



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

FOURTH SECTION

CASE OF GRIVNEAC v. MOLDOVA

(Application no. 35994/03)

JUDGMENT

STRASBOURG

9 October 2007

FINAL

09/01/2008

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 Grivneac 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 L. GARLICKI,

Ms L. MIJOVIĆ, *judges*,

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

Having deliberated in private on 18 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 35994/03) 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 Mihai Grivneac (“the applicant”), on 12 September 2003.

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

3. The applicant complained that the failure to enforce the final judgment of 6 October 2000 in his favour had violated his right to have his civil rights determined by a court within a reasonable time, as guaranteed by Article 6 of the Convention, and his right to peaceful enjoyment of his possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention.

4. The application was allocated to the Fourth Section of the Court. On 9 December 2004 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 was born in 1946 and lives in Chisinau.

6. The facts of the case, as submitted by the applicant, may be summarised as follows.

7. The applicant initiated court proceedings against a private individual. On 6 October 2000 the Centru District Court awarded him 2,000 United States Dollars (USD). No appeal was lodged and the judgment became final and enforceable fifteen days later. He obtained an enforcement warrant, which the bailiff did not enforce.

8. In response to a request of the Centru District Court dated 22 December 2000, the Chişinău Land Register stated that the debtor did not have any real estate registered in Chişinău.

9. On 14 February 2001 a bailiff established that the debtor did not live at the address indicated by the applicant and that, accordingly, it was impossible to enforce the judgment.

10. On 6 March 2001 the debtor's wife paid the applicant USD 1,000.

11. On 16 March 2001 the Centru District Court ordered the local police to determine the debtor's whereabouts. On an unknown date a copy of the decision was sent to the local police station. On 3 February 2004 the police decided to take steps to locate the debtor. According to the police, the debtor cannot be found.

12. The judgment of 6 October 2000 has not been enforced to date.

II. RELEVANT DOMESTIC LAW

13. The relevant domestic law has been set out in *Prodan v. Moldova* (no. 49806/99, ECHR 2004-III (extracts)).

THE LAW

14. The applicant complained that the failure to enforce the final judgment of 6 October 2000 had violated his rights as guaranteed by Article 6 § 1 of the Convention.

Article 6, 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”

He also complained that the same failure to enforce had violated his rights under Article 1 of Protocol No. 1 to the Convention. This Article 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

The Government's preliminary objections

15. The Government submitted that the present application was inadmissible *ratione personae* because the debtor was a private individual and the State could not be held responsible for private debts when the whereabouts of the debtor were unknown.

16. The Court considers that this objection is closely linked to the substance of the applicant's complaints and that its examination should therefore be joined to the merits of the case.

17. The Government also considered that the application had been lodged with the Court outside the six-month time-limit established in Article 35 of the Convention.

18. The Court notes that the applicant's complaint does not concern any alleged unfairness of the proceedings, but rather the continuing failure to enforce the final judgment in his favour. It reiterates that “execution of a judgment given by any court must ... be regarded as an integral part of the “trial” for the purposes of Article 6” (see *Hornsby v. Greece* judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 510, § 40, and *Prodan*, cited above, § 52). Therefore, since the judgment in the applicant's favour has not been enforced to date, the six-month rule cannot be applied in respect of this application.

Accordingly, this objection must be rejected.

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

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

20. The Government submitted that the authorities had taken all reasonable steps to ensure the enforcement of the judgment and that the State could not be held responsible for the debtor's inability to pay.

21. The Court reiterates that while the execution of a judgment given by any court must be regarded as an integral part of the “trial” for the purposes of Article 6, that does not mean that a State can be held responsible for non-enforcement of a judgment debt which is due to the insolvency of the debtor (see *Sanglier v. France*, 50342/99, § 39, 27 May 2003). However, when the authorities are obliged to act in order to enforce a judgment and they fail to do so, their inactivity can engage the State's responsibility (see *Scollo v. Italy*, judgment of 28 September 1995, Series A no. 315-C, § 44; *Istrate v. Moldova*, no. 53773/00, §§ 55 and 61, 13 June 2006).

22. In the present case, the Court notes that after the judgment of 6 October 2000 had become final on 21 October 2000 the first action by the authorities to ensure enforcement was taken only two months later and was limited to verifying the debtor's ownership of immovable assets only in Chişinău (see paragraph 8 above). It took another two months for the bailiff to visit the debtor's home to establish that he was no longer there (see paragraph 9 above) and for the court to order that his whereabouts be determined (see paragraph 11 above).

23. Moreover, the Court notes that despite the order of the Centru District Court, the police started searching for the debtor only three years later (see paragraph 11 above). No explanation was given for these delays, which gave ample opportunity to the debtor to avoid the payment of his debt, such as selling any movable property he may have had or any immovable property outside Chişinău, transferring money from bank accounts to other persons or leaving the country. While it is not known whether the debtor had any assets at the time of the adoption of the final court judgment, this lack of information is the direct result of the failure of the authorities to act. In this respect, the Court reiterates that “the State has a positive obligation to organise a system for enforcement of judgments that is effective both in law and in practice and ensures their enforcement without any undue delay” (*Fuklev v. Ukraine*, no. 71186/01, § 84, 7 June 2005).

24. It follows that the State authorities did not take all reasonable steps to enforce the judgment debt in the applicant's favour and undermined, by their lack of action, any chances of enforcement at present. In view of the above, the State's responsibility for the failure to enforce the judgment debt

is engaged (see *Jenčová v. Slovakia*, no. 70798/01, § 29, 4 May 2006; *Istrate*, cited above, §§ 55 and 61). Accordingly, the Government's objection as to the Court's competence *ratione personae* is to be rejected.

25. 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). The applicant had an enforceable claim by virtue of the final judgment of 6 October 2000, and therefore a “possession”. It finds that the impossibility for the applicant to obtain the execution of the judgment debt, resulting from the inaction of the State authorities, constituted an interference with his right to peaceful enjoyment of his possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 to the Convention. By failing to take the necessary steps to have the judgment debt of 6 October 2000 enforced the national authorities prevented the applicant from enjoying or using the money. Having regard to its findings concerning Article 6, the Court considers that the Moldovan authorities failed to strike a fair balance between the applicant's interests and the other interests involved.

26. 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 the failure to enforce final judgments (see, among other authorities, *Prodan*, 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).

27. Having examined the material submitted to it, the Court notes that the file does not contain any element which would allow it to reach a different conclusion in the present case.

28. Accordingly, the Court finds, for the reasons given in those cases, that the failure to enforce the judgment of 23 April 1999 constitutes a violation of Article 6 § 1 of the Convention 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. The applicant claimed EUR 2,430 in compensation for the damage caused to him by the failure to enforce the final court judgment in his favour.

31. The Government considered that the amount claimed was excessive and unsubstantiated.

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 in his favour. However, the amount claimed is excessive. Ruling on an equitable basis, the Court awards the applicant EUR 1,500 under this head.

B. Costs and expenses

33. The applicant made no claims under this head.

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 of the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros) in respect of 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 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 9 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President