



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

FOURTH SECTION

**CASE OF COOPERATIVA AGRICOLA SLOBOZIA-HANESEI
v. MOLDOVA**

(Application no. 39745/02)

JUDGMENT

STRASBOURG

3 April 2007

FINAL

03/07/2007

*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 Cooperativa Agricola Slobozia-Hanesei 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,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 13 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 39745/02) 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 Cooperativa Agricola Slobozia-Hanesei (“the applicant”), a company registered in Moldova, on 23 October 2002.

2. The applicant was represented by Mr G. Botezat, a lawyer practising in Ștefan Vodă. 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 26 April 2002 violated its right to have its civil rights determined by a court guaranteed by Article 6 of the Convention and its right to peaceful enjoyment of its possessions guaranteed by Article 1 of Protocol No. 1 to the Convention.

4. The application was allocated to the Fourth Section of the Court. On 24 September 2004 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.

5. The applicant and the Government each filed observations on the admissibility and merits of the case (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant, Agrarian Cooperative “Slobozia Hanesei”, is a Moldovan registered company. It is represented before the Court by Mr G. Botezat, a lawyer practising in Ștefan Vodă.

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

8. According to the statute of the State-owned company “Moldtranselectro” (“M.”), as modified on 7 November 2000, the company is empowered to consolidate the debts accumulated in the energy sector of Moldova and is responsible both for lodging claims against entities indebted to the former (State) energy companies and for paying the debts that those companies owed to third persons. This is regulated by Law no. 336 on the restructuring of the debt of energy sector companies (see paragraph 13 below). In a letter dated 26 February 2002 the National Agency for Energy Regulation (NAER) stated, *inter alia*, that in accordance with Law no. 336-XIV (“Law no. 336”, see paragraph 13 below) M. had acquired all debts and claims of legal persons in respect of Red Centru, a State-owned energy company which was privatised after 1999.

9. The applicant initiated court proceedings against M. and SA Red Centru as a third party. It claimed that SA Red Centru owed it 23,557 Moldovan lei (MDL) since 1999 and that its debts had become the debts of M. by virtue of Law no. 336. On 26 April 2002 the Chișinău Economic Court adopted a judgment by which M. was ordered to pay the applicant MDL 23,557 (1,943 euros (EUR) at the time). The court found that, in accordance with Article 6 of Law no. 336 both the debts of SA Red Centru and the debts owed to it had been transferred to M., as confirmed by an act of verification dated 8 February 2000. No appeal was lodged and the judgment became enforceable on 12 May 2002.

10. The applicant obtained an enforcement warrant which the Bailiff did not enforce. On 27 May 2002 it wrote to the Decision Enforcement Department of the Ministry of Justice requesting the execution of the judgment and the seizure of its debtor's property. On 1 September 2002 it wrote to “the Government” requesting the latter to take measures to execute the judgment. The applicant received no answer to any of these requests.

11. The judgment of 26 April 2002 has not been enforced to date. On 26 October 2006 the Parliament adopted the Law concerning the improvement of the economic-financial situation of the State Company “Moldtranselectro” by annulling certain obligations (no. 311-XVI). The law annulled a number of penalties resulting from delays in payments by M. towards the State budget.

II. RELEVANT DOMESTIC LAW

12. The relevant provisions of domestic law have been set out in this Court's judgment in the case of *Prodan v. Moldova* (no. 49806/99, ECHR 2004-III (extracts), § 31).

13. In addition, the relevant provisions of the Law on the restructuring of the debt of energy sector companies no. 336-XIV read as follows:

“Article 1

The following companies ... [RED Centru] ... shall be privatised without their debts older than 60 days owed to or claimable against third parties...

Article 3

Pending the [privatisation] of energy sector companies, the following debts shall be frozen:

2) of [list of energy sector companies] owed to the State company “Moldtranselectro”;

Article 5

Debts older than 60 days at the moment of [privatisation] of [private] companies owed to the energy sector companies which are to be privatised shall become debts owed to the State company “Moldtranselectro”.

