



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

THIRD SECTION

CASE OF BEIAN v. ROMANIA (No. 1)

(Application no. 30658/05)

JUDGMENT
[Extracts]

STRASBOURG

6 December 2007

FINAL

06/03/2008

In the case of Beian v. Romania (no. 1),

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

Boštjan M. Zupančič, *President*,

Corneliu Bîrsan,

Elisabet Fura-Sandström,

Alvina Gyulumyan,

Egbert Myjer,

Ineta Ziemele,

Isabelle Berro-Lefèvre, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 15 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 30658/05) 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 national, Mr Aurel Beian (“the applicant”), on 4 August 2005.

2. The applicant was represented by his wife, Mrs Elena Beian. The Romanian Government (“the Government”) were represented by their Agent, Mr R.H. Radu, of the Ministry of Foreign Affairs.

3. The applicant alleged that the proceedings he had brought in order to claim social security benefits had been unfair and that he had been subjected to discriminatory treatment compared with other people in a similar situation.

4. On 2 June 2006 the Court decided to give notice of 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 applicant was born in 1932 and lives in Sancraiu de Mureș.

6. In 1953 the applicant was called up for military service. However, because of his father’s opposition to the collectivisation of farmland, he was not allowed to undergo military training. Instead, he was assigned to a

number of military units, including the Vatra Dornei unit, as a building worker. His military service ended in 1955.

7. In 1961 the Labour Department, an administrative body grouping together the military units specially created for conscripts who were barred from military training, was abolished.

8. Law no. 309 of 22 May 2002 (“Law no. 309-2002”) recognised as forced labour the work performed in the military units coming under the authority of the Labour Department, and provided for compensatory measures including a monthly allowance, free medical treatment and exemption from the television licence fee.

9. On 22 August 2002 the applicant applied to the county pensions and social insurance fund (“the county fund”), claiming the benefits available under Law no. 309-2002. In a decision of 19 December 2002 the county fund refused the application on the ground that the applicant had not performed his military service in a military unit coming under the authority of the Labour Department.

10. On 5 May 2003 the applicant brought proceedings against the county fund before the Targu Mureş Court of Appeal, seeking to have the decision of 19 December 2002 set aside and to be recognised as having performed forced labour during his military service.

11. In a judgment of 2 June 2003 the Court of Appeal found in the applicant’s favour and ordered the county fund to issue a new decision awarding him the benefits provided for by Law no. 309-2002. On the basis of the entries in the applicant’s military service record book, the Court of Appeal concluded that he had worked on various building projects with the Vatra Dornei military unit and had been discharged from service as an “untrained combat soldier”.

12. The county fund appealed to the High Court of Cassation and Justice (“the HCCJ”).

13. At the applicant’s request, the HCCJ referred to the Constitutional Court an objection raised by the applicant as to the constitutionality of Article 1 of Law no. 309-2002. The applicant alleged that, in making a distinction between persons who had performed the same kind of forced labour during their military service, the provision in question was in breach of Article 16 of the Constitution and of the European Convention on Human Rights. He considered this difference in treatment to be unjustified since it was based solely on the hierarchical structure to which the conscript’s military unit had belonged.

14. The Constitutional Court dismissed the objection in a judgment of 1 April 2004, which included the following passage:

“The definition of the categories of persons who are eligible for certain measures in compensation for the duress and hardship they underwent in the past ... is a matter for the legislature alone, provided that no privileges or discrimination are engendered between persons belonging to the same category and in identical situations. Article 1

of Law no. 309-2002 does not give rise to any privileges or discrimination contrary to Article 16 of the Constitution.”

15. In a judgment of 8 June 2004 in which it found in favour of the county fund, the HCCJ quashed the judgment of the Court of Appeal and remitted the case for further preparation, with a view to determining whether the Vatra Dornei military unit had been attached to the Labour Department.

16. In a letter of 1 November 2004 in reply to a request for information made by the Court of Appeal, the Pitești military unit, which kept the army archives, stated that the Vatra Dornei military unit did not feature on the list of units attached to the Labour Department. It added that, in accordance with the rules on the implementation of Law no. 309-2002, the list had been drawn up by the National Pensions and Social Insurance Fund, which had made it available to the military unit as a “working tool”.

17. On 3 November 2004 the national archives of the Ministry of the Interior and Administrative Affairs informed the Court of Appeal that the Vatra Dornei military unit had not been attached to the Labour Department.

18. On the basis of the information provided by the Pitești military unit and the national archives, and taking the view that Law no. 309-2002 applied only to conscripts who had worked in military units coming under the authority of the Labour Department, the Court of Appeal dismissed the applicant’s claims in a judgment of 8 November 2004.

