour had been enforced on 8 August 2012. The applicant did not dispute this.

II. RELEVANT DOMESTIC LAW

12. Law no. 87, which created a new remedy to address complaints concerning unreasonable length of proceedings and non-enforcement of final court decisions, entered into force on 1 July 2011. According to Law no. 87, anyone who considers himself or herself to be a victim of a breach of the right to have a case examined or a final judgment enforced within a reasonable time is entitled to apply to a court to obtain acknowledgment of such a breach and compensation. Section 1 of the Law lays down that the provisions of the Law should be interpreted and applied in accordance with the national law, the Convention and the Court's case-law. Section 5 of the Law states that if a breach of the right to have a case examined or a final judgment enforced within a reasonable time is found by a court, compensation in respect of pecuniary damage, non-pecuniary damage and costs and expenses must be awarded to the applicant. Further details of the Law are set out in this Court's decision in *Balan v. Moldova* (dec.), no. 44746/08, 24 January 2012.

13. Pursuant to Article 876 of the Civil Code, a real estate lease must be drawn up in written form. If the lease exceeds three years, it must be registered in the land register. Failure to comply with this rule renders the contract ineffective (*inopozabil) vis-à-vis* third parties.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

14. The applicant complained that the domestic authorities had failed to fully enforce the judgment of 19 October 2004. He relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, which provide, in so far as relevant:

Article 6

" 1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... within a reasonable time."

Article 1 of Protocol No. 1

"1. 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..."

A. Admissibility

15. The Government asked the Court to declare the application inadmissible because the applicant had lost his victim status after exhausting the remedy under Law no. 87. They observed that the Chișinău Court of Appeal had acknowledged a violation of the "reasonable time" principle and granted the applicant MDL 44,965 by way of compensation in respect of non-pecuniary damage and for costs and expenses, thus providing adequate redress for the breach of the Convention.

16. The applicant disagreed and argued that the domestic court had not expressly acknowledged the violation of his rights under Article 1 of Protocol No. 1 to the Convention, had not awarded him compensation in respect of pecuniary damage and for costs and expenses in full and that for this reason he had not lost his victim status.

17. The Court reiterates that a decision or measure favourable to the applicant is not, in principle, sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, for example, *Eckle v. Germany*, 15 July 1982, § 69 et seq., Series A no. 51; *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; and *Jensen v. Denmark* (dec.), no. 48470/99, ECHR 2001-X).

18. In the instant case it is true that the Chișinău Court of Appeal held that there had been a violation of the applicant's right under Article 6 of the Convention and that it awarded him some compensation. That said, the Court finds that the question of the applicant's victim status as regards the redress for the violation of his right is inextricably linked to the merits of the complaint. Therefore, it considers the two issues should be joined and examined together.

19. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

20. The applicant argued that the length of the enforcement proceedings in respect of the judgment in his favour had not satisfied the reasonable-time

requirement and had thus violated his rights under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention. He complained that the redress awarded by the domestic courts had been insufficient.

21. The Government acknowledged that there had been a violation of Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention. However, they argued that the redress awarded by the domestic courts had been sufficient and adequate. Without any valid evidence to substantiate the claims in respect of pecuniary damage, the Chișinău Court of Appeal could not have awarded compensation for such damage.

1. Principles established under the Court's case-law

22. The question of whether a person may still claim to be the victim of an alleged violation of the Convention essentially involves an *ex post facto* examination by the Court of his or her situation. As it has already held in other length-of-proceedings cases, the question of whether he or she has received reparation for the damage caused – comparable to just satisfaction as provided for under Article 41 of the Convention – is an important one. Regarding violations of the reasonable-time requirement, one aspect of sufficient redress which may remove a litigant's victim status concerns the amount awarded as a result of using the domestic remedy. The Court has already had occasion to indicate that an applicant's victim status may depend on the level of compensation awarded at domestic level on the basis of the facts about which he or she has complained before the Court (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 181 and 202, ECHR 2006-V).

