



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

THIRD SECTION

CASE OF ȘTEFĂNICĂ AND OTHERS v. ROMANIA

(Application no. 38155/02)

JUDGMENT

STRASBOURG

2 November 2010

FINAL

02/02/2011

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

In the case of Ștefănică and Others 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. 38155/02) against Romania lodged with the Court on 7 October 2002 under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by eighteen Romanian nationals (“the applicants”), whose details are set out in the annex to this judgement (“the Annex”). Two of the applicants died after the lodging of the request to the Court and their heirs expressed their will to pursue the application. Their details are also provided in the Annex.

2. The applicants were represented by Mr G. Teodorescu, a lawyer practising in Bucharest. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu, from the Ministry of Foreign Affairs.

3. The applicants complained about the inconsistent case-law of county courts in Romania concerning the granting of compensatory payments for collective dismissal from the same State-owned bank.

4. On 4 March 2009, the President of the Third Section decided to communicate 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

5. The applicants are all Romanian citizens.

6. The facts, as submitted by the parties, may be summarised as follows.

7. The applicants are all former employees of B., a bank, which was involved in a large restructuring process of State-owned companies in Romania, entailing collective dismissals.

8. The collective dismissal of employees of B. took place in different stages between September 1998 and October 1999. It affected hundreds of persons across Romania working either in the central office or in the local branches of the bank as follows: 632 persons dismissed in September 1998, seventy persons dismissed in February 1999 and 725 persons dismissed in May 1999. No precise numbers were available for the final stages of the dismissal process. From the case file, it appears that the applicants were dismissed during the period September 1998-October 1999.

9. The applicants made several attempts to receive compensatory sums for collective dismissal (see paragraph 14 below) before the Bucharest Employment and Vocational Training Agency (“the agency”), a State agency entrusted with the disbursement of these payments, but did not have any success.

10. On 3 December 2000, they brought an action against the agency, seeking to be granted the compensatory payments. They argued that according to the applicable law, their right had arisen on the date on which their contracts had been terminated. The fact that B. had failed to submit to the agency a list of the persons whose contracts had been terminated could not be imputed to the employees. Moreover, there was established case-law upholding applications submitted by other former employees in a similar situation from the same court of first instance in Bucharest and in final decisions of higher courts across the country.

11. By a judgment of 9 August 2001, Bucharest District Court upheld the applicants' claim. It established that B. had only submitted to the local agency a list of persons dismissed after 8 October 1999 and had failed to send a list of persons dismissed before that date, even though they were part of the same collective dismissal process. The court considered that this failure gave rise to inequalities among the people dismissed.

12. Allowing an appeal by the agency, the Bucharest County Court, by a final decision of 25 March 2002 (drafted on 1st July 2002), reversed the first-instance decision and concluded that the applicants did not meet the requirements for receiving the compensatory payments. For the applicants dismissed between September 1998 and May 1999, the appellate court referred to another condition provided by the national legislation, namely that the State Property Fund (FPS) should have mandated its special

representatives on the board of shareholders to proceed with the reorganisation, in particular with the collective dismissal. In the case at issue, the appellate court established that such a mandate did not exist on the date when the applicants were dismissed and therefore they were not entitled to compensatory payments. For the applicants dismissed between August and October 1999, the county court established that they did not meet another condition, namely that they did not prove that they had taken part in the pre-dismissal procedures. It concluded that the applicants did not satisfy these specific conditions and dismissed their claims.

13. The applicants submitted requests to the Procurator General for leave to lodge an extraordinary appeal against the final decision, invoking, *inter alia*, the existence of conflicting final decisions concerning other former employees in the same situation as them, namely those dismissed before October 1999. Their requests were rejected.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant legislation on compensatory payments for collective dismissal

14. Emergency Ordinance no. 9/1997, as modified by Emergency Ordinance no. 52/1998, provided that persons whose employment contracts were terminated due to collective dismissal procedures were entitled to compensatory payments ranging from six to twelve times the average net salary nationwide. On 24 June 1999 the newly adopted Emergency Ordinance no. 98/1999 changed the method for determining the quantum of the compensatory payments, which since then has ranged from six to twelve times the average net salary in the specific company.