Article 6

The Government

1) shall become the legal successor:

b) in the person of the State Enterprise "Moldtranselectro" - of credit indebtedness of the electricity sector enterprises undergoing privatisation more than 60 days overdue as of the date of signing contracts for the sale of the majority stake in their shares, except for arrears of wages, contributions (payments) to the state social insurance fund and the debt written off pursuant to Article 4, paragraph 1);

...3) shall formulate proposals identifying the sources of financing the difference between the debts owed to 'Moldtranselectro' and accumulated by it in accordance with Article 5 of the present law and of paragraph 1 b) of the present Article.”

THE LAW

14. The applicant complained that the failure to enforce the final judgment of 26 April 2002 had violated its rights guaranteed 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 PRELIMINARY OBJECTION

15. The Government submitted that the applicant was itself responsible for the non-enforcement of the judgment. In particular, they claimed that, following two unsuccessful attempts to enforce the judgment, a court had decided to return the enforcement warrant to the applicant without enforcement due to the debtor's lack of assets. However, the applicant did not re-submit the warrant during the following year as it was entitled to do by law.

16. The applicant submitted that its debtor M. was a State company, as confirmed by its statute, and that the State should be held responsible for its debts.

17. The Court observes that it would appear from its statute and Law no. 336 mentioned above that M., while enjoying a certain degree of legal and economic independence from the State, has assumed some of the latter's functions. In particular, it was responsible, at the relevant time, for claiming the debts owed by third parties to privatised energy sector companies and for paying, with the means so acquired, the debts owed by those privatised companies to third parties. It was thus an instrument employed by the Government in the privatisation of the State's energy sector and in settling any subsequent claims with third parties. In addition, Law no. 336 expressly stated that the Government, through the State company M., had become the legal successor of the debts of energy sector companies owed to third parties. The applicant had claimed such a debt from a privatised energy sector company (see paragraph 9 above).

18. Moreover, the Government had to identify additional sources of funding, should the sums accumulated from debts owed to privatised companies prove insufficient to pay the debts taken over by M. by virtue of Law no. 336 (see paragraph 13 above). In addition, further measures aimed at improving M.'s financial situation by annulling its penalties were taken in

2006 (see paragraph 11 above). Accordingly, the Court considers that the State has a significant control over M.'s assets, increasing them by entrusting M. with the right to exercise claims against third parties or providing additional funding and annulling its penalties, as well as giving third parties the right to direct their claims against M.

19. In view of the delegation of some State functions to M. (see paragraph 17 above) and of the significant control over M.'s assets (see paragraph 18 above), the Court considers that the State is to be held responsible for any debts incurred by M. (see, *mutatis mutandis*, *Mykhaylenky and Others v. Ukraine*, nos. 35091/02, 35196/02, 35201/02, 35204/02, 35945/02, 35949/02, 35953/02, 36800/02, 38296/02 and 42814/02, §§ 41-46, ECHR 2004-XII). Hence, the enforcement warrant in favour of the applicant may be considered as having been issued against the State itself.

20. The Court recalls that “a person who has obtained an enforceable judgment against the State as a result of successful litigation cannot be required to resort to enforcement proceedings in order to have it executed (see *Koltsov v. Russia*, no. 41304/02, § 16, 24 February 2005; *Petrushko v. Russia*, no. 36494/02, § 18, 24 February 2005; and *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). It follows that the Government's objection based on the failure of the applicant to re-submit the enforcement warrant cannot be accepted since the State had to ensure its enforcement when it was first submitted, if need be from its own funds.

21. In view of the above, the Court concludes that the application cannot be declared inadmissible for non-exhaustion of domestic remedies. Accordingly the Government's objection must be dismissed.

