



Cases introduced after the *Olaru* pilot judgment have to be submitted to Moldovan courts under the new remedy

In its decision in the case of [Balan v. Moldova](#) (application no. 44746/08) the European Court of Human Rights has unanimously declared the application **inadmissible**. The decision is final.

The case concerned the new domestic remedy introduced in Moldova against non-enforcement of final domestic judgments and unreasonable length of proceedings, following the European Court of Human Rights' pilot judgment¹ in the case of *Olaru v. Moldova*².

Principal facts

The applicant, Vasile Balan, is a The Republic of Moldovan national who was born in 1956 and lives in Pănășești.

In 2003, he instituted civil tort proceedings against D. who had accidentally injured him. The applicant suffered an injury to his left thigh bone and was seeking compensation for pecuniary damage. In November 2004 D. was ordered by a District Court to pay the applicant the equivalent of 435 euros (EUR) in compensation for pecuniary damage and EUR 13 for legal fees. This decision was final and an enforcement warrant was issued. It has not been enforced to date.

Following the pilot judgment delivered by the European Court of Human Rights on 28 July 2009 in the case of *Olaru v. Moldova*, in which the Court had found in particular that the problem of non-enforcement of domestic judgments awarding social housing to different categories of individuals disclosed the existence of a "systemic problem", the Moldovan Government passed a legal reform, introducing in July 2011 a new domestic remedy against non-enforcement of final domestic judgments and unreasonable length of proceedings (Law no. 87).

In November 2011, the applicant, whom the Registry of the Court had informed of the new remedy, replied that he was not intending to use it because, in his view, it was not effective. Mr Balan submitted that Law no. 87 did not provide for a mechanism to trigger a rapid enforcement of an unenforced final judgment and that going back to the domestic courts and attempting to exhaust the new remedy would be an excessive burden for him.

Complaints, procedure and composition of the Court

Relying on Articles 6 § 1 (right to a fair trial) and 1 of Protocol No.1 (protection of property), the applicant complained that the Republic of Moldova had failed to ensure the enforcement of a binding and enforceable judgment in his favour.

The application was lodged with the European Court of Human Rights on 1 September 2008.

¹ On the pilot judgment procedure, please see [Rule 61 of the Rules of Court](#).

² [Judgment of 28 July 2009](#).

The decision was given by a Chamber of seven, composed as follows:

Josep **Casadevall** (Andorra), *President*,
Corneliu **Bîrsan** (Romania),
Alvina **Gyulumyan** (Armenia),
Ján **Šikuta** (Slovakia),
Luis **López Guerra** (Spain),
Nona **Tsotsoria** (Georgia),
Mihai **Poalelungi** (The Republic of Moldova), *Judges*,

and also Santiago **Quesada**, *Section Registrar*.

Decision of the Court

The applicant, while disputing the effectiveness of the new remedy, had not submitted that it had not been available to him. The Court indeed noted that he had been entitled to bring his claims to domestic courts in accordance with Law no. 87.

Examining the effectiveness of the new remedy, the Court recalled that – when deciding on claims lodged under Law no. 87 – domestic courts were required to apply the Convention criteria for effectiveness in the same manner as the Court does. The Court thus accepted that Law no. 87 had been designed, in principle, to address the issue of delayed enforcement of judgments in an effective and meaningful manner, taking into account the Convention requirements. While the domestic courts had not been able to establish any stable practice under the new law yet, the Court saw at this stage no reason to believe that the new remedy would not afford the applicants the opportunity to obtain adequate and sufficient compensation for their complaints or that it would not offer reasonable prospects of success.

The Court further reiterated that member States could choose solely to introduce a compensatory remedy in respect of non-enforcement of judgments without that remedy being automatically regarded as ineffective. The Court acknowledged that a remedy designed to prevent delays in the proceedings and to hasten the ultimate recovery of the judgment debt was most desirable. However, the pecuniary compensation that might be awarded to applicants through the compensatory remedy could at least provide adequate and sufficient redress for violations of the Convention in their cases to date.

The Court noted that the new remedy had become available only after the introduction of Mr Balan's application with the Court. However, as in several length-of-proceedings cases in which the applicants had been compelled by exceptional circumstances to exhaust such remedies, the Court considered it appropriate and justified in Mr Balan's case that he used the new domestic remedy introduced by Law no. 87. One of the pilot judgment procedure's aim had precisely been to allow the speediest possible redress for the large numbers of people suffering from non-enforcement and implicitly from length of proceedings.

Furthermore, the Court attached particular importance to the transitional provision of Law no. 87 whereby redress could be granted in Moldova to people who had already applied to the European Court before the entry into force of the new law. This was in accordance with the paramount principle of subsidiarity of the Convention system to the national systems. The consideration of Mr Balan's case and hundreds of similar ones indeed involved for the main part domains of domestic jurisdictions (establishment of basic facts and calculation of monetary compensation).

While the Court might exceptionally decide, for the sake of fairness and effectiveness, to conclude its proceedings in certain cases of this kind by a judgment, as a matter of principle, all new cases introduced after the *Olaru* pilot judgment and falling under Law

no. 87 had to be submitted to the Moldovan courts in the first place. However, the Court's position might be subject to review in the future depending, in particular, on the domestic courts' capacity to establish consistent case-law under Law no. 87 in line with the Convention requirements and to provide evidence that the new remedy was effective in practice.

The Court was satisfied that going back to the domestic courts did not constitute an excessive burden for Mr Balan and for other applicants in a similar position as the duration of the first instance procedure was limited to a maximum of three months, and the number of appeals to one, and given that no court fees were applied. The Court concluded that Mr Balan had not instituted the new domestic remedy in Moldova, as he had been required, and therefore rejected his application for non-exhaustion of domestic remedies (Article 35 §§ 1 and 4 of the Convention).

The decision is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.