



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

THIRD SECTION

CASE OF DEKANY v. ROMANIA

(Application no. 22011/03)

JUDGMENT

STRASBOURG

1 April 2008

FINAL

01/07/2008

This judgment may be subject to editorial revision.

In the case of Dekany v. Romania,

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Egbert Myjer,

Ineta Ziemeļe, *judges*,

and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 11 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 22011/03) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Romanian nationals, Mr Emeric Dekany and Mrs Esztera Dekany (“the applicants”), on 9 June 2003. On 3 September 2004 the second applicant died and the first applicant, as her only successor, continued the application.

2. The applicants were represented by Mrs R. Bercea, a lawyer practising in Timișoara. The Romanian Government (“the Government”) were represented by their Agent, Mr R.-H. Radu.

3. On 3 May 2007 the Court decided to give notice of the application 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 first applicant was born in 1948 and lives in Timișoara. The second applicant, the mother of the first applicant, was born in 1921 and died on 3 September 2004. In a letter of 4 June 2007 the first applicant, as the only successor of her mother, informed the Court that he wished to pursue the application.

5. On 9 September 1991 the applicants lodged an action with the Timișoara Court of First Instance seeking rectification of the Land Registry and, accordingly, registration of their ownership right with regard to a plot of land. Of the twenty one hearings held between 2 October 1991 and

19 June 1997 five were adjourned at the applicants' request, including between 11 February 1992 and 18 January 1993, between 2 March 1993 and 6 July 1994, and between 11 October 1994 and 27 February 1996, when the proceedings were stayed during criminal investigations against one of the defendants. On 19 June 1997 the Timișoara Court of First Instance dismissed the applicants' action.

6. On 28 April 1998 the Timiș Regional Court upheld the applicants' appeal and quashed the judgment of the First Instance Court, sending the case back for retrial. The court considered that, as the land had been sold during the appeal proceedings, the new owner should be involved in the lawsuit. This ruling was upheld on 22 October 1998 by a final decision of the Timișoara Court of Appeal.

7. After retrial, on 10 January 2000 the Timișoara Court of First Instance rejected the applicants' action as groundless. On 19 July 2000 the Timiș Regional Court confirmed this decision.

8. On 10 November 2000 the Timișoara Court of Appeal allowed the applicants' appeal, quashed the two preceding judgments and referred the case back to the First Instance Court for a fresh examination, on the ground that the two courts had omitted to rule on two complaints and with regard to another defendant.

9. On 21 December 2001 the Timișoara Court of First Instance re-examined the action and dismissed it. Of the eighteen hearings held between 12 December 2000 and 21 December 2001 one was adjourned at the applicants' request.

10. On 2 July 2002 the applicants' appeal was upheld by the Timiș Regional Court, which ordered rectification of the Land Registry, declared null and void the subsequent sale contracts and ordered the administrative authorities to restitute the plot of land in kind.

11. On 10 December 2002 the Timișoara Court of Appeal by a final decision allowed the opposing parties' appeal and therefore annulled the judgment of 2 July 2002 considering, *inter alia*, that the courts cannot act as a substitute for the administrative authorities set up by the Real Property Act (Law no. 18/1991) to deal with claims for return of land.

THE LAW

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

12. 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...”

13. The Government contested that argument.

14. The period to be taken into consideration began 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.

The period in question ended on 10 December 2002. It thus lasted eight years, five months and twenty days for three levels of jurisdiction. Nine courts examined the case throughout this period.

A. Admissibility

15. 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

16. 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 applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

17. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

18. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. 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

19. The applicants complained under Article 6 § 1 that the proceedings in the case were unfair, since the domestic courts had failed to assess the facts correctly, had misinterpreted the domestic law and had not given reasoned decisions. They also claimed to be victims of a violation of

Article 1 of Protocol No. 1 in so far as the proceedings had not allowed them to recover their property.

20. As regards the first limb of the applicants' complaints, the Court reiterates that Article 6 § 1 obliges the courts to give reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument. Therefore the question whether a court has failed to fulfil the obligation to state reasons can only be determined in the light of the circumstances of the case (see *Ruiz Torija v. Spain*, judgment of 9 December 1994, Series A no. 303-A, § 29). Further, the Court is not called upon to deal with errors of fact and law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

21. Having regard to the above, the Court considers that in the proceedings complained of, seen as a whole, there is no appearance of unfairness or arbitrariness which would infringe the guarantees of a fair hearing within the meaning of Article 6 § 1 of the Convention.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

22. In so far as Article 1 of Protocol No. 1 is concerned, the Court considers that the applicants have not shown that they had a claim which was sufficiently established to be enforceable, and they therefore cannot argue that they had a "possession" within the meaning of Article 1 of Protocol No. 1 (see, among other authorities, *Gratzinger and Gratzingerova v. the Czech Republic* (dec.), no. 39794/98, ECHR 2002-VII).

23. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The surviving applicant claimed 40,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

26. 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 pointed out that damage was claimed only by one of the applicants and that there was no precise amount for non-pecuniary damage.

27. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicants must have sustained non-pecuniary damage in respect of the violation found. Ruling on an equitable basis, it awards a total sum of EUR 3,500 under that head to be paid to the surviving applicant.

B. Costs and expenses

28. The surviving applicant also claimed EUR 5,000 for the costs and expenses incurred before the Court. He did not provide any supporting document.

29. The Government contested the claim as excessive and unsubstantiated.

30. According to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum (see *Arvelakis v. Greece*, no. 41354/98, § 34, 12 April 2001). The Court points out that under Rule 60 of the Rules of Court "the applicant must submit itemised particulars of all claims, together with any relevant supporting documents failing which the Chamber may reject the claim in whole or in part".

31. The Court notes that the surviving applicant did not submit any supporting documents or particulars to substantiate his claim. Accordingly, the Court does not award any sum under this head.

C. Default interest

32. 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 excessive 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 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, 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 amount 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 1 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Deputy Registrar

Josep Casadevall
President