22. The Court considers that the applicant's complaints under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention raise questions of fact and 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 AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

23. The applicant complained that the non-enforcement to-date of the judgment in its favour had violated its right under Article 6 § 1 of the Convention to have its case examined “within a reasonable time”, since examination of a case does not end with the adoption of a judgment but must also include the period of its enforcement.

24. The applicant also complained that that non-enforcement had violated its right to property guaranteed by Article 1 of Protocol No. 1 to the Convention and had caused it considerable pecuniary and non-pecuniary damage.

25. The Government submitted that the authorities had taken all reasonable steps to ensure enforcement and could not be held liable for the debtor's lack of assets.

26. The Court refers to its finding (see paragraph 19 above) that the State is to be held responsible for the debts of M. It also recalls that 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. However, it 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 its litigation.

27. The issues raised under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention are identical to those found to give rise to violations of those Articles in *Prodan v. Moldova* (cited above, §§ 56 and 62) and *Sîrbu and Others v. Moldova* (nos. 73562/01, 73565/01, 73712/01, 73744/01, 73972/01 and 73973/01, § 40, 15 June 2004). There is no reason to depart from those findings in the present case.

28. There has, accordingly, been a violation of Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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. Damage

30. In its initial application, the applicant claimed the payment of MDL 23,557 representing the award which had not been enforced. It also claimed EUR 50,000 in compensation for non-pecuniary damage.

31. The Court notes that the applicant submitted its observations on the merits of the case and its just satisfaction claims outside the time-limit set. It finds that the applicant's lawyer's explanations for this delay are unpersuasive, namely that the lawyer understood that he had to come for a hearing in Strasbourg and, since he had been away and could not arrive in

time, he did not contact the Registry or take any other action in this regard. The Court decides not to award any compensation for any non-pecuniary damage caused.

32. However, in view of its finding that the authorities have not taken the necessary steps to ensure the enforcement of the judgment in the applicant's favour and that the judgment has still not been enforced, the Court finds that the applicant is still entitled to recover the judgment debt awarded in the domestic proceedings (EUR 1,943).

B. Costs and expenses

33. The applicant did not make any claim for costs and expenses.

C. 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. *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 the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,943 (one thousand nine hundred and forty three euros) in respect of pecuniary damage, to be converted into the 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 3 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly concurring opinion of Mr Pavlovschi is annexed to this judgment.

N.B.
T.L.E.

PARTLY CONCURRING OPINION OF JUDGE PAVLOVSKI

In the case under consideration I had no difficulty in finding a violation of Article 6 § 1 of the Convention, as the time taken to enforce the final judicial decision – about five years – was truly excessive.

As far as a violation of Article 1 of Protocol No. 1 to the Convention is concerned, the situation is less clear, and it was only after a great deal of hesitation that I decided to go along with the majority's position.

As a matter of principle, State-owned companies cannot be held liable for each other's debts, just as a State cannot be held liable for the debt of State-owned companies, which act independently of the State on the basis of private law. Of course there are some exceptions, for instance, in situations where a State assumes a State-owned company's debts, or where a State-owned company exercises State power or acts on behalf of the State, and so forth.

In the case before us it is of great importance to examine whether or not one or more of these exceptions are applicable to the applicant's situation and, more precisely, whether or not the Moldovan Government – in the person of the State enterprise “Moldtranselectro” – assumed responsibility for all the debts of the energy sector in Moldova.

In my view, there are two possible approaches to the problem of Article 1 of Protocol No. 1 in this case.

The first approach is a theoretical, legal one, based on law and the second approach is a formal approach based on the position of the national judicial authorities and representatives of the Moldovan Government.

If we take the legal approach, we will note the following. According to the judgment delivered by the Chişinău Economic Court on 26 April 2002 “...it is established that, in accordance with Article 6 of Law no. 336 of 1 April 1999, both the debts accumulated by [the energy sector] and the debts owed [to it] were transferred to SC “Moldtranselectro”, a fact confirmed by the verification act of 8 February 2000...” (See the Economic Court's judgment)¹.