23. In the case of *Scordino v. Italy (no. 1)*, the Grand Chamber held that when, in order to prevent or to put right violations of the "reasonable time" principle, Contracting States choose to introduce remedies of a compensatory nature, it might be easier for the domestic courts to refer to the amounts awarded at domestic level for other types of damage – such as personal injury, damage relating to a relative's death or damage in defamation cases – and to rely on their innermost conviction, even if that results in awards of amounts that are lower than those fixed by the Court in similar cases. However, the Court is required to verify whether the way in which the domestic law is interpreted and applied has produced consequences that are consistent with the principles of the Convention, as interpreted in the light of the Court's case-law. It points out that, especially for States that have effectively incorporated the Convention into their legal systems, a clear error in assessment by the domestic courts may also arise as a result of a misapplication or misinterpretation of the Court's case-law (see *Scordino*, cited above, §§ 182-192).

24. Where pecuniary damage is concerned, the domestic courts are clearly in a better position to determine the existence and quantum of such damage. However, in cases of non-enforcement of a judgment awarding

applicants a sum of money, or ownership or possession in respect of an asset, the Court has consistently concluded that the applicants must have suffered pecuniary damage as a result of their lack of control over their possessions and the denial to them of the possibility to use and enjoy those possessions (see *Prodan v. Moldova*, no. 49806/99, §§ 70-71, ECHR 2004-III (extracts)).

2. Application of the foregoing principles

25. The Court notes first that – according to the Government – the final judgment in the applicant's favour was enforced on 8 August 2012, when an occupancy voucher was issued to him. The applicant did not dispute this. Therefore, the judgment in the applicant's favour was enforced with a delay of 87 months.

26. The Court notes that the Chișinău Court of Appeal found on 29 February 2012 that the delay of 78 months (as calculated up to 30 November 2011) in the enforcement of the judgment in his favour had resulted in a violation of the applicant's right. Therefore, the first precondition, which is the acknowledgement of a violation by the national authorities, is not in issue. It remains to be ascertained whether the redress granted can be considered appropriate and sufficient.

27. As regards monetary compensation, the Court observes that the applicant obtained EUR 2,270 in respect of non-pecuniary damage but was not able to obtain any compensation in respect of pecuniary damage. The applicant submitted to the domestic courts documents (lease contracts and receipts) according to which he had spent EUR 7,500 on renting accommodation during the period from September 2004 to December 2011. The domestic court dismissed his claims as unsubstantiated because, they argued, the contracts were not binding for the State since they had not been registered in the land register.

28. The Court notes that none of the submitted lease contracts exceeded three years and that for this reason under domestic law (see paragraph 13) they do not appear to be subject to mandatory registration in the land register. Moreover, the Court sees no reason to depart from its finding in *Prodan* (cited above, §§ 70-71) and considers it clear that the applicant must have suffered pecuniary damage as a result of his lack of control over his possessions and the denial to him of the possibility of using and enjoying the social housing granted to him under a final judgment. These losses were sustained as a result of the non-execution of a final judgment for a period of 87 months. The failure of domestic courts to award compensation under this head is therefore manifestly unreasonable having regard to the Court's case-law.

29. In these circumstances, while it is true that the national authorities acknowledged the breach alleged in the present case, the applicant was not able to obtain adequate redress in respect of the delayed enforcement of the

judgment. Therefore, he may still claim to be victim within the meaning of Article 34 of the Convention in relation to the period during which the judgment remained unenforced. The Court thus dismisses the Government's preliminary objection concerning the applicant's victim status.

30. The Court notes that the fact that proceedings under Law no. 87 did not cause the applicant to lose his "victim" status constitutes an aggravating circumstance with regard to a breach of Article 6 § 1 for exceeding a reasonable time (see, *mutatis mutandis*, *Scordino*, cited above, § 225). The Court will therefore revert to this issue under Article 41.

