



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

FIRST SECTION

Application no. 61362/12  
V.P.  
against Russia  
lodged on 13 September 2012

**STATEMENT OF FACTS**

The applicant, Mr V.P., who was granted anonymity by the President of the Chamber on 11 March 2013, is a Moldovan national, who was born in 1975 and lives in Chisinau.

**The circumstances of the case**

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

On 28 October 2006 the applicant married Ms E.P., also a national of Moldova. On 15 June 2007 she gave birth to their son, A.P. At some point relations in the couple deteriorated, and on 24 June 2008 Ms E.P. moved to the Cahul town, in Moldova, where her parents lived. The boy, A.P., remained with her.

On 22 August 2008 Ms E.P. initiated divorce proceedings before the Rîscani District Court of Chisinau. She also sought that the court defined the child's habitual residence with the mother. On 25 September 2009 the applicant filed a counter-claim seeking to define the child's habitual residence with him.

On 13 September 2008, while the proceedings were still pending, Ms E.P. left Moldova with the child and settled in Moscow, Russia<sup>1</sup>.

On 1 October 2008 the court fixed a "schedule of visits" for the applicant.

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<sup>1</sup> Moldovan nationals do not need a visa to travel to Russia

On 10 October 2008 the applicant sought a court order prohibiting Ms E.P. to leave the country with the child without the applicant's consent. On the same day the court ordered as requested by the applicant.

On 28 October 2008 Ms E.P., by a letter, informed the court and the police authorities that she opposed any contacts between the applicant and their son. Her written statement to that end was certified by a notary public in Moscow.

On 31 October 2008 Ms E.P. obtained a certificate of "temporary residence registration" with the Russian Immigration Authority in Moscow. In the following months she went through this procedure several times, the last time on 26 June 2009.

In the following months Ms E.P. did not take part in the proceedings; however, her interests were represented by a lawyer.

The applicant contacted Moldovan police in order to establish the whereabouts of the child. According to a written reply from the police dated 10 March 2003 (which was apparently based on information provided by the parents of Ms E.P.) the applicant's son lived with his mother at an address on Nag. Street in Moscow.

According to the applicant, on 27 April 2009 Ms E.P. returned to Moldova with the boy. During their stay in Moldova she allowed the applicant to see the child twice. During one of the visits Ms E.P. informed the applicant that in Moscow she lived with a partner, and that she had told her son that Mr A.G. was his father.

On 12 May 2009 Mr E.P. left for Russia again, bringing the child with her.

The applicant contacted Russian police and asked them to verify whether the child and the mother in fact lived at the address on Nag. Street. On 24 June 2009 and 29 December 2010 Russian police informed the applicant that, according to their information, Ms E.P. and her son did not live at that address.

On 28 October 2009 the Rîscani District Court of Chisinau decided the case in favour of the applicant. The judgment was confirmed at two levels of jurisdiction – on 28 January 2010 and, in the final instance (the Supreme Court of Justice) on 19 May 2010. The judgment of 28 October 2009, as upheld, dissolved the marriage and defined that the boy's habitual residence (domicile) for the purposes of upbringing and education should be with his father (the applicant).

On an unspecified date Ms E.P. married Mr A.G. in Russia. For some time they lived together in Moscow at an address on Bak. Street.

On 4 June 2010 the Ministry of Justice, with reference to the bilateral treaty between Moldova and Russia of 25 February 1993<sup>1</sup> asked the Russian Ministry of Justice to assist the applicant in the enforcement of the judgment of 28 October 2009. They informed the Russian Ministry of Justice that A.P. lived with his mother at an address on Bak. Street in Moscow.

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<sup>1</sup> The applicant refers to 1999 as the year of adoption of the Treaty, but, by all appearances, he means the 1993 treaty on legal assistance in civil, family and criminal matters between Moldova and Russia.

On 1 September 2010 Ms E.P. enrolled the boy to a kindergarten situated in Moscow. She requested in written that the administration of the kindergarten did not allow the applicant to see the child.

On an unspecified date the applicant requested the Moscow City Court to issue an execution warrant pursuant to the judgment of 28 October 2009 by the Rîscani District Court of Chisinau.

On 15 September 2010 the Moscow City Court refused to examine the validity of the judgment of 28 October 2009 for the purposes of enforcement on the territory of Russia. The judge held that such judicial acts, pursuant to the bilateral treaty between Moldova and Russia of 1993 and the Minsk Convention of 1993 are self-executing, and do not need any special confirmation. In addition, the judgment of 28 October 2009 did not impose on the defendant any obligation to act or to refrain from acting in a particular way. The Moscow City Court concluded that it had no competence to examine the applicant's request.

On 1 February 2011 the ruling of 15 September 2010 was quashed by the Supreme Court of the Russian Federation and remitted to the Moscow City Court for fresh examination.

On 7 April 2011 the Moscow City Court re-examined the applicant's request. Ms E.P. was present at the hearing and argued that the original judgment of 28 October 2009 was unlawful since the Chisinau court had been incompetent to examine the dispute. The Moscow City Court rejected that argument. It ruled that A.P. resided in Moscow on a temporary basis, as confirmed by the temporary registration certificates, and that his permanent place of residence was in Chisinau. Consequently, the Chisinau court was competent, under the Minsk Convention and the bilateral treaty of 1993, to examine the matter. Further, the Moscow City Court held that none of the reasons preventing enforcement of a foreign judicial decision and provided by Article 55 of the Minsk Convention existed in the case at hand. As a result, the Moscow City court satisfied the applicant's request and ordered to enforce the judgment of 28 October 2009 on the territory of Russia. It stipulated that by virtue of that judgment the place of habitual residence of the applicant's child was defined, for the purposes of upbringing and education, with his father.