15. Article 46 of Emergency Ordinance no. 98/1999 obliged the employer company to notify, in writing, the competent agencies of the collective dismissal process, as approved in the restructuring programme, and to provide lists of the staff to be dismissed. Based on those lists, the competent agencies were required to provide pre-dismissal services, including counselling and professional guidance. In order to be eligible for compensatory payments, the persons who were part of a collective dismissal had to take part in these pre-dismissal programmes.

B. Case-law on similar claims

16. In similar cases, former employees of B., dismissed before October 1999, requested recognition of their right to compensatory payments. Following the agency's refusal to pay compensation, they lodged complaints with the competent domestic courts. By different final decisions rendered by county courts between June 2000 and September 2001, their

right to compensatory payments was recognised. The reasoning varied: some county courts considered that the condition regarding the special mandate of the FPS was satisfied, others did not even take this special condition into account.

The condition regarding participation in the pre-dismissal procedures was indirectly taken into account into some of the decisions. In those decisions reference was made to the fact that the employer had failed to submit to the competent agencies lists of the staff dismissed before October 1999.

Some decisions underline the fact that the collective dismissal took place in different stages and that the persons dismissed before October 1999 had been deprived of the social protection provided by the compensatory payments, even though the dismissal conditions had been identical and there was no objective reason for such discrimination.

17. Another group of former employees, who were dismissed between August 1998 and May 1999 and who lost their case by a final decision of the Bucharest County Court of 31 January 2002, submitted a request to the Procurator General for leave to lodge an extraordinary appeal (*recurs în anulare*) in their favour. The latter accepted their request and made a request in this respect to the Supreme Court of Justice.

By a final decision of 1 October 2003 the Supreme Court allowed the extraordinary appeal and quashed the final decision delivered in that particular case. It concluded that the lack of the special mandate of the FPS (issued in August 1999) did not affect the right of persons whose employment contracts had been terminated in the framework of a collective dismissal to receive compensatory payments. It further explained that in the event of a contrary interpretation, the effects would be unacceptable because it would create discrimination between persons placed in the same or similar positions. It also added that in the event that the former employees were not involved in the collective pre-dismissal procedures because of the negligence of the employer, they were still entitled to receive compensatory payments.

18. Subsequent final decisions of the Bucharest Court of Appeal of 30 June 2003 and 3 September 2004 followed the same approach and recognised the right to compensatory payments for former employees dismissed during the same period of time as the applicants.

C. Domestic law on extraordinary appeals

19. The Romanian Code of Civil Procedure (“the CCP”) in force at the time provided in its Article 330 that the Prosecutor General, *ex officio* or upon request of the minister of justice, could lodge an extraordinary appeal (“*recurs în anulare*”) against final judicial decisions. This extraordinary appeal was repealed from domestic law by a Government ordinance published on 26 June 2003.

20. Article 329 of the CCP regulates another type of extraordinary appeal (“*recurs in interesul legii*”). The provisions in force at the time provided that in order to ensure uniform interpretation and application of the law, the Prosecutor General, *ex officio* or at the request of the minister of justice, could request the Supreme Court of Justice to deliver a decision concerning a legal issue which had received different solutions in the lower courts. The decision thus delivered could not alter the outcome of cases already decided. Amendments were made in 2005 and it was made possible to recognise the right of the managerial boards of the courts of appeal to lodge such a request with the High Court of Cassation and Justice.

21. Article 322 § 9 of the CCP further provides that a case may be reopened in front of the domestic courts if the European Court of Human Rights has found that a specific domestic decision violated fundamental rights or liberties.

