



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

FOURTH SECTION

CASE OF DECEV v. MOLDOVA

(Application no. 7365/05)

JUDGMENT

STRASBOURG

24 February 2009

FINAL

24/05/2009

This judgment may be subject to editorial revision.

In the case of Decev v. Moldova,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Ján Šikuta,

Mihai Poalelungi,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 3 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 7365/05) 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 Leonid Decev (“the applicant”), on 4 February 2005.

2. The applicant was represented by Mr Ștefan Urîtu, a lawyer practising in Chișinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr Vladimir Grosu.

3. On 20 November 2007 the Acting President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1950 and lives in Comrat.

5. On 29 November 2006, during a press conference, the Governor of the Gagauzia region of Moldova, Mr G.T., made a statement which the applicant considered defamatory. He instituted civil defamation proceedings against G.T. which ended on 19 December 2001 with a final judgment of the Court of Appeal in his favour. The court found the statement defamatory

and ordered G.T. to retract it and to pay the applicant non-pecuniary damages of 122 euros (EUR).

6. The applicant obtained an enforcement warrant and, on 1 March 2002, requested that the judgment be enforced, in accordance with the procedure prescribed by the Code of Civil Procedure (see paragraph 10 below). However, in May 2002, a bailiff refused to enforce the judgment on the ground that the defendant did not have a domicile in Comrat (the main town in Gagauzia region). It does not appear that the enforcement was formally discontinued by a court decision, in accordance with the provisions of the Code of Civil Procedure (see paragraph 10 below).

7. In the meantime, defendant G.T. ended his mandate as Governor of the Gagauzia region and, in February 2001, was elected MP in the Moldovan Parliament on the Communist Party ticket – this is the party in power to date. In 2002 Mr G.T. was re-elected Governor of the Gagauzia region also as a representative of the Communist Party and simultaneously appointed to the central Government of Moldova. He occupied the above positions until 2006 and 2007 respectively and had offices both in the building of the Government in Chişinău and in Comrat.

8. According to the applicant, he complained on several occasions to the competent authorities about the non-enforcement of the final judgment favourable to him, however to no avail. He sent the Court a copy of a letter dated 24 January 2005 he had written to the Minister of Justice. The Minister of Justice forwarded his letter to the Comrat Office of Enforcement of Judgment but no action followed. Further correspondence took place in 2008, but also to no avail.

9. The final judgment of 19 December 2001 has not been enforced to date.

II. RELEVANT DOMESTIC LAW

10. The relevant provisions of the old Code of Civil Procedure, in force until 12 June 2003, concerning enforcement, read as follows:

Article 338. Issue of an enforcement warrant

An enforcement warrant shall be issued to a plaintiff by a court, after the judgment has become final...

Article 343. The request for enforcement

The bailiff shall start the enforcement of a judgment at the request of [one of the parties to the proceedings]...

Article 367. The examination of issues relating to the discontinuation of enforcement proceedings

Issues concerning the ... discontinuation ... of enforcement proceedings shall be examined by a judge...His or her decision is susceptible of appeal.

11. The relevant provisions of the Code of Enforcement of Judgments read as follows:

Article 149. Enforcement of a judgment which obliges a defendant to take an action

(4) If a defendant refuses to comply with a judgment by which he was obliged to act in a certain manner and it is only he who can do so, ... he shall be given a new time-limit to comply, a written note of the fine imposed on the defendant shall be remitted [by the bailiff] to the head of the Execution Office and a new time-limit for compliance shall be instituted. The fine for individuals varies between 2,000 and 4,000 Moldovan lei. The payment of the fine does not release the defendant from the obligation to comply with the judgment.

(5) If the defendant fails again to comply with the judgment within the prescribed time-limit the head of the Enforcement Office can apply the measures provided for in paragraph (4) of the present Article again.

12. The relevant provisions of the Criminal Code read as follows:

Article 320. Non-compliance with a court judgment

(1) Intentional non-compliance with a court judgment is punishable by a fine of up to 6,000 Moldovan lei, 150-200 hours of community work, or two years' imprisonment.

