



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

THIRD SECTION

CASE OF MITREA v. ROMANIA

(Application no. 26105/03)

JUDGMENT

STRASBOURG

29 July 2008

FINAL

01/12/2008

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 Mitrea v. Romania,

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

Josep Casadevall, *President*,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Egbert Myjer,

Ineta Ziemele,

Luis López Guerra,

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. 26105/03) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian national, Mr Augustin Mitrea (“the applicant”), on 11 July 2003.

2. The applicant was represented by Mr Vasile Florin Fericean, a lawyer practising in Baia Mare. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu, from the Ministry of Foreign Affairs.

3. On 6 November 2007 the Court decided to communicate to the Government the complaint concerning the alleged violation of the applicant’s right to a fair hearing by the quashing, on an extraordinary appeal, of a final and enforceable decision in his favour. It 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**

4. The applicant was born in 1934 and lives in Baia Mare.

A. Proceedings against I.W.

5. On 1 April 2002 the Maramureş County Court ordered a company I.W., the applicant's former employer, to reinstate him in his post and to pay him compensation. This decision became final.

However, on 30 September 2002 the same court granted I.W.'s request and annulled the 1 April 2002 decision (*contestație în anulare*). It proceeded to re-examine the case and dismiss the applicant's initial action.

The 30 September 2002 decision was drafted on 28 October 2002 and typed up on 30 October 2002. In accordance with the rules of procedure, it was not served on the parties.

6. On 18 December 2002 the applicant requested the Procurator-General to lodge an application with the Supreme Court of Justice for an audit setting aside the decision of 30 September 2002 (*recurs în anulare*). On 20 March 2003, the Procurator-General refused to act upon the applicant's request.

B. Proceedings against M.

7. In a decision of 3 February 2000, which was upheld by a final decision of the Maramureş County Court on 18 May 2000, the applicant's previous employer, a company called M. was ordered to give the applicant his employment record and to pay him 100,000 Old Romanian Lei (ROL) in legal fees.

8. On an unspecified date, the applicant lodged an application with the Baia Mare District Court to enforce that decision. In its defence, M. claimed that it no longer had the applicant's employment record and that only the most recent employer (I.W.) was allowed to deliver a duplicate.

9. On 15 February 2002 the application was dismissed. The court found, in particular, that the facts of the case confirmed that it was objectively impossible for M. to deliver the applicant's employment record, as the document was no longer in its possession.

10. The applicant's appeal was allowed by the Maramureş County Court in a final decision of 17 June 2002, as amended on 12 September 2002. The court imposed a daily penalty on M. of ROL 350,000 from 3 February 2000 until execution and ordered it to pay the applicant ROL 5,712,000 in legal fees. After noting the arguments used by the court at first-instance in order to find in favour of the debtor, the appeal court stated, in particular, that:

"In so far as an irrevocable decision ordered [M.] to deliver to the complainant his employment record, the impediments to compliance referred to by the first-instance court are irrelevant."

11. On 10 March 2003 M. filed with the Maramureş County Court a request for the annulment (*contestație în anulare*) of the decision of

17 June 2002, on the ground that the County Court had not examined the evidence confirming its inability to comply.

12. The applicant submitted that M. did not have *locus standi* to request an annulment, since the extraordinary-appeal procedure was only available to the party who had lodged the ordinary appeal. He also contended that the request should be rejected since M. had invoked the same reasons as before the first-instance court and the appeal court.

13. In a final decision of 26 March 2003, the Maramureş County Court, sitting in a different composition from that of 17 June 2002, allowed the request, and quashed the final decision of 17 June 2002 on the merits and the decision of 12 September 2002 amending it. Consequently, it dismissed the applicant's appeal and upheld the judgment of 15 February 2002. The relevant parts of the decision read as follows:

“The request [for annulment] was lodged by [M.], which was the respondent in the appeal proceedings, within the time-limits set out in Article 313 of the Code of Civil Procedure...

The court considers that Article 318 of the Code of Civil Procedure is applicable, as the appeal court committed a material error, that is, an obvious material error made by omitting important elements or information from the file which had an influence on the solution adopted.

When examining the grounds for appeal, the court should have taken into account the evidence, that is, all elements that confirmed the inability to comply, namely the lack of the applicant's employment record. The court's conclusion that those impediments are irrelevant contradicts the evidence.”

II. RELEVANT DOMESTIC LAW

14. Article 318 of the Code of Civil Procedure defines a “material error” as one of the grounds for having a final decision quashed by means of a request for annulment (*contestație în anulare*). This Article reads as follows, in so far as relevant:

Article 318

“Decisions rendered by a court of last instance may also be contested by means of a request for annulment, when the decision was based on a material error...”