31. For these reasons, and having regard to its case-law on the subject, the Court considers that in the instant case the failure to enforce the judgment in favour of the applicant for a period of 87 months constitutes a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant sought MDL 123,200 (equivalent to 8,161 euros (EUR) on the date when the claim was formulated) in respect of pecuniary damage to compensate him for the costs he had incurred for alternative accommodation from September 2004 to December 2011 plus the rent paid until the Court's judgment was delivered. In support of his claims, the applicant submitted lease contracts for that period, receipts signed by the landlady for MDL 123,200 which represented the rent paid in 2004-2011, and an addendum to the lease contract, according to which the amount of the monthly rent from 1 October 2011 onwards was MDL 2,500 (equivalent to EUR 162). The applicant also submitted evidence that the landlady had paid taxes and penalties on the rent received and that the lease contracts had been registered with the tax authorities.

34. The Government objected to the amount sought, arguing that it was not substantiated by valid evidence.

35. The Court notes that the applicant submitted lease contracts and receipts for the rent paid in 2004-2011 and an addendum to the lease contract for the period from 1 October 2011 onwards. Therefore, the Court awards the applicant EUR 9,461 for the pecuniary damage sustained.

B. Non-pecuniary damage

36. The applicant claims MDL 112,000 (equivalent to EUR 7,419 on the date when the claim was formulated) in respect of non-pecuniary damage.

37. The Government objected to the amount, arguing that the applicant had already received compensation before the domestic courts.

38. The Court notes that the applicant suffered non-pecuniary damage resulting from the delay of 87 months in the enforcement of the judgment in his favour. However it should be borne in mind that at domestic level the applicant had already obtained EUR 2,270 under this head in reference to a period of 78 months (see paragraph 9 above).

39. In the case of *Scordino* (cited above, §§ 268-269) the Grand Chamber stressed that the amount to be awarded in respect of non-pecuniary damage under Article 41 may be less than that indicated in its case-law where the applicant has already obtained the finding of a violation at domestic level and compensation by using a domestic remedy. Apart from the fact that the existence of a domestic remedy is fully in keeping with the subsidiarity principle embodied in the Convention, such a remedy is closer and more accessible than an application to the Court, is faster and is processed in the applicant's own language; it thus offers advantages that need to be taken into consideration.

40. The Court considers, however, that where an applicant can still claim to be a "victim" after making use of that domestic remedy, he or she must be awarded the difference between the amount actually obtained from the national authorities and an amount that would not be regarded as manifestly unreasonable compared with the amount awarded by the Court in analogous cases (see *Scordino (no. 1)*, cited above, §§ 268 and 269).

41. The applicant should also be awarded an amount in respect of stages of the proceedings that were not taken into account by the domestic courts in the reference period and where he can no longer take the case back before the domestic courts or the remaining length was not in itself sufficiently long to be regarded as amounting to a second violation in respect of the same proceedings.

42. Having regard to the characteristics of the domestic remedy chosen by the Republic of Moldova and the fact that, notwithstanding that remedy, the Court has found a violation, it considers, ruling on an equitable basis, that the applicant should be awarded EUR 1,300, plus any tax that may be chargeable on that amount.

C. Costs and expenses

43. The applicant also claimed MDL 1,700 (equivalent to EUR 112) for the costs and expenses incurred before the domestic courts and before the Court, representing secretarial expenses.

44. The Government objected to the amount, arguing that the applicant had already received compensation before the domestic courts.

45. Regard being had to the documents in its possession and to its case-law, and the fact that the applicant clearly incurred some secretarial expenses, the Court considers it reasonable to award him the sum of EUR 112 for incidental costs and expenses, plus any tax that may be chargeable on that amount.

D. Default interest

46. The Court considers it appropriate that the default interest rate 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. *Joins* to the merits the Government's preliminary objection concerning the applicant's victim status and *rejects* it;

2. *Declares* the application admissible;

3. *Holds* there has been a violation of Article 6 § 1 of the Convention and 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, the following amounts, to be converted into Moldovan lei, at the rate applicable at the date of settlement:
      (i) EUR 9,461 (nine thousand four hundred and sixty-one euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 1,300 (one thousand three hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 112 (one hundred twelve euros), plus any tax that may be chargeable to the applicant, 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;

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

Done in English, and notified in writing on 14 April 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Josep Casadevall
President