



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

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1959 · 50 · 2009

THIRD SECTION

**CASE OF S.C. PRODCOMEXIM S.R.L. v. ROMANIA**

*(Application no. 35877/05)*

JUDGMENT

STRASBOURG

27 October 2009

**FINAL**

*27/01/2010*

*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 S.C. Prodcomexim S.R.L. v. Romania,**  
The European Court of Human Rights (Third Section), sitting as a Chamber composed of:  
Josep Casadevall, *President*,  
Corneliu Bîrsan,  
Boštjan M. Zupančič,  
Alvina Gyulumyan,  
Egbert Myjer,  
Luis López Guerra,  
Ann Power, *judges*,  
and Stanley Naismith, *Deputy Section Registrar*,  
Having deliberated in private on 6 October 2009,  
Delivers the following judgment, which was adopted on that date:

## PROCEDURE

1. The case originated in an application (no. 35877/05) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian company, S.C. Prodcomexim S.R.L. (“the applicant company”), on 16 September 2005.
2. The applicant was represented by Mr Gheorghe Ungureanu, its managing director. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu.
3. On 23 April 2008 the President of the Third 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 company is a joint stock company based in Ploiești.

#### A. Claim for damage against the town council

5. In 2000 the applicant company brought proceedings against the Ariceștii Rahtivani town council seeking payment by the latter of the

amount of 448,586,286 old Romanian lei (ROL), updated at the date of payment, for damages allegedly resulting from a contract they had entered into, which concerned repairs that had to be carried out by the applicant company to the defendant's new headquarters. The applicant company also requested the court to attach the defendant's accounts up to that amount and to order the town council to pay interest in accordance with Government Ordinance no. 9/2000 regarding the legal level of interest for pecuniary obligations.

6. On 15 May 2001 the Prahova County Court (“the County Court”) attached the town council's financial assets in the Treasury.

7. On 28 August 2001 the County Court, by an enforceable judgment, allowed the action in part and ordered the town council to pay the applicant company ROL 433,545,816 as due payment and ROL 33,315,916 in respect of the costs of the proceedings. The court based its findings on an accounting expert report which had updated the due amount and had also calculated the due interest in accordance with Government Ordinance no. 9/2000.

8. On 18 January 2002 the Ploiești Court of Appeal (“the Court of Appeal”), by a final decision, allowed an appeal by the applicant company, considering that it was also entitled to the reimbursement of the penalties for overdue payments to the State budget. It therefore supplemented the previous amount by ROL 751,742,532 for damages and ROL 15,923,050 for costs of proceedings and further ordered the defendant to pay ROL 13,284,025 in respect of the costs of the appeal proceedings.

## **B. The enforcement**

9. In February-April 2002 the debtor paid, in four instalments, ROL 433,545,816. In September 2003 it paid ROL 33,315,916. These were the amounts stipulated by the judgment of 28 August 2001.

10. On 9 April 2002 the Ploiești Court of First Instance (“the Court of First Instance”), in private, consented to a seizure requested by the bailiff, at the applicant company's request, in respect of the town council's goods and declared that the two judgments could be enforced, since the debtor had not voluntarily executed its obligation. An appeal by the town council was dismissed on 14 June 2002 by the County Court, which held that the debtor's appeal was an attempt to procrastinate and abusively delay the payment. That ruling became final.

11. By two interlocutory decisions delivered in private on 18 June 2003 the Court of First Instance, upon two requests by the applicant company, attached the town council's immovable and movable property and declared that the two judgments could be enforced. Two appeals by the town council were allowed by two judgments of 19 September 2003 of the County Court,

which found that the town council had to pay only the remainder, ROL 576,828,428.

12. On 7 April 2004 the town council also paid ROL 576,828,428 out of the ROL 751,742,532 stipulated by the judgment of 18 January 2002, as well as ROL 15,923,050 for costs and expenses stipulated by the same judgment.

13. However, on 13 July 2004 and 8 February 2005 respectively the Court of Appeal, by final decisions, allowed further appeals by the applicant company and upheld the rulings of the two interlocutory decisions (see paragraph 11 above), considering that it was not for the court which had authorised the enforcement to establish the scope of the obligation contained in the title.

### **C. Objection to the execution by the town council**

14. Following the payment of 7 April 2004 (see paragraph 12 above), but before the judgment of 13 July 2004 (see paragraph 13 above), the town council objected to the execution. An accounting expert report was produced in the proceedings, assessing the remaining debt according to the dates of the partial payments and on the basis of the inflation rate and of the interest rate provided by Government Ordinance no. 9/2000.

15. On 9 December 2004 the Court of First Instance allowed the objection in part and ordered the continuation of the execution by seizure up to ROL 1,353,840,852. The court relied on Article 371<sup>2</sup> § 3 of the Code of Civil Proceedings (“CCP”) (see Relevant domestic law below) and approved the findings of the accounting expert report, considering that the court which had awarded damages to the applicant company had also deemed necessary to award the loss of profit or any benefit, since the applicant company was engaged in commercial activity and thus would have had the opportunity to use those amounts if they had been paid when those judgments were delivered.