19. The applicant appealed to the HCCJ. In his submission, the Pitești military unit, by confining itself to reproducing the information contained in the list drawn up by the National Pensions and Social Insurance Fund and omitting to check the recruitment file, which contained proof of the work carried out, had not adequately replied to the request for information from the Court of Appeal.

20. The applicant further contested the distinction made by the Law between those conscripts who had performed forced labour in military units answerable to the Labour Department and other conscripts who, although they had performed the same kind of work, were not entitled to benefits under the Law solely because their military units had not come under the authority of the Labour Department. He argued that, in any event, the HCCJ, in a judgment of 21 January 2004, had recognised a former conscript in a similar situation to his own as being covered by the provisions of Law no. 309-2002.

21. In a final judgment of 13 May 2005, the HCCJ dismissed the appeal and upheld the judgment of the Court of Appeal on the following grounds:

“In accordance with Law no. 309-2002, persons who performed their military service between 1950 and 1961 in the work brigades under the authority of the Labour Department are covered by the provisions of that Law.

It follows that the decisive criterion for eligibility under the Law is not the kind of work performed within the military unit, for example building work, but whether or not the unit in question came under the authority of the Labour Department, within which work brigades were established.

As a result, given the information provided by the Pitești military unit in its letter stating that the unit to which the applicant belonged was not on the list of units answerable to the Labour Department, the Court of Appeal was correct in ruling that the conditions for application of the Law were not met in the instant case and in dismissing the appeal accordingly.”

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. Law no. 309 of 22 May 2002 (“Law no. 309-2002”) concerning eligibility for and the award of certain benefits to persons who performed military service under the auspices of the Labour Department between 1950 and 1961

Article 1

“Any Romanian citizen who performed military service between 1950 and 1961 in the work brigades coming under the authority of the Labour Department shall be covered by the provisions of this Law.”

Article 2

“The persons referred to in Article 1 shall be entitled to a monthly allowance ...”

Article 4

“The persons referred to in Article 1 ... shall also be entitled to ...:

- free medical treatment and medicines ...;
- exemption from the television licence fee ...”

Article 6

“(2) The benefits referred to in the preceding sections shall be awarded on request, regard being had to the entries in the individual’s military service record book or certificates issued by the county military headquarters or the Pitești military unit.

(3) Requests for these benefits shall be addressed to the county pensions and social insurance funds.”

2. Government decree laying down the rules on implementation of Law no. 309-2002, enacted on 10 October 2002

Article 7

“For the purposes of the award of the benefits provided for by this Law, the National Pensions and Social Insurance Fund may request the national archives ... to compile, on the basis of the documents at its disposal, a list of the work brigades under the authority of the Labour Department.”

3. Judgment of the HCCJ of 2 December 2003

22. In a case similar to the present one, a former conscript who had performed forced labour in a military unit which did not come under the authority of the Labour Department claimed eligibility under the provisions of Law no. 309-2002. When the county pension fund dismissed his claim on the ground that the Law applied only to conscripts in the work brigades, he appealed to the Court of Appeal, which found in his favour.

23. Following an appeal by the county fund, the HCCJ upheld the Court of Appeal judgment on the following grounds:

“As the fact that the claimant was subjected to forced labour is not in dispute ..., there is no justification for withholding the benefits in question. To do so would be to create an inequitable situation, denying compensation to persons who performed military service in identical conditions and who, for purely formal reasons relating solely to the hierarchical structure to which their military units belonged, would thus be subjected to different treatment of a clearly discriminatory nature.”

4. Other judgments of the HCCJ

24. In a number of other judgments, including those of 4 November 2003, 21 January, 2 June and 14 December 2004, 11 and 19 January, 7, 14, 18, 22 and 28 February, 1, 8, 14 and 28 March and 24 May 2005, and 24 May and 6 June 2006, the HCCJ delivered rulings to the same effect as that referred to above.

25. However, in other judgments, and in particular those delivered on 13 and 28 November 2003, 11 March and 15, 22 and 29 April 2004, 11 and 18 January, 1, 17 and 21 February, 1, 10 and 28 March, 13 and 23 May and 14 November 2005, and 12 and 13 April and 25 May 2006, it ruled to the opposite effect, holding that conscripts who had not performed their military service in a military unit coming under the authority of the Labour Department were not covered by the provisions of Law no. 309-2002.