On 16 June 2011 Ms E.P. left her husband, Mr A.G., and took the child with her. Mr A.G. knew that she moved to her new partner, but he did not know his name and where they lived.

On 4 July 2011 a police officer from the Teplyi Stan Police Station visited Mr A.G. and inquired about the whereabouts of A.P. On the next day a municipal worker visited Mr A.G. and asked him the same question, but Mr A.G. was unable to give any specific information on that matter.

On 25 July 2011 the Moscow police informed the applicant that whereabouts of Ms E.P. and her son were unknown, and that a "search file" was open in respect of a minor, A.P., in the competent department of the police of the South-West Administrative Circuit of Moscow.

On 29 August 2011 the Moscow City Court issued an execution warrant (No. 002197065) pursuant to the judgment of 28 October 2009.

On 18 October 2011 the execution warrant issued by the Moscow City Court was received by the Bailiffs Service. However, the Service refused to institute the enforcement proceedings and execute the warrant, referring to

the fact that it was not “enforceable” by definition. On 19 October 2011 the warrant was sent back to the Moscow City Court. As follows from the letter of the Head of the Legal Department of the Bailiffs’ Service of 25 November 2011, a copy of the decision of the Bailiffs’ Service not to institute the enforcement proceedings was not forwarded to the applicant.

The applicant requested the bailiff service to study materials in his case-file in the Bailiffs’ Service. However, those materials were allegedly destroyed during a fire on 27-28 December 2011 in the Cheremushki branch of the Bailiffs’ Service.

On 8 February 2012 the Social Security Department informed the applicant that Ms E.P. and A.P. did not leave at the address on Rok. Street. According to the owner of the flat, the mother and the child rented a room in that flat for several months but then left without leaving any address.

According to the letter of 18 April 2012 addressed by the Bailiffs’ Service to the Moldovan Embassy, “the judicial act [of the Moldovan courts] simply acknowledged the fact that the child was living with his father and, by its nature, did not require forcible execution, since the court ... did not establish the obligation of the respondent to perform certain actions or refrain from performing them. Similarly, the judicial act does not contain an order of removal of the child from the respondent and conferring him to the plaintiff”. The Service recommended the applicant to file a new claim with the courts of the Republic of Moldova in order to obtain direct orders of that kind.

The applicant filed a complaint with the Cheremushki District Court of Moscow about the inaction of the Bailiffs’ Service in court, seeking an injunction. The District Court summoned Ms E.P. but she failed to appear.

On 21 June 2012 the Cheremushki District Court of Moscow satisfied the applicant’s claim. It found that the execution warrant by the Moscow City Court, based on the judgment of 28 October 2009 by the Rîscani District Court of Chisinau was valid and enforceable on the territory of Russia. It consequently held that the decision of the bailiff not to start enforcement proceedings in this respect was unlawful. On 28 September 2012 the Moscow City Court confirmed the decision on appeal.

In the meantime the applicant learned, through his own channels, that Ms E.K. lived with another man, a certain A. S.-O., at an address on Rok. Street.

It appears that the decision of 28 October 2009 by the Rîscani District Court of Chisinau remains unenforced to date and the applicant’s son, A.P., still lives with his mother.

## COMPLAINT

The applicant complains that the failure of the Russian authorities to enforce the judgment by the Rîscani District Court of Chisinau violates his right to family life under Article 8 of the Convention.

### **QUESTIONS TO THE PARTIES**

1. Is the judgment of 21 June 2012 of the Cheremushki District Court of Moscow, upheld on appeal on 28 September 2012, final? The Government are requested to produce a copy of the cassational court decision in this case, if any.
2. Assuming that the decision of 21 June 2012 is final, what particular measures did the bailiffs take in order to enforce the judgment of 28 October 2009 by the Rîscani District Court of Chisinau, as confirmed by the execution warrant of the Moscow City Court of 29 August 2011?
3. What legal and practical tools do the Russian authorities (police, bailiffs, social security bodies, etc.) have for enforcing a judgment (including a foreign judgment) assigning habitual residence of a child with one of the parents? What legal and practical tools are available to the authorities to enforce a return order where the parent who has *de facto* custody of the child refuses to cooperate and his/her whereabouts are uncertain? The Government are requested to cite particular provisions of the Russian law they refer to.
4. Was it possible for the applicant, under the Russian law, under the Minsk Convention on legal assistance 1993, or under the 1993 bilateral treaty on legal assistance between Moldova and Russia to enforce the judgment of 28 October 2009 by the Rîscani District Court of Chisinau on the territory of Russia without confirming it first through the Russian Courts and obtaining a separate execution warrant from them?
5. What international treaties to which Russia is a party are applicable to the case at hand? At the moment of the events at issue, was the Hague Convention on the Civil Aspects of International Child Abduction of 1980 legally binding in the relations between Russia and Moldova?
6. More generally, has there been a violation of the applicant's right to respect for his family life, contrary to Article 8 of the Convention, as a result of the inaction of the Russian authorities, complained of? In particular, were the measures taken by the Russian authorities (if any) sufficient (in terms of their efficiency and speediness) to comply with the State's positive obligations under Article 8 of the Convention in respect of the applicant's family life, and, in particular, his family relations with A.P. (see, in particular, the case of *Ignaccolo-Zenide v. Romania*, no. 31679/96, ECHR 2000-I)?