



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

THIRD SECTION

CASE OF MATICA v. ROMANIA

(Application no. 19567/02)

JUDGMENT

STRASBOURG

2 November 2006

FINAL

02/02/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Matica v. Romania,

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

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr C. BÎRSAN,

Mr V. ZAGREBELSKY,

Mrs A. GYULUMYAN,

Mr DAVID THÓR BJÖRGVINSSON,

Mrs I. ZIEMELE, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 12 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 19567/02) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Romanian nationals, Mrs Maria Matica, Maria-Marieta Matica and Dorina-Meri Matica (“the applicants”), on 25 April 2002.

2. The applicants were represented by Mr T. Cadar, a lawyer practising in Bihor, Romania. The Romanian Government (“the Government”) were represented by their Agent, Mrs R. Rizoiu and then by Mrs B. Ramaşcanu who replaced her.

3. On 6 September 2005 the Court decided to communicate the complaint concerning the length of the proceedings to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

4. The applicants, mother and daughters, were born in 1937, 1957 and 1966. Mrs Maria Matica, the mother, died on 3 September 2004 and Mrs Maria-Marieta Matica died on 27 July 2006. Mrs Doina-Meri Matica is their sole heir. She currently lives in Copăceni, Romania.

5. On 18 June 1992, the first applicant and V.M., her husband, lodged an action with the Beiuş District Court seeking a declaration that they were the owners of a plot of land and, accordingly, an order for their ownership title to be published in the Land Registry. On 5 October 1992, they supplemented their action, also seeking a declaration that the property

deed for the same plot of land issued to third parties was null and void. They claimed that they had purchased, in 1981, the respective plot of land, together with a house that had been built on it.

6. On 1 February 1993, the action was partially allowed. However, on 2 July 1993, the Bihor County Court, acting upon the claimants' appeal, referred the case back to the District Court for a fresh examination, on the ground that the latter court omitted to rule on one of the complaints.

Of the fourteen hearing held between 14 October 1993 and 27 October 1994, ten were adjourned for the absence of witnesses or of the expert reports, one at the first applicant's request in order to hire a lawyer and one for deliberations.

In a decision of 27 October 1994, the Beiuş District Court remitted to the Oradea Court of Appeal the complaint concerning the nullity of the property deed issued to third parties, and stayed the examination of the other complaints until the validity of the property deed would be decided by the appropriate courts.

7. Before the Court of Appeal one hearing was adjourned for the applicants to hire a lawyer and one for problems with the summoning procedure. After another postponed hearing due to failure in the summoning procedure, on 15 May 1995 the Oradea Court of Appeal dismissed the action on the ground that the first applicant and her husband had not exhausted the preliminary administrative procedure before lodging their complaints with the courts.

8. The first applicant and her husband appealed against this decision, considering that the Court of Appeal was not competent to examine the matter. On 5 June 1996, the Supreme Court of Justice allowed the appeal and remitted the case to the Beiuş District Court.

9. Twelve hearings were held before this court, most of them being adjourned due to the absence of any answer to the claimants' requests of information from the local authorities in support of their claims.

The Beiuş District Court dismissed all the complaints formulated by the applicants, in a judgment of 16 July 1998. All parties appealed.

10. On 26 March 1999, the Bihor County Court referred the case back to the District Court, on the ground that no specific action had been ordered to the administrative authorities responsible for the deliverance of the property deed, although they were parties to the proceedings.

11. On 17 December 1999, the Beiuş District Court re-examined the action and dismissed it.

12. On 9 February 2000, V.M. died and the action was continued by his wife and daughters, the applicants.

13. On 30 April 2001, the applicants' appeal was dismissed by the Bihor County Court.

14. In a final decision of 3 December 2001, the Oradea Court of Appeal confirmed the solution, upon the applicants' appeal on points of law.

15. Based on the evidence adduced in the case, namely the purchase contract of 1981 and witness testimony, the courts found that, in 1981, the applicants only bought the house and not the land in question. Furthermore, they could not bring any evidence showing that the intention of the parties of the 1981 contract had been to transfer the ownership of the land. In addition, the court could find no ground to declare the third parties' ownership title null and void.

THE LAW

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

16. The applicants complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

17. 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

18. The Government considered that the case had been very complex and that the applicants had contributed significantly to its protraction in particular by supplementing their initial action after the beginning of the proceedings, by filing appeal against the first judgment, that of 1 February 1993, although it had been favourable to them and by requesting several adjournments for hearing of witnesses. Although significant delays had been caused by the fact that the witnesses had not appeared before the courts, the applicants had not wished to wave their right to hearing of witnesses.