16. The town council appealed, alleging that the applicant company had no enforceable entitlement to both the inflation rate and the loss of profit. It considered that, from the interpretation of Article 371<sup>2</sup> § 3 of the CCP, the applicant company was not entitled to claim the updating of the amount since that fact was not mentioned in the operative parts of the judgments of 28 August 2001 and 18 January 2002. The town council further contested the findings of the first-instance court, which held that the courts which had awarded damages had also awarded the sums in respect of loss of profit under Government Ordinance no. 9/2000, since the applicant company was a trading company. That finding was thus in conflict with Article 371<sup>2</sup> § 2 of the CCP (see Relevant domestic law below).

17. At a hearing on 11 March 2005 the applicant company's lawyer submitted a request for the proceedings to be adjourned because of illness

and consequent inability to appear before the court. The court dismissed that request and, in order to allow the applicant company to submit written conclusions, put forward the deliberations to 18 March 2005. On 17 March 2005 the applicant company further submitted to the court a request to restore the case to its list, and also its lawyer's written conclusions on the merits.

18. On 18 March 2005 the County Court, by a final decision, upheld the appeal by the town council and ordered the continuation of the execution by seizure up to ROL 190,836,157. Invoking Article 371<sup>2</sup> § 2 of the CCP, the court found unlawful the judgment of the first-instance court, which had awarded to the applicant company, at the same time, amounts in respect both of the rate of inflation and of loss of profit or any benefit, considering that the loss of profit or any benefit from an amount of money was precisely the rate of inflation. Therefore, it updated the remainder in accordance with inflation, without awarding loss of profit or any benefit in addition.

19. On 28 October 2005 the applicant's representative lodged a criminal complaint against the mayor, alleging abuse of authority. On 2 February 2007 the public prosecutor decided that there were no grounds which would justify initiating a criminal action against the mayor.

20. On 9 June 2008 the Ariceştii Rahtivani town council informed the Government Agent that all the amounts stipulated in the judgments had been paid to the applicant company and that the town council had no financial obligation towards the applicant company.

21. According to a certificate delivered by the bailiff on 17 February 2009, the debt mentioned by the judgments of 28 August 2001 and 18 January 2002 was paid by 9 April 2004. Further, the amount mentioned by the final decision of 18 March 2005 was paid on 14 July 2005. However, the enforcement fees had been deducted from that last amount and therefore there remained an amount of 7,720 new Romanian lei (RON) to be recovered.

## II. RELEVANT DOMESTIC LAW

22. Article 371<sup>2</sup> § 2 of the CCP provides that in the event that an enforceable title has awarded interest, penalties and other amounts without establishing their quantum, they shall be calculated by the enforcing body, in accordance with the law.

23. Article 371<sup>2</sup> § 3 of the same code provides that when an enforceable title contains sufficient criteria based on which the enforcing body may bring up to date the value of the pecuniary obligation, regardless of its character, then it shall update that amount. In the event that an enforceable title does not contain any such criteria, the enforcing body shall bring the amount up to date in accordance with the rate of the currency used for the

payment, applicable at the date of effective payment of the obligation provided by the enforceable title.

## THE LAW

### I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

24. The applicant company complained that the failure to fully enforce the judgment in its favour had infringed its rights guaranteed by Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, which, in so far as relevant, read as follows:

#### **Article 6 § 1**

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

#### **Article 1 of Protocol No. 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.

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.”

#### **A. Admissibility**

25. The Court concludes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor are they inadmissible on any other grounds. They must therefore be declared admissible.

#### **B. Merits**

26. The Government submitted that the authorities had enforced for the most part the judgment of 18 January 2002, the only issue that might arise being in respect of a remaining amount of RON 7,720.

27. The applicant company considered that the town council had made no effort to pay the debt, that it had not paid the whole debt and that the debt that had been already paid had not been paid in due time. It further alleged that the town council had been aware of the fact that it had to pay the enforcement fees as well, since it is a debtor's responsibility to pay those fees and since the bailiff had also informed the council in that respect. Therefore the applicant had still to receive an amount of RON 7,720.

28. The Court notes that the final decision of 18 January 2002 was enforced in part in 2002, in September 2003, in April 2004 and then in July 2005 (see paragraphs 9, 12 and 21 above). The Government did not point out any circumstances justifying the delays in paying those partial amounts in September 2003, in 2004 and then in 2005. The Court finds it unacceptable that a judgment debt against the State not be honoured for such a long period of time.

