



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

THIRD SECTION

**CASE OF GHEORGHE AND MARIA MIHAELA DUMITRESCU
v. ROMANIA**

(Application no. 6373/03)

JUDGMENT

STRASBOURG

29 July 2008

FINAL

26/01/2009

This judgment may be subject to editorial revision.

In the case of Gheorghe and Maria Mihaela Dumitrescu v. Romania,

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Corneliu Bîrsan,

Alvina Gyulumyan,

Egbert Myjer,

Ineta Ziemele,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 8 July 2008,

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

PROCEDURE

1. The case originated in an application (no. 6373/03) 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 Gheorghe Dumitrescu and Mrs Maria Mihaela Dumitrescu (“the applicants”), on 10 February 2003.

2. The applicants were represented by Ms Michaela Claude-Dumitrescu. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu.

3. The first applicant, acting in the name and in his capacity as the legal representative of his daughter (the second applicant), complained under Article 6 § 1 of the Convention that the length of the proceedings before the domestic courts to which she was a party was excessive.

4. On 3 May 2007 the Court decided to give notice of the application to the Government. It decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3 of the Convention).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicants, who are father and daughter, were born in 1947 and 1995 respectively and live in Cepari.

6. On 4 June 2000 the second applicant was grievously injured in a car accident. She suffered total paralysis of her lower limbs and was admitted to hospital where, according to the first applicant, she remained for 709 days.

7. On an unknown date during pre-trial investigations the second applicant's mother claimed damages in criminal proceedings. On 7 December 2000 the Public Prosecutor attached to the Curtea de Argeş Court of First Instance ("the Court of First Instance") committed T.M., the driver of the car, for trial before the Court of First Instance.

8. Of the fourteen hearings held between 17 January and 7 December 2001, ten were adjourned for the absence of witnesses or of expert reports, for hearing new witnesses and for ordering a new expert report, two at T.M.'s request for the absence of her lawyer and one for deliberations.

On 7 December 2001 the Court of First Instance convicted T.M. of having negligently caused bodily harm, sentenced her to a conditional prison sentence of three months, held her personally liable and awarded both pecuniary and non-pecuniary damages to the second applicant and to her mother. It also ordered T.M. to pay the mother a monthly sum pending her daughter's recovery.

9. On 26 March 2002 the Argeş Regional Court ("the Regional Court") rejected an appeal by the mother, considering that the Court of First Instance had correctly reduced the damages on the ground of contributory negligence by the second applicant and lack of surveillance by the parents.

10. On 25 June 2002 the Piteşti Court of Appeal ("the Court of Appeal") upheld a subsequent appeal lodged by both the second applicant's mother and T.M. and quashed the previous judgment, sending the case back for retrial. The court noted that the insurance company had not been summoned.

11. During the retrial the six hearings held between 26 September 2002 and 9 January 2003 were adjourned at the request of either T.M. or the insurance company.

12. On 23 January 2003 the Court of First Instance sentenced T.M. to a conditional prison sentence of three months, held her jointly liable with the insurance company and awarded both pecuniary and non-pecuniary damages to the second applicant and to her mother, including a monthly sum pending the second applicant's recovery.

13. On 8 May 2003 the Regional Court rejected an appeal by the second applicant's mother and, finding that her daughter had been exclusively at fault, allowed an appeal by the opposing parties, held T.M. personally liable and reduced the amount of damages.

14. On 20 November 2003 the Court of Appeal upheld subsequent appeals lodged by the second applicant's mother and by the public prosecutor, quashed the previous judgment and sent the case back for retrial. The court considered that both parties to the accident had been at fault and

that the Regional Court had not pronounced on all the complaints raised by the second applicant's mother.

15. After the retrial, on 3 March 2004 the Regional Court allowed the action lodged by the second applicant's mother in part and awarded both pecuniary and non-pecuniary damages, finding T.M. jointly liable up to a certain sum and exclusively liable for the remainder.

16. On 27 May 2004 the Court of Appeal gave a final decision rejecting as unfounded an appeal by the second applicant's mother. The court considered that the quantum of damages had been correctly assessed.

THE LAW

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

17. 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..."

18. The Government contested that argument.

19. The period to be taken into consideration began at the latest on 7 December 2000 and ended on 27 May 2004. It thus lasted at least three years, four months and twenty days for three levels of jurisdiction. Eight courts examined the case during this period.

A. Admissibility

20. The Government considered that the first applicant was not a victim, as he had not participated in the domestic proceedings.

21. The applicants contested that argument.

22. The Court notes that the first applicant is the father of the second applicant and that he acted before the Court in the name and in his capacity as the legal representative of the second applicant, while it was the mother of the second applicant who acted as her legal representative in the domestic proceedings. In these circumstances, it is undeniable that both parents of the second applicant may act on her behalf as legal representatives. However, insofar as the father has included his own name as applicant, the Court considers that this is misconceived, as he cannot be regarded himself as a victim of any violation of the Convention for the purposes of Article 34.