THE LAW

22. Relying on Articles 6 § 1, 2 § 1, 13 and 17 of the Convention the applicants complained that the rejection of their claim by the Bucharest County Court was contrary to the solution adopted at final instance by other county courts across the country and that they had thus been deprived of the compensatory payments to which they were entitled. They also claimed that the domestic courts were not impartial or independent and had delivered a wrongful decision in their case.

23. The Court is master of the characterisation to be given in law to the facts of the case and is not bound by the characterisation given by an applicant or a government. A complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on (see *Powell and Rayner v. the United Kingdom*, 21 February 1990, § 29, Series A no. 172, and *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I). Having regard to this, the Court considers that the applicant's complaints are to be examined under Article 6 § 1 of the Convention and Article 1 of Protocol No 1 in conjunction with Article 14 of the Convention.

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

24. The applicants complained that the domestic courts had adopted conflicting solutions in respect of similar legal issues. The relevant provisions of Article 6 § 1 read as follows:

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

A. Admissibility

25. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 1 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*

26. The Government submits that conflicting case-law within a legal system based on jurisdiction over specific geographic areas is not of itself incompatible with the requirements of Article 6 § 1. According to them, the applicants had failed to bring forward proof of a divergent case-law adopted consistently at national level or by the highest jurisdiction and had provided only a limited number of examples of divergent solutions.

27. The Government further underlines that contrary to the factual situation in the case of *Beian v. Romania (no. 1)* (no. 30658/05, ECHR 2007-XIII (extracts)), the divergent case-law in the present case does not stem from the highest court. They consider that it was within the competence of the national judges to interpret the law and, in the absence of any decision of the Supreme Court intended to create common practice, the existence of different interpretations of the applicable legal provisions does not amount to a breach of the principle of legal certainty.

28. In respect of the decision delivered by the Supreme Court of Justice on 1 October 2003, the Government notes that it was not intended to unify the practice of the lower courts, but concerned a specific case. Nevertheless, they further draw attention to the fact that at the time the domestic law provided for a remedy in case of divergent jurisprudence, namely an appeal in the interest of law (see § 20 above).

29. The applicants disagreed with the Government's position and reiterated that opposing final decisions had been reached in cases similar to theirs.

2. *The Court's assessment*

30. The Court notes that it has previously concluded that certain divergences in interpretation could be accepted as an inherent trait of any judicial system which, like the Romanian one, is based on a network of trial and appeal courts with authority over a certain territory (see *Zielinski and Pradal and Gonzalez and Others v. France* [GC], nos. 24846/94 and 34165/96 to 34173/96, § 59, ECHR 1999-VII). This conclusion was made with reference to legal systems that had a supreme court whose precise role was to resolve conflicts between decisions of lower courts (see *Zielinski and*

Pradal and Gonzalez and Others, cited above, and *Schwarzkopf and Taussik v. the Czech Republic* (dec.), no. 42162/02, 2 December 2008).

31. The Court notes that the present case concerns a legal question affecting former employees of B. who were part of the same collective dismissal process. It accepts that the legal issue at stake was not a matter of general concern to the whole of society, such as the conflicting case-law on restitution at stake in the case of *Tudor Tudor v. Romania* (no. 21911/03, § 31, 24 March 2009), but affected a clearly defined category of people. However, it considers that the applicants, like any other citizen, had the right to a fair trial in the determination of their civil claims and the right to a fair trial includes the right to legal certainty. It recalls in this respect its case-law according to which the principle of legal certainty is implied in the Convention and constitutes one of the basic elements of the rule of law (see *Beian (no. 1)*, cited above, § 39).

32. The Court considers that once a solution has been adopted by a State to regulate the collective dismissal of hundreds of persons from state-owned companies, it must be implemented with reasonable clarity and coherence in order to avoid, in so far as possible, uncertainty and ambiguity for the persons concerned by the measures of implementation. In that context, it should be stressed that uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is an important factor to be taken into account in assessing the State's conduct (see *Broniowski v. Poland* [GC], no. 31443/96, § 151, ECHR 2004-V; *Păduraru v. Romania*, no. 63252/00, § 92, ECHR 2005-XII (extracts); and *Beian v. Romania (no. 1)*, cited above, § 33).