29. The Court further observes that the Government have not contested that the applicant company was entitled to receive the enforcement-related expenses which had been deducted from the due amount paid by the town council (see paragraph 21 above). In this respect, the Court reiterates 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, among others, *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004, and *Gorokhov and Rusyayev v. Russia*, no. 38305/02, § 33, 17 March 2005). By failing to comply in full with the final decision of 18 January 2002 of the Ploiești Court of Appeal the national authorities prevented the applicant company from receiving the money it could reasonably have expected to receive. The Government have not advanced any justification for this interference.

30. The Court notes that, although the authorities had an obligation to enforce court judgments, namely by paying the whole debt to the applicant company in the instant case, the judgment of 18 January 2002 remains partly unenforced to date. That judgment is nevertheless still valid, no proceedings having been instituted under Romanian law for its modification or annulment before the domestic courts. Apart from enforcement, it is only by such an annulment or substitution by the courts with an equivalent obligation that a situation of continuous non-enforcement may come to an end (see *Sabin Popescu v. Romania*, no. 48102/99, § 54, 2 March 2004).

31. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the ones in the present case (see, among others, *Sabin Popescu*, cited above, and *Dragne and Others v. Romania*, no. 78047/01, 7 April 2005).

32. Having examined the material submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. The authorities have not deployed all necessary efforts to enforce fully and in



due time the judgment in the applicant company's favour. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

33. The applicant company complained under Article 6 of the Convention of a violation of its right to defend itself in the proceedings terminated by the final decision of 18 March 2005 (see paragraph 17 above), about the outcome of those proceedings and that the domestic courts had failed to assess the facts correctly, had misinterpreted the domestic law and had not been impartial. Without invoking any Article, it further complained that that judgment had violated its right to update the debt in accordance with the provisions of the Code of Civil Proceedings and to receive the loss of profit or any benefit caused by the fact that the due amounts had not been paid in due time.

34. As regards the applicant company's allegations in respect of unfair proceedings, the Court considers that in the proceedings complained of, seen as a whole, there is no appearance of unfairness or arbitrariness which would infringe the guarantees of a fair hearing within the meaning of Article 6 § 1 of the Convention.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

35. In so far as the complaint in respect of the loss of profit or any benefit is concerned, which may be considered under Article 1 of Protocol No. 1, the Court considers that the applicant company has not shown that it had a claim which was sufficiently established to be enforceable, and it therefore cannot argue that it had a “possession” within the meaning of Article 1 of Protocol No. 1 (see, among other authorities, *Gratzinger and Gratzingerova v. the Czech Republic* (dec.), no. 39794/98, ECHR 2002-VII). The Court notes that the domestic courts pronounced on that issue in their final decision of 18 March 2005 (see paragraph 18 above).

It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

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

36. 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

37. The applicant claimed 59,926 euros (EUR) in respect of pecuniary damage, on the basis of an accounting expert report from June 2008. That report took as reference the report on which the Ploiești Court of First Instance based its judgment of 9 December 2004 (see paragraphs 14 and 15 above) and updated that amount in accordance with the inflation rate and also added the loss of profit as provided by Government Ordinance no. 9/2000. The applicant company also claimed EUR 50,000 in respect of non-pecuniary damage.

38. The Government reiterated that the town council had paid all the pecuniary obligations established by the courts and submitted that the equivalent of 7,720 new Romanian lei (RON) was EUR 1,860. Further, they considered that the finding of a violation would constitute in itself sufficient just satisfaction for any non-pecuniary damage which the applicant company might have suffered.

39. The Court reiterates that, where it has found a breach of the Convention in a judgment, the respondent State is under a legal obligation to put an end to that breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 32, ECHR 2000-XI).

40. The Court considers, in the circumstances of the case, that the full enforcement of the judgment of 18 January 2002 would put the applicant as far as possible in a situation equivalent to the one in which it would have been if there had not been a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

41. The Court notes that the above-mentioned judgment has not been enforced fully and in due time, as there were significant delays in payment. Moreover, there is no dispute between the parties as regards a due amount of RON 7,720 for the enforcement fees, which had been deducted from the money that the applicant company was entitled to receive. Therefore, the State's outstanding obligation to ensure the effective enforcement of the judgment in the applicant company's favour is not in dispute. However, as regards the amount of money claimed by the applicant company in respect of loss of profit or benefit, the Court reiterates that it found this complaint

incompatible *ratione materiae* with the provisions of the Convention (see paragraph 35 above).

42. The Court further considers that the serious interference with the applicant company's right of access to a court and to the peaceful enjoyment of its possessions could not be adequately compensated for by the simple finding of a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

43. Making an assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant company the global sum of EUR 12,000 in respect of pecuniary and non-pecuniary damage.

#### **B. Costs and expenses**

44. The applicant company did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

#### **C. Default interest**

45. 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 complaints concerning Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in respect of the enforcement of a final decision admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1;
3. *Holds*
  - (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 12,000 (twelve thousand euros) in respect of pecuniary and 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;

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

Done in English, and notified in writing on 27 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith  
Deputy Registrar

Josep Casadevall  
President