Accordingly, to this extent the preliminary objection must be upheld and this part of the application, which is incompatible *ratione personae* with the

provisions of the Convention, must be rejected pursuant to Article 35 §§ 3 and 4. The second applicant is therefore the sole applicant for the purposes of this application.

23. 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

24. 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).

25. 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).

26. 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. Moreover, the dispute in the present case related to compensation for physical injury following a car accident which involved the applicant, a five-year old child, who suffered total paralysis of her lower limbs. The Court is of the opinion that the nature of the dispute called for particular diligence on the part of the domestic courts (see, *mutatis mutandis*, *Gheorghe v. Romania*, no. 19215/04, § 54, 15 March 2007 and *Marchenko v. Russia*, no. 29510/04, § 40, 5 October 2006).

27. The Court does not consider the subject matter of the case to be complex and, although the overall length of the proceedings does not appear to be excessive, the Court observes that the domestic courts twice quashed previous judgments due to procedural errors for which responsibility rested entirely with the authorities.

28. The Court considers that in the instant case, having regard especially to what was at stake for the applicant and to the particular diligence that the case called for from the authorities, 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

29. The applicant complained of serious abuses of process and of the outcome of the case. She also alleged that she had received no money from T.M.

30. As regards the first part of the applicant's complaints, the Court considers that they should be examined under Article 6 § 1 of the Convention. The Court observes that the allegations in respect of abuses of process by the authorities are unsubstantiated, whereas the complaint regarding the outcome is of a "fourth instance" nature. Moreover, 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 must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

31. As regards the second part of the applicant's complaints, the Court considers that it should be examined under Article 1 of Protocol No. 1. The Court notes that this complaint is unsubstantiated and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant claimed 250,000 United States Dollars in respect of pecuniary damage for the surgical operation that she has had to have abroad. She did not submit a claim in respect of non-pecuniary damage.

34. The Government contested the claim in respect of pecuniary damage on the ground that no causal link between the award sought and the alleged violation of the reasonable length of proceedings could be found. They also observed that the applicant had not submitted a claim in respect of non-pecuniary damage.

35. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. It notes that the applicant did not submit a claim in respect of non-pecuniary damage. Accordingly, there is no call to make an award under this head.

B. Costs and expenses

36. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the second applicant's complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* by five votes to two that there has been a violation of Article 6 § 1 of the Convention.
3. *Dismisses* unanimously the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

dissenting opinions of Judges Myjer and Power.

J.C.M.
S.Q.

DISSENTING OPINION OF JUDGE MYJER

I do not agree with the majority that in this case the reasonable time provision has been violated.

Indeed, not only the total length of the proceedings at the national level should be taken into account but also what was at stake.

When comparing the way this case was handled at the national level with what happens in many other cases, I cannot but conclude that – apparently precisely because of what was at stake – the national authorities acted with particular diligence. After pre-trial investigations the criminal case, in which the mother of the applicant claimed damages, was set down for trial by the public prosecutor six months after the accident (7 December 2000). Exactly one year after that date – less than eleven months after the first hearing – the court of first instance pronounced its judgment (7 December 2001). In the meantime fourteen hearings had been scheduled, of which ten were adjourned. That fact alone makes it clear that the national courts apparently did not want to lose extra time and showed particular diligence. Three and a half months later (26 March 2002) the regional court dismissed the appeal lodged by the applicant's mother. A further three months later (25 June 2002) the Court of Appeal upheld the appeal lodged by the applicant's mother and T.M. The case was sent back to the court of first instance. In the second half of 2002 six hearings were scheduled but adjourned at the request of T.M. or the insurance company. Still, seven months after the judgment of the court of appeal the court of first instance delivered another judgment (23 January 2003). Three and a half months later (8 May 2003) the regional court rejected the appeal lodged by the applicant's mother. Six and a half months later (20 November 2003) the court of appeal quashed the previous judgment and sent the case back for retrial. After the retrial, judgment was delivered on 3 March 2004. Three and a half months later (27 May 2004) the final judgment was given.

This means that in total eight judgments were given by three instances within a period less than three and a half years.

Of course I am aware of the "anti-ping pong reasoning" of this Court, where it has considered that, although the Court 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 may disclose a serious deficiency in the judicial system (see, among other authorities, *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003). But, in my opinion, that has not been the case here. Whenever a remittal was ordered, at all levels the national judges apparently did their best to give a speedy judgment.

In these circumstances I consider it a wrong signal to the national judges to conclude that at the national level the reasonable time provision has been violated.

I remember well the commentaries at the national level when, in the Court's judgment of 13 July 1983 in the case of *Zimmerman and Steiner v. Switzerland* (Series A, no. 66), it took the Commission and the Court almost four years to conclude that a term of nearly three and a half years at one national level amounted to a violation of the reasonable time requirement.