33. The Court notes that the judicial decisions available in the case file and concerning the entitlement to compensatory payments concern persons in a similar situation; namely, persons who had been dismissed from different branches of the same company, before October 1999 and who had been denied by their employer the right to compensatory payments. As they were not considered by the company to have been part of a collective dismissal, the persons concerned had also not been involved in the pre-dismissal procedures. Furthermore, according to the Emergency Ordinance no. 98/1999, in order to benefit from pre-dismissal assistance, their names would have had to be provided to the agencies charged with providing these services. As it appears from the various court decisions available in the case-file, the employer did not provide the agencies with lists of the persons dismissed before October 1999.

34. The Court notes further that, while the applicants' legal action for compensatory payments was dismissed, final decisions of different county courts recognised the right to such payments to persons in similar situations. These contradictory solutions reveal an inconsistent approach of the domestic courts in interpreting the conditions set by the law for the award of compensatory payments despite similar factual situations.

35. Without deeming it appropriate to pronounce as to what the actual outcome of the applicants' lawsuit should have been (see *mutatis mutandis*,

Vinčić and Others v. Serbia, no. 44698/06 et seq. § 56, 1 December 2009), the Court considers that this diversity of interpretation of national law by the different county courts ruling as final instances led to judicial uncertainty in the adjudication of similar civil claims.

36. The Court considers it necessary to analyse further the Government's argument that there was a mechanism in place to ensure a uniform interpretation of the applicable law. In this respect it notes that the final instance courts with jurisdiction were the county courts and, as a consequence, there was no possibility for the Supreme Court of Justice to intervene in the adjudication of the cases during the ordinary proceedings.

37. The applicants themselves applied to the Prosecutor General for leave to lodge either one of the two extraordinary appeals and both requests were refused. At the same time, a request from a different set of plaintiffs was accepted and led to a favourable solution for those concerned (see § 17 above). The decision delivered by the Supreme Court of Justice in those extraordinary proceedings concerned the particular application of law in that individual case and was not meant to settle conflicting interpretations of national law (see *mutatis mutandis*, *Tudor Tudor*, cited above, § 29). Moreover, the Court reiterates its conclusion in the case of *Tudor Tudor* (cited above) that where the intervention of the Supreme Court was only possible by means of an extraordinary appeal that contradicted in itself the principle of legal certainty.

The Court acknowledges that a lower court's appreciation of the facts of a case and its assessment of the evidence therein, may lead to different outcomes for parties with broadly similar grievances. Such reality does not, per se, violate the principle of legal certainty.

However, where there are divergences in the application of substantively similar legal provisions to persons in near identical groups, a problem with legal certainty does arise. Such was the situation in this case.

38. In the light of the foregoing considerations, the Court concludes that in the absence of a remedy to resolve such divergences, the inconsistent adjudication of claims brought by many persons in similar situations led to a state of uncertainty, which in turn must have reduced the public's confidence in the judiciary, such confidence clearly being one of the essential components of a State based on the rule of law (see *mutatis mutandis*, *Vinčić*, cited above, § 56). The judicial uncertainty in question has deprived the applicants of a fair hearing.

39. There has consequently been a violation of Article 6 § 1 in this connection.

40. Having regard to the above finding, the Court considers that it is not necessary to pursue the examination of the remaining complaints under Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

41. The applicants complained in substance under Article 1 of Protocol No. 1 in conjunction with Article 14 of the Convention that they had been deprived of compensatory payments, while others in a position similar to theirs received those payments.

