



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

THIRD SECTION

CASE OF S.C. APRON DYNAMICS SRL BAIA MARE v. ROMANIA

(Application no. 21199/03)

JUDGMENT

STRASBOURG

2 November 2010

FINAL

11/04/2011

*This judgment has become final under Article 44 § 2 (c) of the Convention.
It may be subject to editorial revision.*

In the case of S.C. Apron Dynamics SRL Baia Mare v. Romania,
The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President*,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Egbert Myjer,

Ineta Ziemele,

Luis López Guerra,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 12 October 2010,

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

PROCEDURE

1. The case originated in an application (no. 21199/03) 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. Apron Dynamics SRL Baia Mare (“the applicant”), on 16 May 2003.

2. The applicant company was represented by Mr Georg Valentin Coza, its administrator. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu, of the Ministry of Foreign Affairs.

3. On 2 April 2009 the President of the Third Section decided to communicate to the Government the complaints concerning the alleged lack of access to court and the length of the civil proceedings as well as the complaint under Article 1 of Protocol No. 1 to the Convention relative to the proceedings mentioned above. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant company was founded in 1992 and is based in Baia Mare.

A. Action for recovery of debt

5. On 14 March 1996 the applicant company lodged an action seeking to compel company A. (a State-owned private company) to return 2,934,854,487 Romanian lei (ROL), representing the price of merchandise delivered by the applicant and not paid by A., plus interest. The defendant objected, claiming that the debt had already been paid.

6. The applicant paid ROL 10,000 in court fees but was asked by the court to make a supplementary payment to cover a percentage of the total claim. On 31 May 1996 the court calculated the fee at ROL 270,162,136.

On 28 June 1996 the company contested the new court fee and argued that according to the law, as interpreted by the higher courts, it should only pay ROL 10,000.

On 4 October 1996 it reiterated its position on the matter.

7. On the same day the court started deliberations in the case.

8. On 11 October 1996 the court restored the case to its list and summoned the parties to a hearing on 29 November 1996 to discuss the need for an expert evaluation of the claims.

9. On 20 January 1997 company A. accepted the calculation of the debt.

10. An evaluation of the debt was ordered and the report was submitted to the court on 11 December 1997.

11. On several occasions during the proceedings the defendant asked that the applicant company be requested to pay court fees. Several adjournments were granted to this end.

12. On 26 September 1997 the defendant informed the court that insolvency proceedings had been initiated against it (see paragraph 19 below).

13. On 5 February 1998 the Maramureş County Court cancelled the action for failure to pay the court fees. It also noted that the applicant company had never contested the level of the court fee.

14. The applicant company appealed, arguing that according to the law on which it based its initial action the court fee was set at a lump sum of ROL 10,000 irrespective of the amount claimed, a sum which it had already paid over at the start of the proceedings. The applicant paid the court fees for the appeal in the amount of ROL 10,000 and ROL 3,000 in judicial stamps.

15. On 27 May 1998 the Cluj Napoca Court of Appeal dismissed the appeal as unfounded. The decision was enforceable.

16. On 24 June 1998 the applicant company lodged an appeal on points of law.

17. On 9 May 2006 the applicant company sought information on the proceedings from the Maramureş County Court. In reply, on 12 May 2006 the County Court informed the applicant company that due to

an administrative error the appeal on points of law had only been forwarded to the Supreme Court of Justice on 12 May 2006.

18. In a final decision of 15 February 2008 the High Court of Cassation and Justice dismissed the appeal as ill-founded. It noted that in so far as the debtor contested the claim, the first-instance court was correct in seeking court fees proportionate to the value of the claim.

B. Winding up of company A.'s business

19. On 5 April 1995 one of company A.'s creditors sought institution of insolvency proceedings against company A., under the relevant Articles of the Commercial Code.

20. From 10 May 1995 to 25 June 1997 the proceedings were stayed at company A.'s request, as the Government had adopted programmes for the financial rehabilitation of the company (Government Ordinance no. 13/1995 on restructuring State-owned companies).

21. On 18 March 1998 the Maramureş County Court declared company A. insolvent. Following the reports on the company's financial situation, on 9 July 1998 it started winding-up proceedings.

22. On 11 June 1998 the applicant company requested the inclusion in the creditors' list of its claim of 1,474,012.64 United States dollars (USD). The claim was contested by the “debtor”, company A.

On 9 February 1999 the applicant reiterated its claim, which was included provisionally in the creditors' list pending examination of the objections raised.

23. On 16 February 2000 the County Court rejected the applicant company's claim as no longer enforceable (*prescrisă*). It considered that enforcement time had not been interrupted by the action for recovery of debt, in so far as that action had been annulled for failure to pay the court fees.

24. On 22 November 2000 the Cluj Napoca Court of Appeal upheld the judgment. It reiterated that the claim was no longer enforceable. It also considered that the claim, which had been contested by the debtor, had not been certified and quantified in the proceedings for recovery of debt, because the applicant's action had been cancelled.