DISSENTING OPINION OF JUDGE POWER

In June 2000, when she was five years old, the second applicant was seriously injured in a road traffic accident. She suffered total paralysis of her lower limbs and required lengthy hospitalisation. The enormity of the loss that she and her parents suffered is inestimable. Criminal proceedings ensued and in the context thereof a civil claim for damages was lodged. The applicants complain that the length of those proceedings was incompatible with the “reasonable time” requirement of Article 6 § 1 of the Convention. The proceedings lasted three years, four months and twenty days and covered three levels of jurisdiction. The question before this Court is whether that period was so unreasonable as to constitute a violation of the applicants’ fundamental human right to a trial within a reasonable time.

Article 6 § 1 of the Convention guarantees that right. In civil cases, it underlines “the importance of rendering justice without delays which might jeopardise its effectiveness and credibility”; (see *H. v. France*, judgment of 24 October 1989, Series A no. 162-A and *Pélissier and Sassi v. France* [GC], no. 25444/94, ECHR 1999-II). I am in agreement with the majority that the nature of the dispute herein called for particular diligence on the part of the domestic courts. However, I do not share their view that the length of proceedings was so excessive as to constitute a failure to meet the “reasonable time” requirement of Article 6 § 1.

Adversarial proceedings, by their very nature, take time. Litigation is a complex business even when the facts of a case may not be particularly complicated. Consultations must be convened, pleadings drafted and delivered, documents filed and stamped, interim applications made, expert reports obtained, witnesses interviewed, court lists organised, trials conducted, appeals taken and, ultimately, final judgments delivered. The procedural safeguards within that process – such as, for example, the right to apply for an adjournment where additional relevant evidence is required – are not mere peripheral matters of case management. They go to the very heart of a fair trial.

In this case, significant injuries were sustained by the second applicant and contentious litigation ensued because legal liability for the cause of those injuries was, quite evidently, in issue. In the course of those proceedings an important additional party was joined. Expert medical evidence, presumably, from a number of paediatric specialists, was required. Various appeals were lodged. All of these measures, undoubtedly, took time but none of them was unimportant in the overall objective of the pursuit of justice. In complaining about the length of the proceedings, reference is made, *inter alia*, to the fact that ten of the fourteen hearings held in 2001 were adjourned and that on two occasions judgments were quashed due to procedural errors. Undoubtedly, these events extended, somewhat, the overall duration of the proceedings but it is an unfortunate

fact of life (and of legal systems) that adjournments are necessary and that errors, though regrettable, occur and require rectification. Eight of the ten adjournments in 2001 were for reasons relating to the absence of witnesses or expert reports, for the purpose of hearing new witnesses and for ordering a new expert report. These appear to be entirely legitimate grounds for adjournment, not directly imputable to the Government. To have proceeded in the absence of relevant evidence would have served neither the interests of the applicants nor the administration of justice, generally.

Medical witnesses are not always available to attend court on fixed dates as their primary professional commitments oblige them to be elsewhere. A considered prognosis is a prerequisite for any assessment of quantum thus necessitating the preparation of updated reports. These are not incidental factors giving rise to unnecessary delay. They are the practical realities involved in contentious litigation concerning causation and damage in serious personal injury actions. Of course, particular urgency will be required where it is established that delay is likely to have an adverse effect upon an applicant's health. There is no indication, however, in this case, that the delay alleged adversely affected the second applicant's health. There is no intimation that she was deprived of medical treatment whilst awaiting the monetary compensation to which she was entitled.

It is entirely understandable that to each individual claimant his or her case is unique and its resolution of immediate and vital significance. In assessing the reasonableness of length of proceedings, however, one cannot overlook the fact that the domestic courts are dealing with thousands, if not hundreds of thousands, of cases at any given time. The requirement of "reasonableness" in Article 6 § 1 implies that domestic legal systems and the registries and registrars that support them are given adequate time to deal with cases in a meaningful manner, to respond to developments as they occur, to allow for adjournments where fairness so requires and, ultimately, to manage, hear and determine cases in a manner consistent with the requirements of justice.

I do not want to be taken as acquiescing in the proposition that regular delays are endemic in every system and must, of necessity, be tolerated. Excessive delays endanger respect for the rule of law and I reaffirm the importance of administering justice in a manner that does not jeopardise its effectiveness and credibility (see *Bottazzi v. Italy* [GC], no. 34884/97, ECHR 1999-V).

The proceedings in this case involved serious personal injuries, the liability for which was contested. They spanned three levels of jurisdiction and lasted three years, four months and twenty days. In finding that this duration constituted a violation of Article 6 § 1, there is a danger of imposing unattainably high standards upon domestic courts. If we make it

so impossible for States to organise their legal systems in a workable manner by imposing excessively restrictive time limits within which cases must be resolved, then we run the risk of compromising the proper administration of justice for the sake of speed and expediency. In such an event, the fabric of a democratic society is weakened. Justice delayed may be justice denied but that must be balanced by a recognition of the reality that its proper administration requires a reasonable time. In my view, the time involved in this case was not so unreasonable as to constitute a violation of Article 6 § 1.