The Government pointed out that the period to be taken into account for the first applicant began to run on 20 June 1994, when Romania ratified the Convention, whereas for the other applicants it started on 9 February 2000, when they joined the proceedings. Relying on the case of

Farcaș and others v. Romania (no. 67020/01, § 30, 10 November 2005), they concluded that the Court should examine separately their situation.

Bearing in mind what was at stake for the applicants, the Government considered that they had not suffered any damage as a result of the delays in the proceedings. Lastly, they recalled that no periods of total inactivity had occurred, and concluded that the authorities had been diligent.

19. The Court recalls firstly that in the case of *Farcaș and others* cited above it considered that the heirs of a deceased claimant started the proceedings at the date when the claimant himself did (see paragraph 27 of the said judgment). It sees no reason to depart from this interpretation.

20. It follows that the period to be taken into consideration began for all the applicants on 20 June 1994, when Romania ratified the Convention. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time. Accordingly, more than two years after the date when the initial action had been lodged, the case was still pending before the court of first instance.

The period in question ended on 3 December 2001. It thus lasted seven years, five months and thirteen days for three levels of jurisdiction. Ten courts heard the case throughout this period.

21. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

22. Bearing in mind its competence *ratione temporis*, the Court will not look into the arguments concerning the period before the ratification of the Convention by the respondent State, namely the supplementation of the initial action and the appeal against the first judgement in the case. It further recalls that the applicants cannot be found responsible for the protraction of the case for not having waived their right to hearing of witnesses, as this is an integral part of their right to a fair trial, also protected by Article 6 of the Convention.

23. Moreover, the Court reiterates that even in legal systems applying the principle that the procedural initiative lies with the parties, the latter's attitude does not dispense the courts from ensuring the expeditious trial required by Article 6 § 1 (see *Sürmeli v. Germany* [GC], no. 75529/01, § 129, 8 June 2006).

24. Lastly, the Court has already found that, although it is not in a position to analyse the juridical quality of the case-law of the domestic courts, since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings discloses a serious deficiency in the judicial system (see *Wierciszewska v. Poland*, no. 41431/98, § 46,

25 November 2003). Moreover, this deficiency is imputable to the authorities and not the applicants.

25. Having examined all the materials submitted to it and having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

26. The applicants complained, under Article 6 § 1, that the proceedings in the case were unfair. They also claimed to be victims of a violation of Article 13 of the Convention in so far as the national law did not provide any effective remedy to challenge the final decision of 3 December 2001.

27. In so far as the fairness of the proceeding is questioned by the applicants, the courts seem to have adopted their solution based on the evidence adduced to the case. There is nothing in the case file that would indicate that the examination of the facts and application of the national law were unfair or arbitrary against the requirements of Article 6 § 1 of the Convention.

28. In so far as Article 13 of the Convention is concerned, the Court recalls that this provision does not guarantee a remedy against legislation nor does it require that there should be several levels of jurisdiction.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicants claimed the restitution of their property and 100 000 euros (EUR) in respect of pecuniary and non-pecuniary damage caused by the loss of the property and the proceedings before the numerous national courts.

32. The Government contested the claim on the ground that no causal link between the pecuniary damages sought and the alleged violation of the

reasonable length of proceedings could be found. They also considered that EUR 100 000 in non-pecuniary damages is an exorbitant claim.

33. 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 awards EUR 4,200 for non-pecuniary damage to be paid to the surviving applicant.

B. Costs and expenses

34. The applicants claimed EUR 1,500 for the costs and expenses incurred before the Court. They also requested the reimbursement of the expenses incurred before the national courts but did not quantify them and claimed that all the bills are in the files of the national courts. Lastly, they claimed EUR 1,000 for future expenses with new proceedings that they would start with the national courts after the finding of a violation in the present case.

35. The Government contested these claims and asked the Court to reimburse only the costs that were necessarily incurred.

36. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award EUR 500 for the proceedings before the Court.

C. Default interest

37. 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 concerning the length of the proceedings 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*

(a) that the respondent State is to pay the surviving applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,200 (four thousand two hundred euros) in respect of non-pecuniary damage and EUR 500 (five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable;

(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;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 2 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President