

In the case of Weissman and Others v. Romania,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

John Hedigan, *President*,

Lucius Caflisch,

Corneliu Bîrsan,

Vladimiro Zagrebelsky,

Egbert Myjer,

Dauid Thór Björgvinsson,

Ineta Ziemele, *judges*,

and Vincent Berger, *Section Registrar*,

Having deliberated in private on 4 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 63945/00) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by five Romanian nationals, Mr Eugene Weissman, Mrs Mariana Balan, Mrs Rosa Brener Veisman, Mrs Liana Alberta Veisman de Neuberger and Mrs Karin Weissman Humbert ("the applicants"), who are members of the same family, on 21 October 2000.

2. The applicants were represented by Mr D. Mihai, a lawyer practising in Bucharest. The Romanian Government ("the Government") were represented by their Agent, Mrs R. Rizoiu, then by Mrs B. Rămășcanu of the Ministry of Foreign Affairs.

3. The applicants alleged a violation of their right of access to a court, together with a violation of their right to the peaceful enjoyment of their possessions, on account of the dismissal of their action for reimbursement of income earned by the State from the use of a building, confiscated in 1949, which had been returned to them in 1999.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 28 September 2004, the Chamber declared the application admissible.

6. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicants, Mr Eugene Weissman, Mrs Mariana Balan, Mrs Rosa Brener Veisman, Mrs Liana Alberta Veisman de Neuberger and Mrs Karin Weissman Humbert, were born in 1931, 1930, 1913, 1947 and 1937 respectively and live in Seattle, New York, Ariel (Israel) and Beaune (France).

9. On 3 September 1998, acting in their capacity as heirs of the former owners, the applicants lodged an action before the Bucharest County Court against the State, represented by the Ministry of Finance, and the firm L., responsible for managing the State's immovable property, with a view to the restitution of real estate, consisting of a building and the adjacent land situated at 21 Rabat Street, Bucharest, and occupied by the embassy of the Federal Republic of Germany. They alleged that the State had appropriated the property in question in 1949 without title or any other legal authority, and that it had become part of the possessions of the Romanian Communist Party and, subsequently, of the firm L.

10. In defence pleadings, included in the case file on 2 November 1998, the Ministry of Finance informed the court that the State had taken possession of the building without title, and that it had no papers certifying this transfer of ownership. At the court's request, the Bucharest City Council replied that it too had no papers on this matter. The firm L. confirmed that it was managing the building under Government Decision no. 115/1990 on the legal situation of buildings which had belonged to the Romanian Communist Party.

11. By a judgment of 14 April 1999, the Bucharest County Court allowed the applicants' claim. It held that the State had taken possession of the building in 1949 without legal authority and that it continued to enjoy possession of it without title. It considered that Government Decision no. 115/1990 could not constitute valid title, given that there had been no legal basis for the appropriation itself. In consequence, it ordered the firm L. to return the building and adjacent land to the applicants.

12. On an appeal (*apel*) and further appeal (*recurs*) by the respondent parties, the judgment was upheld by a judgment of the Bucharest Court of

Appeal on 9 September 1999 and by a judgment of the Supreme Court of Justice on 22 March 2000.

13. On 12 October 1999 the applicants were given possession of the building.

14. By an action brought on 11 May 1999 in the Bucharest County Court against the Ministry of Finance, the Bucharest City Council and the firm L., the applicants sought reimbursement of 35,506,776 United States dollars (the equivalent of 30,609,289 euros (EUR)) in respect of loss of earnings, based on the rental income received by the State for the building since its confiscation, paid, *inter alia*, by the embassy of the Federal Republic of Germany, which had occupied the building from an unspecified date.

15. At a hearing on 9 June 1999, the court ordered the applicants to pay stamp duty amounting to 5,333,215,000 Romanian lei (the equivalent of EUR 323,264), calculated in accordance with section 2 of Law no. 146/1997 on stamp duty.

16. At a hearing on 8 September 1999, the applicants' lawyer requested that they be exempted from stamp duty on the ground that the action for reimbursement of rental income was accessory to the action for recovery of possession and that it was therefore exempt from costs, in application of section 15 of Law no. 146/1997.

17. By a judgment of 8 September 1999, the Bucharest County Court held that the action had been brought as independent proceedings and cancelled it on the ground that the applicants had failed to pay the stamp duty.

18. On an appeal (*apel*) by the applicants, the Bucharest Court of Appeal upheld the independent nature of the proceedings in a judgment of 12 January 2000. It ruled that an accessory action, which was exempt from stamp duty, was necessarily attached to a pending main action, but in this case a final judgment had already been delivered in respect of the applicants' action for recovery of possession.

19. On a further appeal (*recurs*) by the applicants, the Supreme Court of Justice, in a judgment of 21 April 2000, upheld the substance of the previous decisions. It added that the purpose of the two actions had been different, emphasising that the action for recovery of possession had enabled the applicants to have the building returned to them, while the purpose of the action for reimbursement of loss of earnings had been to recuperate rental income which they had not received.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Law no. 146 of 24 July 1997 on stamp duty

20. The relevant provisions of this Law provide:

Section 1

“Actions and claims lodged before the courts ... shall be subject to stamp duty as provided for by law depending on whether or not the matter at stake is open to evaluation on a pecuniary basis.”

Section 2

“Actions and claims lodged before the courts which may be evaluated on a pecuniary basis shall be subject to the following taxes:

... if the amount at stake exceeds 500,000,000 Romanian lei [ROL], stamp duty shall be [ROL] 13,215,000 plus 1% of the amount exceeding [ROL] 500,000,000.”