25. On 20 November 2002 the Supreme Court of Justice upheld the decision, which thus became final.

C. Insolvency proceedings against the applicant company

26. On 30 May 2000 the Oradea Customs Office (*Direcția Generală Vamală Oradea*) sought the winding up of the applicant company's business for an unpaid debt of ROL 458,121,902.

27. On 26 June 2000 the proceedings were stayed as the applicant company contested the debt (the applicant company won that action on 18 September 2002).

28. On 3 November 2003 the Maramureş County Court started the winding-up proceedings. On 21 January 2004 the Cluj Napoca Court of Appeal quashed the decision and rejected the 30 May 2000 request.

II. RELEVANT DOMESTIC LAW

29. The relevant legislation on court fees is described in *Iorga v. Romania*, no. 4227/02, §§ 22-25, 25 January 2007.

30. The relevant articles of the Commercial Code, as in force before the 1995 amendments (see paragraph 31 below), read as follow:

Article 717

“From the date the insolvency is declared no action shall be allowed against the insolvent entity concerning its movable or immovable property or any enforcement action concerning the same property, unless the action is lodged before the insolvency judge (*judecătorul sindic*). Such actions that have already started against the insolvent entity shall continue before the insolvency judge.”

Article 780

“Even after the expiration of the time-limits ... creditors who have not presented their claims may ask the judge to verify them ...”

31. The insolvency procedure regulated by the Commercial Code was replaced by the Insolvency Act (Law no. 64/1995) published in 1995 and amended and republished in 1999. Its relevant articles, after republication, read as follows:

Article 42

“When the procedure is started all judicial or extrajudicial actions aimed at recovering debts from the debtor or his possessions shall be suspended.”

Article 131

“Insolvency proceedings started before the present law has entered into force shall continue under the provisions of the Romanian Commercial Code.”

The text of Article 131 was present in the initial version of the law as well, under Article 130.

32. Law no. 64/1995 has been replaced by Law no. 85 of 20 July 2006.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

33. The applicant company complained mainly about the way the domestic courts set the court fees in the proceedings initiated by it against company A., about the length of those proceedings and about the rejection of its claims against company A. in the insolvency proceedings.

It relied on Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

34. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

35. The Government argued that the domestic courts examined the applicant's claims on the merits and that the fact that the applicant was unsatisfied with the outcome of the proceedings did not impair its access to court.

36. They submitted that the applicant company had never contested the amount of the court fee and that the imposition of such fees was an accepted limitation of the right of access to court.

37. The Government further contended that the proceedings in restitution of debt were very complex and that besides the one administrative error made by the Court of Appeal, which postponed referring the appeal on points of law to the Supreme Court, the authorities had not had any long periods of inactivity. They also considered that the applicant company had caused essential delays in the proceedings; in particular they claimed that it had been aware for a long time that that appeal had not been sent to the High Court, but, in bad faith, preferred to wait for eight years before urging continuation of the proceedings.

38. The applicant claimed that the fact that the insolvency court did not inform it of the winding-up proceedings alone prevented it from effectively claiming its right and thus denied it access to a court.

39. It contended that the court fees imposed by the court, worth ROL 270,162,136, were exaggerated and constituted a disproportionate restriction of its right of access to court. It also considered that the insolvency court was wrong in dismissing the action on enforcement grounds, as the time-limit had not been reached so long as company A. had accepted the expert examination on 20 January 1997.

The applicant argued that its claims had never been examined on the merits.

40. Lastly, the applicant refuted the Government's arguments on the length of the proceedings and put forward that the authorities had failed to examine its claims promptly.

2. *The Court's assessment*

(a) **General principles**

41. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way it embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect (see *Golder v. the United Kingdom*, 21 February 1975, §§ 35-36, Series A no. 18).

42. However, the “right to a court” is not absolute. It is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard (see *Ashingdane v. the United Kingdom*, 28 May 1985, § 57, Series A no. 93). However, these limitations must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired (see *Levages Prestations Services v. France*, 23 October 1996, § 40, *Reports of Judgments and Decisions* 1996-V).

The Court has recognised both the imposition of court fees and the institution of prescription rules as acceptable limitations of the right of access to court (see *Weissman and Others v. Romania*, no. 63945/00, § 35, ECHR 2006-VII (extracts), and *Yagtzilar and Others v. Greece*, no. 41727/98, § 23-24, ECHR 2001-XII).

The Court has also established that under Article 6 of the Convention, everyone has the right to a final decision, within a reasonable time, on disputes over civil rights and obligations. The Contracting States accordingly have the obligation to organise their legal systems so as to allow the courts to comply with this requirement. In particular, the Court has considered that it was for the domestic courts to identify related proceedings and, where necessary, join them, suspend them or reject the further institution of new proceedings on the same matter (see *Gjonbocari and Others v. Albania*, no. 10508/02, § 67, 23 October 2007).

(b) Application of the principles to the present case

43. The Court notes at the outset that both the proceedings for recovery of debt and the request for participation in the insolvency proceedings pursued the same goal, that is for the applicant company to recover its alleged debt from company A. Therefore, in order to assess the applicant's effective access to court, the two sets of proceedings should be examined globally, in the light of the principles enunciated above (see *SC Concept Ltd SRL and Manole v. Romania*, no. 42907/02, § 47, 22 November 2007).