THE LAW

13. The applicant complained that the non-enforcement of the final court judgment in his favour had violated his 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

14. On 17 September 2008 the Government submitted a unilateral declaration similar to that in the case of *Tahsin Acar v. Turkey* ((preliminary objection) [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. The Government drew the Court’s attention to the fact that the defendant in the domestic proceedings was an individual and that the judgment could not be enforced due to the authorities’ failure to determine his whereabouts. They proposed paying the applicant EUR 1,500 in respect of non-pecuniary damage and costs and expenses and argued that this amount would constitute sufficient just satisfaction in the present case. They relied on the case of *Grivneac v. Moldova* (no. 35994/03, 9 October 2007) in which a similar amount had been awarded to the applicant as a result of finding of a violation on account of non-enforcement of a final judgement. The Government invited the Court to strike out the application in accordance with Article 37 of the Convention.

15. The applicant disagreed with the Government’s proposal and argued that the Government’s submissions about the authorities’ failure to find the defendant were untrue and abusive. According to the applicant the non-enforcement of the final judgment in his favour was due to the defendant’s political influence and to the interference of those in political power in the affairs of the judiciary.

16. 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. It would state in particular that 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*)”.

17. As to whether it would be appropriate to strike out the present application on the basis of the unilateral declaration made by the Government, the Court notes that the Government conceded that there had been a violation of Articles 6 and 1 of Protocol No. 1 to the Convention and offered to pay the applicant non-pecuniary damage of EUR 1,500. The Court considers that the primary purpose of the civil defamation proceedings brought by the applicant against G.T. was to repair his tarnished reputation and that the payment of non-pecuniary damage by the latter was only a subsidiary and ensuing consequence of the court’s finding

the impugned statement defamatory. In such circumstances the present case is distinguishable from *Grivneac* (cited above), referred to by the Government, where money was at the centre of the dispute.

18. The Court reiterates the principle set 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 as the present one, where a Government seeks 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 Article 6 § 1 and 1 of Protocol No. 1 to the Convention, the Government reiterated that they could not find defendant G.T.’s whereabouts, a statement which the Court is not ready to accept for the reasons set out in paragraph 26 below. 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

A. The complaints under Articles 17 and 34 of the Convention

21. In his observations on the admissibility and merits of the case, the applicant argued that the Government submitted untrue information to the Court concerning the impossibility of finding the whereabouts of defendant G.T. and submitted that such behaviour on behalf of the Government amounted to a breach of Articles 17 and 34 of the Convention. The Government did not comment on these complaints.

22. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set

out in the Convention. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

B. The remaining complaints

23. The Court considers that the applicant's remaining 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 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 the complaints.

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

24. The applicant complained that his rights guaranteed under the above Articles had been violated as a result of the failure to enforce the final court judgment in his favour. He submitted that the Government's submission concerning the authorities' failure to locate the defendant were untrue since the latter was a public figure who occupied important positions in the State administration during the last decade.

25. The Government disagreed and argued that the non-enforcement was due to the applicant's failure to assist the authorities in finding the defendant G.T. They also submitted that the judgment could not be enforced because the enforcement authorities could not find the defendant.

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 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). In the present case, the Court notes that the applicant has complied with the requirements of the Code of Civil Procedure (see paragraph 6 above) by obtaining an enforcement warrant and requesting a bailiff to enforce it. On the other hand, the Court was not presented with any evidence that the enforcement authorities took any steps to have the judgment enforced. The Court is not convinced by the Government's submission that defendant G.T., who was during the period of non-enforcement a Member of Parliament, Governor of the Gagauzia region and a member of the central Government of Moldova, could not be located by the enforcement authorities. Therefore, the Court finds that the

failure to enforce the judgment of 12 June 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

27. 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

28. The applicant claimed EUR 10,462 in respect of pecuniary and non-pecuniary damage.

29. The Government did not comment on the applicant’s claim.

30. 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 2,500 for non-pecuniary damage.

B. Costs and expenses

31. The applicant also claimed EUR 1,600 for the costs and expenses incurred before the Court.

32. The Government did not comment on the applicant’s claim.

33. The Court awards EUR 800 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. *Rejects* the Government’s request to strike the application out of its list of cases;
2. *Declares* the complaints under Articles 17 and 34 of the Convention inadmissible and the remainder of 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 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage and EUR 800 (eight hundred euros), in respect of costs and expenses, 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 24 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President