



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

FOURTH SECTION

**CASE OF DANILIUC v. MOLDOVA**

*(Application no. 46581/99)*

JUDGMENT

STRASBOURG

18 October 2005

**FINAL**

*18/01/2006*

*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 Daniliuc v. Moldova,**

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 27 September 2005,

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

**PROCEDURE**

1. The case originated in an application (no. 46581/99) against the Republic of Moldova lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Moldovan national, Ms Ecaterina Daniliuc (“the applicant”), on 19 November 1997.

2. The Moldovan Government (“the Government”) were represented by their Agent, Mr Vitalie Pârlog.

3. The applicant alleged, in particular, that her rights provided for by Article 6 § 1 of the Convention and by Article 1 of Protocol No. 1 to the Convention were violated because of the non-enforcement of two judgments favourable to her and because of the quashing of one of them following a request for annulment (*recurs în anulare*) by the Prosecutor General.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

6. On 27 April 2004 a Chamber of the Fourth Section decided to join the admissibility and merits of the case in accordance with Article 29 § 3 of the Convention.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1962 and lives in Costești.

*1. Proceedings concerning the enforcement of the judgment of the District Court of Ialoveni of 6 October 1995.*

8. In 1995, the applicant lodged with the Ialoveni District Court a civil action against Costești Municipal Council claiming compensation for alleged illegal acts.

9. On 6 October 1995, the Ialoveni District Court found in favour of the applicant and awarded her 675 Moldovan lei (MDL). No appeal was lodged and the judgment became final.

10. Between 1995 and 2003 the applicant complained on numerous occasions to different State bodies about the non-enforcement of the judgment of 6 October 1995.

11. On 11 March 2003, after the present case was communicated to the Government, the judgment of 6 October 1995 was enforced.

*2. Proceedings concerning the enforcement of the judgment of the District Court of Ialoveni of 16 September 1996.*

12. In 1996 the applicant lodged with the Ialoveni District Court a civil action against the Costești Municipal Council and a private agricultural enterprise.

13. On 16 September 1996, the Ialoveni District Court allowed the action in part and awarded the applicant MDL 20,960.

14. On 26 February 1998 the Chișinău Regional Court rejected the Costești Local Council's appeal for failure to pay the court fees. The judgment of 16 September 1996 became final.

15. In 1998, the applicant lodged an appeal on points of law in which she argued that the amount of compensation was insufficient.

16. On 18 August 1998, the Court of Appeal rejected the appeal and upheld the judgment of 16 September 1996.

17. On an unspecified date in 2000 the Prosecutor General's Office lodged with the Supreme Court of Justice a request for annulment of the judgments of 16 September 1996, 26 February 1998 and 18 August 1998.

18. On 17 May 2000 the Supreme Court of Justice allowed the Prosecutor General's appeal, quashed the judgments of 16 September 1996, 26 February 1998 and 18 August 1998 and ordered the re-opening of the proceedings.

19. The re-opened proceedings ended by a final judgment of the Ialoveni District Court of 2 December 2002 by which the applicant's application was struck out of the list of cases for failure to appear before the court.

## II. RELEVANT DOMESTIC LAW

20. The relevant domestic law has been summarised in *Prodan v. Moldova*, no. 49806/99, § 31, ECHR 2004-.... and in *Roşca v. Moldova*, no. 6267/02, § 16, 22 March 2005.

## THE LAW

21. The applicant complained that her rights provided for by Article 6 § 1 of the Convention had been violated by the authorities' failure to enforce in due time the judgments of 6 October 1995 and of 16 September 1996 and by the quashing of the final judgment of 16 September 1996 by way of a request for annulment by the Prosecutor General. She relied on Article 6 § 1 of the Convention which, insofar as relevant, provides as follows:

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

22. She also submitted that because of the non-enforcement of the judgments in her favour and of the quashing of the judgment of 16 September 1996 she was unable to enjoy her possessions, and thus that her right to protection of property under Article 1 of Protocol No. 1 to the Convention had been 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

### **A. Alleged violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention as a result of the quashing of the final judgment of 16 September 1996**

23. In a letter of 27 June 2005 the applicant complained about the quashing of the final judgment of 16 September 1996 by way of a request for annulment.

24. The Court recalls that “the quashing of a final judgment is an instantaneous act, which does not create a continuing situation, even if it entails a re-opening of the proceedings” (see *Frunze v. Moldova*, no. 42308/02, 14 September 2004). The quashing of the final judgment in this case took place on 17 May 2000. The six-month period started running from that date while the applicant submitted this complaint some five years later.

25. The complaint was therefore introduced outside the time-limit set down by Article 35 § 1 of the Convention and must be rejected as inadmissible pursuant to Article 35 § 4 of the Convention.

### **B. Non-exhaustion of domestic remedies**

26. The Government argued that the applicant had not exhausted all the domestic remedies available to her under domestic law, as required by Article 35 § 1 of the Convention. In particular, they submitted that it was open to the applicant to lodge a revision request under Article 449 (j) of the new Code of Civil Procedure.

27. The Court recalls that under Article 35 § 1 of the Convention normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, the *Akdivar and Others v. Turkey* judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1210, § 66).

28. It is noted that the new Code of Civil Procedure entered into force on 12 June 2003, while the alleged non-enforcement of the final judgments continued only until 17 May 2000 and 11 March 2003 respectively. In these circumstances the Court considers that this remedy was not available to the applicants at the time of the events complained of.

29. The Court is accordingly of the view that the application cannot be declared inadmissible for failure to exhaust domestic remedies. This objection must consequently be dismissed.

### C. Alleged abuse of the right of petition by the applicant

30. The applicant submitted that following the introduction of the present application with the Court, her family became the target of an intimidation campaign led by the Government. According to her, her husband was illegally charged with a criminal offence and taken to a psychiatric hospital for a medical examination. She was allegedly contacted by Government representatives who demanded the withdrawal of her application from the Court.