Section 15

“Actions for the recovery of property unlawfully nationalised by the State during the period from 6 March 1945 to 22 December 1989, lodged by the owners, the latter’s heirs or by other legal persons, as well as accessory claims, shall be exempt from stamp duty.”

Section 21

“The Ministry of Finance may grant exemptions, reductions or payment by instalments in respect of stamp duty, under the conditions laid down by the Ministry of Finance.”

21. Section 21 of Law no. 146/1997 was amended by Law no. 195 of 25 May 2004, which provides that the granting of exemptions, reductions or repayment by instalments in respect of stamp duty is henceforth a matter for the courts.

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

27. The applicants alleged that there had been a violation of their right of access to a court and complained of the unfairness of the proceedings on account of alleged errors of law by the courts. They relied on Article 6 § 1 of the Convention, the relevant parts of which provide:

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

A. The parties' submissions

28. Relying on the Court's case-law (see *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, §§ 61-67, Series A no. 316-B) and that of the Commission (*Philis v. Greece*, no. 18989/91, decision of 12 October 1994, unreported), the Government claimed that the fact of establishing procedural costs which were proportional to the amounts claimed in civil proceedings could not, in itself, represent an impediment to the right of access to a court. They emphasised that the amount of costs payable represented only approximately 1.09% of the sum claimed and that, consequently, it was not unreasonable.

29. Finally, the Government alleged that the applicants could have asked the Ministry of Finance for an exemption from stamp duty and then challenged any potential refusal before the courts.

30. The applicants alleged that the amount of stamp duty was excessive and had rendered void their right of access to a court. Referring to *Kreuz v. Poland (no. 1)* (no. 28249/95, § 66, ECHR 2001-VI), they considered that the Romanian authorities had not struck a fair balance between, on the one hand, the State's right to recover procedural costs and, on the other, their interest in having their claims examined by the courts.

31. They also claimed that their action for damages had been merely accessory to the action for recovery of possession and that, consequently, it ought to have been exempted from stamp duty.

B. The Court's assessment

32. The Court notes that there are two limbs to this complaint: the first concerns lack of access to a court and the second relates to the fairness of the proceedings. However, in so far as the courts did not rule on the merits of the action but merely cancelled it, the Court considers that it is not necessary to examine separately the applicants' complaint concerning the alleged unfairness of the proceedings.

33. The Court further reiterates that Article 6 § 1 of the Convention guarantees everyone's right to have his or her civil rights and obligations determined by a court. It thus enshrines a "right to a court", of which the right of access, namely the right to apply to a court in civil proceedings, is only one aspect.

34. However, the "right to a court" is not absolute. It lends itself to restrictions since, by its very nature, it requires regulation by the State, which may select the means to be used for that purpose.

35. In this respect, the Court reiterates that it has never ruled out that a financial requirement may be imposed on an individual's right of access to a court in the interests of the fair administration of justice (see *Tolstoy*

Miloslavsky, cited above, §§ 61 et seq., and *Kreuz (no. 1)*, cited above, § 59).

36. Notwithstanding the margin of appreciation enjoyed by the State in this area, the Court emphasises that a restriction on access to a court is only compatible with Article 6 § 1 if it pursues a legitimate aim and if there is a reasonable degree of proportionality between the means used and the aim pursued.

37. In particular, bearing in mind the principle that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective, the Court reiterates that the amount of the fees, assessed in the light of the particular circumstances of a given case, including the applicant's ability to pay them and the phase of the proceedings at which that restriction has been imposed, are factors which are material in determining whether or not a person enjoyed his or her right of access to a court or whether, on account of the amount of fees payable, the very essence of the right of access to a court has been impaired (see *Tolstoy Miloslavsky*, cited above, §§ 63 et seq., and *Kreuz (no. 1)*, cited above, § 60).

38. In the instant case, the Court notes that the failure to pay the EUR 323,264 due in stamp duty for bringing the proceedings resulted in the cancellation of the action.

39. The Court further notes that the amount in question, which is undoubtedly very high for any ordinary litigant, was not justified either by the particular circumstances of the case or by the applicants' financial position; it was calculated on the basis of a set percentage, laid down by law, of the sum at stake in the proceedings. Although the amount claimed by the applicants in respect of loss of earnings resulting from the rental income received by the State was considerable, the Court considers, in view of the value of the property, that it was not unreasonable or without foundation.

40. In contrast, the Court holds that the amount claimed from the applicants in order to lodge their action was excessive. As a result, they were implicitly obliged to abandon the action, which deprived them of the right to have their case heard by a court.

41. With regard to the option for the applicants to apply for exemption from stamp duty, the Court notes that the Government's argument, based on the applicants' alleged omission, is similar to an objection that they failed to exhaust domestic remedies. The Court notes that a similar objection was dismissed at the stage of examining the application's admissibility. In any event, the Court observes that the Government have not submitted any case-law from the domestic courts that would demonstrate the effectiveness of such a request within the meaning of Article 35 § 1 of the Convention.

42. Having regard to the circumstances of the case, and particularly to the fact that this restriction was imposed at an initial stage of the

proceedings, the Court considers that it was disproportionate and thus impaired the very essence of the right of access to a court (see, *mutatis mutandis*, *Teltronic-CATV v. Poland*, no. 48140/99, 10 January 2006).

43. Accordingly, the Court concludes that the State failed to strike a fair balance between, on the one hand, its interest in recovering the costs of proceedings and, on the other, the applicants' interest in having their claims examined by the courts.

44. Consequently, there has been a violation of Article 6 § 1 of the Convention.

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