THE LAW

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

26. The applicant alleged a twofold violation of Article 6 § 1 of the Convention.

27. Firstly, he complained of a breach of the principle of legal certainty on account of the conflicting case-law of the HCCJ. Secondly, he submitted that his action had not been determined by an “independent and impartial tribunal”, as the domestic courts had given decisive weight to the information provided by the Pitești military unit, although the latter had confined itself to reproducing the information contained in a list drawn up by the defendant. Article 6 § 1 of the Convention, in its relevant part, provides:

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

A. Legal certainty and the case-law of the HCCJ

...

2. *Merits*

29. The Government contended that the principles of independence and impartiality of the courts, promptness of the proceedings, publicly-held hearings and equality of arms had been fully adhered to.

30. In their submission, the fact that in similar cases the domestic courts had found in favour of other former conscripts whose situation was comparable to that of the applicant had no bearing on the fairness of the proceedings. Furthermore, the domestic courts’ interpretation of Article 1 of Law no. 309-2002 had been in line with the case-law of the Constitutional Court.

31. The applicant argued that this interpretation had been in breach of the principle of legal certainty. In his view, the approach taken by the domestic courts in his case had contradicted other court rulings, and in particular HCCJ rulings, on the basis of which he could reasonably have expected a finding in his favour.

32. The Court reiterates at the outset that the Convention imposes no specific obligation on the Contracting States to provide redress for wrongs or damage caused prior to their ratification of the Convention (see, *mutatis mutandis*, *Kopecký v. Slovakia* [GC], no. 44912/98, § 38, ECHR 2004-IX).

33. However, where States decide to enact legislation to compensate victims of past injustices, it must be implemented with reasonable clarity

and coherence in order to avoid, in so far as possible, legal uncertainty and ambiguity for the legal persons concerned. In that context, it should be stressed that uncertainty – be it legislative, administrative or judicial – is an important factor to be taken into account in assessing the State's conduct (see, *mutatis mutandis*, *Broniowski v. Poland* [GC], no. 31443/96, § 151, ECHR 2004-V, and *Păduraru v. Romania*, no. 63252/00, § 92, ECHR 2005-XII).

34. In the instant case the Court notes that, under the terms of Law no. 309-2002, the only persons who qualified for the compensatory measures were conscripts who had performed forced labour in the units coming under the authority of the Labour Department. In a series of judgments delivered after the judgment of 2 December 2003, and on the basis of the principle of non-discrimination, the HCCJ extended the scope of Law no. 309-2002 to include all conscripts who had performed forced labour during their military service, irrespective of the hierarchical structure to which their military unit belonged.

35. However, in another series of judgments delivered over the same period the court developed a line of case-law to the opposite effect, dismissing appeals, as in the applicant's case, from former conscripts who had performed forced labour outside the framework of the Labour Department.

36. In the absence of a mechanism for ensuring consistency in its case-law, the highest domestic court delivered diametrically opposed judgments, sometimes on the same day, concerning the scope of Law no. 309-2002 (see, for instance, the judgments of 11 January and 1 and 28 March 2005).

37. Admittedly, divergences in case-law are an inherent consequence of any judicial system which is based on a network of trial and appeal courts with authority over the area of their territorial jurisdiction. However, the role of a supreme court is precisely to resolve such conflicts (see *Zielinski and Pradal and Gonzalez and Others v. France* [GC], nos. 24846/94 and 34165/96 to 34173/96, § 59, ECHR 1999-VII).

38. In the instant case it is clear that the HCCJ was the source of the profound and lasting divergences complained of by the applicant.

39. The practice which developed within the country's highest judicial authority is in itself contrary to the principle of legal certainty, a principle which is implicit in all the Articles of the Convention and constitutes one of the basic elements of the rule of law (see, *mutatis mutandis*, *Baranowski v. Poland*, no. 28358/95, § 56, ECHR 2000-III). Instead of fulfilling its task of establishing the interpretation to be followed, the HCCJ itself became a source of legal uncertainty, thereby undermining public confidence in the judicial system (see, *mutatis mutandis*, *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 97, ECHR 2002-VII, and *Păduraru*, cited above, § 98; see also, by contrast, *Pérez Arias v. Spain*, no. 32978/03, § 27, 28 June 2007).

40. The Court therefore concludes that this lack of certainty with regard to the case-law had the effect of depriving the applicant of any possibility of obtaining the benefits provided for by Law no. 309-2002, while other persons in a similar situation were awarded those benefits.

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

...

FOR THESE REASONS, THE COURT UNANIMOUSLY

...

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

...

Done in French, and notified in writing on 6 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Boštjan M. Zupančič
President