44. The Court notes that the applicant lodged its initial claim on 14 March 1996 and the insolvency proceedings were initiated against company A. (after suspension) on 25 June 1997. From 26 September 1997 the County Court was informed of the insolvency proceedings. The applicant must have thus also learned about them at the latest at that date.

The applicant sought participation in both sets of proceedings which, given the importance of expediency in commercial actions, can be seen as a diligent approach on its part.

45. The Court will assume that the initial court remained competent to decide on the applicant's claim at least until 18 March 1998, when company A.'s insolvency was declared. Therefore, it will look, from the point of view of Article 6 rights, at the initial set of proceedings up to that date. It thus notes that during this time the County Court did nothing but cancel the action, without examining it on the merits or answering the applicant's objection as to the imposition of the new fee.

The Court considers that the level of the court fee as established by the court on 31 May 1996 was significant even for a company (see *SC Marolux SRL and Jacobs v. Romania*, no. 29419/02, §§ 33-34, 21 February 2008).

46. The Government points out that the applicant did not contest the amount of the court fee. However, the Court has already concluded that at that time there was no effective means of objecting to the court fee or seeking recalculation, and for that reason found a violation of Article 6 § 1 of the Convention in a number of cases lodged against Romania (see *Weissman and Others v. Romania* (dec.), no. 63945/00, 28 September 2004; *Iorga*, cited above, § 47; and *Rusen v. Romania*, no. 38151/05, §§ 23-24, 8 January 2009). It follows that any attempt by the applicant company to act to that end would have more likely failed.

47. In fact it was not until 29 May 2004 that such a remedy was available to the applicant (see *Iorga*, cited above, §§ 22-25). By that time, the decision on appeal, which was enforceable, had already been taken on the first set of proceedings and the applicant's participation in the winding-up proceedings had already been terminated by a final decision.

48. The Court further notes that when the new remedy against the court fees became available, the applicant's initial action had already been pending with the domestic courts for ten years, of which a six-year delay was due exclusively to administrative failures for which the applicant was

not responsible but never received compensation. At the time the remedy became available the case had also been pending with this Court for one year.

Furthermore, until 2006, when the appeal on points of law lodged by the applicant was forwarded to the High Court for examination, the company had no means of using the new remedy.

49. The Court has received no information from the parties on the stage the winding-up proceedings had reached in 2008. Therefore, even assuming that the applicant had successfully used the remedy above and had its claim established, the Court cannot speculate on what effective opportunity the applicant would have had in 2008 to seek re-inclusion in the creditors' list in the winding-up proceedings.

However, at that time the applicant company had already spent twelve years trying to recover its debt.

50. The Court has already found that even in complex winding-up proceedings such a delay is not justified (see *SC Concept Ltd SRL and Manole*, cited above, § 51).

51. This is sufficient for the Court to conclude that the applicant lacked effective access to court both during the first action for recovery of debt and during the winding-up proceedings, and that the proceedings it initiated had lasted too long.

There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

52. The applicant complained of a violation of its rights protected by Article 1 of Protocol No. 1 to the Convention, in connection with the two proceedings aimed at recovering its debt from company A.

53. Both parties presented observations on this complaint.

54. Having regard to the finding relating to Article 6 § 1 (see paragraph 51 above), the Court considers that this complaint is admissible but that it is not necessary to examine whether, in this case, there has been a violation of Article 1 of Protocol No. 1 to the Convention (see, among other authorities, *SC Marolux SRL and Jacobs*, cited above, § 43).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

55. Lastly, the applicant company complained that the winding-up proceedings initiated against it were illegal and infringed its rights guaranteed by Articles 6 of the Convention and 1 of Protocol No. 1.

56. However, 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 or its Protocols.

It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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

58. The applicant company claimed, in respect of pecuniary damage:

- 984,881.39 euros (EUR), representing company A.'s debt towards it;
- EUR 369,325.57, representing its loss from the USD-EUR exchange rate;
- EUR 505,000, representing loss of profit.

It also claimed EUR 15,000 in respect of non-pecuniary damage.

59. The Government argued that the claims were excessive and were not causally linked with the alleged violations.

60. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it acknowledges that the applicant suffered distress as a result of the manner in which the various proceedings were conducted, and, ruling on an equitable basis, it awards EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

61. The applicant also claimed EUR 45,652.37 for the costs and expenses incurred before the domestic courts, namely court fees, legal assistance, transport and secretarial expenses and EUR 676.16 for costs incurred before the Court, in particular stamps and secretarial expenses.

62. The Government contested the claim, considered that it was speculative and exaggerated and not fully justified with evidence.

63. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 covering costs under all heads.

C. Default interest

64. 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 under Article 6 § 1 regarding access to justice and length of the proceedings and under Article 1 of Protocol No. 1 relative to the action on recovery of claims and the winding up of company A. admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there is no need to examine the complaint under 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:
 - (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; and
 - (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, for costs and expenses;
 - (b) that the above amounts are to be converted into the respondent State's national currency at the rate applicable on the date of settlement;

(c) 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;

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

Done in English, and notified in writing on 2 November 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President