31. The Government stated that the applicant's submissions were untrue and defamatory and requested that the application be struck out of the list of cases because of its abusive character.

32. The Court considers that an application will not normally be rejected as abusive under Article 35 § 3 of the Convention on the basis that it was "offensive" or "defamatory" unless it was knowingly based on untrue facts. However, on the basis of the material in its possession, the Court is unable to conclude that the applicant has based her allegations on information which she knew to be untrue. Accordingly, this submission fails (see *Popov v. Moldova*, no. 74153/01, § 49, 18 January 2005).

### D. Conclusion on admissibility

33. The Court considers that the applicant's complaints under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention in respect of the non-enforcement of the final judgments 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 6 above), the Court will immediately consider the merits of these complaints.

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

34. The applicant complained under Articles 6 § 1 of the Convention about the refusal of the authorities to execute the judgments of the Ialoveni District Court of 6 October 1995 and 16 September 1996.

35. The Government submitted that in view of the quashing of the judgment of 16 September 1996 and of enforcement of the judgment of 6 October 1995 on 17 May 2000 and on 11 March 2003 respectively, there was no violation of Article 6 § 1 of the Convention.

36. The general principles which apply in cases of this type are set out in *Prodan v. Moldova* (cited above, §§ 52-53).

37. The Court notes that the Ialoveni District Court's judgment of 6 October 1995 remained unenforced until 11 March 2003. The period of delay to be taken into account began only on 12 September 1997, when the Convention entered into force with respect to the Republic of Moldova. However, in assessing the reasonableness of the delay which occurred after the date of entry into force of the Convention, account must be taken of delays which had already occurred before that date. The total period of delay in this case was over 7 years and 5 months, of which 5 years and 6 months falls within the temporal jurisdiction of the Court.

38. As regards the judgment of 16 September 1996, the Court notes that it was quashed by the judgment of the Supreme Court of Justice of 17 May 2000 and the proceedings were re-opened.

39. The Court observes that a similar situation has already been examined in the case of *Popov v. Moldova* (cited above), in which the Court found that the fact of the quashing of a final judgment did not exclude the State's responsibility for a prior failure to enforce the judgment within a reasonable period and consequently did not call into question the final nature of the judgment in question. Since the Government have failed to advance any grounds for distinguishing the present case, the Court finds no reason to depart from its decision in the *Popov* case.

40. The judgment of 16 September 1996 remained unenforced for a period of almost 2 years and 3 months after it became enforceable and before it was quashed.

41. The Court reiterates that it is not open to a State authority to cite lack of funds as an excuse for not honouring a judgment debt. 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 (see *Prodan v. Moldova*, cited above, § 53). In the present case, the Government have provided no plausible reasons for the long periods of delay in the enforcement of the judgments in question and the Court finds no justification for the delays which are found to have occurred.

42. The Court concludes that in failing for years to take the necessary measures to comply with the final judicial decisions in the instant case, the Moldovan authorities impaired the essence of the right protected under Article 6 § 1 and deprived the provisions of that Article of all useful effect.

43. 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

44. The applicant maintained that the failure of the authorities to execute the judgments of 6 October 1995 and 16 September 1996 violated Article 1 of Protocol No. 1 to the Convention.

45. The Government submitted that the applicant's rights under Article 1 of Protocol No. 1 to the Convention had not been violated.

46. 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 *Prodan*, cited above, § 59).

47. The Court notes that the applicant had enforceable claims deriving from the judgments of 6 October 1995 and 16 September 1996. It follows that the impossibility for the applicant to obtain the execution of the judgments until 11 March 2003 and 17 May 2000 respectively, 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.

48. The Government have not advanced any justification for this interference and the Court considers that lack of funds cannot justify such an omission (see *Prodan*, cited above, § 61).

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

### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicant claimed EUR 132,915,960 for pecuniary damage suffered as a result of the refusal of the authorities to enforce the judgment of 6 October 1995. She claimed that this amount would cover the lost profit calculated on the basis of a business plan elaborated by her for the breeding of pigs. She did not claim any pecuniary damage in respect of the non-enforcement of the judgment of 16 September 1996.

52. The Government considered the amount claimed by the applicant to be excessive and contested her method of calculation.

53. The Court considers that the applicant must have suffered pecuniary damage as a result of the non-execution of the final judgment of 6 October

1995, between 12 September 1997 and 11 March 2003, however it does not accept the applicant's method of calculation. Taking into consideration the average interest rate as indicated by the National Bank of Moldova for the period in question (see *Prodan*, cited above, § 73 *in fine*) and the circumstances of the case under consideration, the Court awards the applicant the total sum of EUR 100 for pecuniary damages.

### **B. Non-Pecuniary Damage**

54. The applicant claimed EUR 5,000,000 for non-pecuniary damage suffered as a result of the non-enforcement of the final judgment favourable to her.

55. She argued that the failure to enforce the final judgment of 6 October 1995 for a long period of time caused her stress and anxiety.

56. The Government disagreed with the amount claimed by the applicant.

57. The Court considers that the applicant must have been caused a certain amount of stress and frustration as a result of the late enforcement of the judgment of 6 October 1995 and of the impossibility to use her money for a period of more than six years. It awards her EUR 1,000 for non-pecuniary damage.

### **C. Default interest**

58. 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* inadmissible the complaints about the quashing of the judgment of 16 September 1996;
2. *Declares* admissible the remainder of the complaints;
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, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 100 (one hundred euros) for pecuniary damage and EUR 1,000 (one thousand euros) for 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 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 18 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELENS-PASSOS  
Deputy Registrar

Nicolas BRATZA  
President