42. Having regard to the findings in paragraph 39 above, the Court considers that it is not necessary to pursue the examination of these complaints.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. In respect of pecuniary damage, the applicants claimed jointly 198,000 euros (EUR), corresponding to the value of the compensatory payments they considered they were entitled to, adjusted to the inflation rate. The Government claimed that in the event that the Court finds a violation, the applicants can avail themselves of Article 322 § 9 of the Code of Civil Procedure, which entitles them to address the national courts with an extraordinary appeal (*revizuire*) in order to restore the situation existing before the breach of the Convention. In any event, the Government considered their claim to be excessive and unreasonable.

45. The Court would state at the outset that 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 (see *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 19, ECHR 2001-I, and *Former King of Greece and Others v. Greece* [GC] (just satisfaction), no. 25701/94, § 72).

46. Having regard to the violation found in the present case and the reasons for that finding (see §§ 35 and 38 above, particularly the reference to the outcome of the applicants' lawsuits), as well as to the provisions of Article 322 § 9 of the CCP (see paragraph 21 above), and in view of the principle of subsidiarity, the Court considers that the applicants' claims must be rejected.

47. The applicants also claimed EUR 90,000 for the non-pecuniary damage they had sustained. The Government considered the sum excessive in the light of the Court's case-law on similar cases.

48. The Court considers that the applicants undoubtedly sustained non-pecuniary damage as a result of the breach of their right to a fair trial. Making its assessment on equitable and reasonable bases, the Court awards each applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

49. The applicants claimed an overall sum of EUR 3,000 EUR for costs and expenses. In this respect, they submitted an itemised list that included the drafting of legal documents submitted to the Court and to domestic authorities seeking the lodging of extraordinary appeals. They also submitted invoices for translation services (observations and judicial decisions delivered in similar cases) of approximately EUR 750.

50. The Government considered the claims to be excessive and disputed the justification of the amounts claimed for under legal advice for domestic extraordinary proceedings and translation services.

51. 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 the quantum.

52. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to make an individual award of EUR 40 to each applicant, for costs and expenses plus any tax that may be chargeable to them.

C. Default interest

53. 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 complaint under Article 6 § 1 concerning the lack of legal certainty admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of breach of the principle of legal certainty;
3. *Holds* that there is no need to examine the admissibility or the merits of the remainder of the complaints;

4. *Holds*

(a) that the respondent State is to pay to each applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts which are to be converted into the respondent State's national currency at the rate applicable on the date of settlement:

(i) EUR 3 000 (three thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable,

(ii) EUR 40 (forty euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(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;

5. *Dismisses* the remainder of the applicants' 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

ANNEX

LIST OF APPLICANTS

NO.	NAME	BORN	RESIDENCE
1.	Mariana Ștefănică	1957	Bucharest
2.	Aurora Vasile	1969	Bucharest
3.	Dorina Iliuță	1954	Bucharest
4.	Emilia-Mihaela Florescu	1953	Bucharest
5.	Diana Nicula	1969	Bucharest
6.	Cristiana Curuțchi	1970	Bucharest
7.	Mariana Damian	1961	Bucharest
8.	Magdalena Dinu (Grecu, before divorce)	1967	Bucharest
9.	Carmen Gabriela Lințoiu	1965	Bucharest
10.	Ioana Oancea (deceased), through acceptant heir Laura Mădălina Oancea	1952 1983	Bucharest Bucharest
11.	Adrian Cosmin Bratoșin	1973	Bucharest
12.	Elena Cristina Badea	1969	Bucharest
13.	Irina-Magda Bejenaru	1968	Bucharest
14.	Maria Magdalena Trif	1975	Bucharest
15.	Valeria Stamate (deceased), through acceptant heir Tudor Dan Stamate	1948 1980	Bucharest Bucharest
16.	Melania -Aurelia Stan	1969	Bucharest
17.	Lizette Dumitrescu	1967	Bucharest
18.	Simona-Gabriela Voineagu	1968	Bucharest