Hence the Economic Court, in deciding to allow the applicant's claims and to oblige the State-owned company “Moldtranselectro” to pay the debts of SA Red Centru, made reference to Article 6 of Law no. 336 of 1 April 1999 as a legal basis for its decision.

We need to examine the exact terms of Article 6 of Law no. 336.

If we study the text of this law we will find the following provisions: “... The Government 1) shall become the legal successor: b) in the person of

¹ The original text of the judgment reads as follows – “...s-a constatat, ca conform Legii RM nr.336 din 1.04.99, art.6, datoriile atat debitoriale, cat si creditoriale, au fost transmise I.S. “Moldtranselectro”...”

the State Enterprise “Moldtranselectro” – of credit indebtedness [*datorii creditoriale*] of the electricity sector enterprises undergoing privatisation more than 60 days overdue as of the date of signing contracts for the sale of the majority stake in their shares...” (see paragraph 13 of the present judgment).

So Article 6 of Law no. 336 of 1 April 1999, to which reference is made, says nothing about debts accumulated by the energy sector as mentioned in the Economic Court judgment.

In its judgment the Economic Court did not mention whether SA Red Centru's debts *vis-à-vis* Cooperativa Agricola Slobozia-Hanesei were “debts accumulated by” it within the meaning of Law no. 336.

Here a short remark is called for. The terms “debts accumulated by” and “debts owed to” are book-keeping terms which, in my opinion, describe two absolutely different situations. In relation to the case before us, and in a very general sense, this means the following – the “debts accumulated by” “Moldtranselectro” are the debts that this company should pay to others, whereas the “debts owed to it” are the debts that this company should be paid by others. That is the difference.

Unfortunately, the Economic Court failed to make any distinction between these two notions and made “Moldtranselectro” responsible for debts which, in my opinion, are not covered by Article 6 of Law no. 336 of 1 April 1999. At the very least, it is not possible for me to find a clear answer to this question without the nature of these debts being determined. This, as I have mentioned, the Economic Court failed to do.

Moreover, even if we take the approach favoured by the Economic Court, we need to determine whether SA Red Centru's debts *vis-à-vis* the applicant were more than 60 days old since, according to the same law (Article 1) “... [Red Centru] ... shall be privatised without their debts older than 60 days owed to or claimable against third parties...” (see paragraph 13 of the present judgment).

If the debts were “older than 60 days” they should have been extinguished; if they were not “older than 60 days” they should have been paid. I regret to mention it, but the Economic Court judgment does not provide us with any answer to this question. Neither did the Government pay any attention to this issue.

So, if we take a legal approach to the problem before us, we must acknowledge that the State-owned company “Moldtranselectro” cannot be held liable for any of Red Centru's debts, for two main reasons:

1. “Moldtranselectro” succeeded to “debts owed to” the energy sector and not “debts accumulated by” it.
2. The applicant never claimed, nor did the Economic Court ever establish, that Red Centru's debts *vis-à-vis* Cooperativa Agricola Slobozia-Hanesei were not, in fact, “older than 60 days”.

International judicial decision-making is a very difficult and delicate process. There are many different factors that influence international judges in their decision-making.

In my view, the most difficult problem which a judge needs to solve is the problem of using his or her legal knowledge, experience and understanding of the national legal system in a situation where the information submitted by a party or parties runs counter to the judge's own understanding of the case.

To come back to the present case: in principle, in such a situation, I should have voted against finding a violation of Article 1 of Protocol No. 1 to the Convention. However, an international judge cannot act on the basis of his or her knowledge alone and, to some extent, is bound by the position submitted by the parties to the proceedings.

Since in the present case the representatives of the Moldovan Government failed to raise all the questions which I have mentioned above and since the Economic Court failed to have them analysed either, I find myself in a situation where I have no other option than to adopt a formal approach and vote together with the majority in finding, in the present case, a violation of Article 1 of Protocol No.1 to the Convention.