THE LAW

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

15. The applicant complained about the annulment of the final decisions of 1 April 2002 and of 17 June 2002 and that the proceedings were unfair, as the extraordinary appeals had been allowed although they did not meet the admissibility criteria. He invoked Article 6 § 1 of the Convention which, in so far as relevant, reads as follows:

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

A. Admissibility

1. *Proceedings against I.W.*

16. The Court reiterates that the object of the six-month time-limit under Article 35 is to promote legal certainty by ensuring that cases raising issues under the Convention are dealt with within a reasonable time and that past decisions are not continually open to challenge. The rule also affords the prospective applicant time to consider whether to lodge an application and, if so, to decide on the specific complaints and arguments to be raised (see, among other authorities, *Worm v. Austria*, judgment of 29 August 1997, *Reports of Judgments and Decisions* 1997-V, p. 1534, at p. 1547, §§ 32-33).

17. The Court notes that the proceedings against I.W. ended with the final decision of 30 September 2002. While it is not possible to establish the date when this decision became available to the parties, the Court notes that by 18 December 2002 at the latest, the applicant must have known the content of the decision. At that date, he asked the Procurator-General to appeal against it. It follows that, in lodging this application on 11 July 2003, the applicant did not observe the six-month requirement set forth in the Convention.

18. Accordingly, this part of the complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

2. *Proceedings against M.*

19. The Court notes that this part of the 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

1. *The parties' submissions*

20. The Government contended that several aspects distinguished this case from *Brumărescu v. Romania* ([GC], no. 28342/95, ECHR 1999-VII) and *Androne v. Romania* (no. 54062/00, 22 December 2004), where the Court found that the quashing of a final decision had violated the applicant's right to a fair hearing. They pointed out that no State official had intervened in the case, as the extraordinary appeal was directly lodged with the courts by the defendant.

Furthermore, the time-limits for lodging the complaint were clearly stated and were observed. Lastly, the court that examined the extraordinary appeal was the same as the one that had rendered the final decision, and not a higher court exercising a supervisory power.

21. The Government contended that the material error committed, namely the overlooking of important evidence, had been a very serious procedural flaw which had led to an erroneous solution to the case.

22. The applicant argued that the County Court had examined the same arguments both in the ordinary and extraordinary appeal and reiterated that in his view the company had not had *locus standi* to lodge the request for annulment.

2. *The Court's assessment*

23. The Court reiterates that, under its settled case-law, the right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 must be interpreted in the light of the Preamble to the Convention, which declares, among other things, the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, *inter alia*, that where the courts have finally determined an issue, their ruling should not be called into question (*Brumărescu*, cited above, § 61).

24. Legal certainty presupposes respect for the principle of *res judicata* (*ibid.*, § 62), that is the principle of the finality of judgments. This principle underlines that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. Higher courts' power of review should be exercised to correct judicial errors and miscarriages of justice, but not to carry out a fresh examination. The review should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character (see *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-IX).

25. However, the requirements of legal certainty are not absolute. The Court itself recommends sometimes the re-opening of proceedings as the most appropriate reparatory measure when the domestic proceedings have not satisfied the Article 6 requirements (see, among other authorities, *Lungoci v. Romania*, no. 62710/00, § 56, 26 January 2006).

In any case, the power to launch and conduct a supervisory review should be exercised by the authorities so as to strike, to the maximum extent possible, a fair balance between the interests at stake (see, *mutatis mutandis*, *Nikitin v. Russia*, no. 50178/99, § 57, ECHR 2004-VIII).

26. Lastly, the Court notes that, in the context of the Russian supervisory review, the Committee of Ministers expressed particular concern at the fact that the same court acted consecutively as a cassation and extraordinary instance in the same case and stressed that the court should be enabled to rectify all shortcomings of lower courts' judgments in a single set of proceedings so that subsequent recourse to the extraordinary appeal becomes truly exceptional, if necessary at all (Interim Resolution ResDH (2006), quoted in *Nelyubin v. Russia*, no. 14502/04, § 17, 2 November 2006).

27. Turning to the facts of the instant case, the Court notes that the final and irrevocable decision of 17 June 2002 found in favour of the applicant and considered that the arguments invoked by the debtor and accepted by the first-instance court in order to justify the failure to comply were irrelevant. However, the same court allowed the extraordinary appeal on the ground that the court of last instance had not taken that evidence into account.

28. In the light of all the material in its possession, and in so far as the Court is competent to examine the domestic proceedings, it finds that they do not disclose any appearance of arbitrariness in the way the ordinary courts dealt with the case, such as to justify the reopening of the proceedings (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, and *Brualla Gómez de la Torre v. Spain*, judgment of 19 December 1997, *Reports* 1997-VIII, p. 2955, § 31; see also paragraph 25 above).

Despite the Government's claim to the contrary, the Court considers that this situation is a typical case of there being different views of the courts concerning the admissibility and relevance of the evidence adduced, which, in the present case, does not justify the quashing of a final and binding decision.

29. Furthermore, bearing in mind the circumstances of the case, the Court does not consider it to be of any great significance that the request for extraordinary review was lodged directly by one of the parties, as, in its view, the domestic court used the opportunity created by that request to re-examine the evidence and quash the final and binding decision (see also, *mutatis mutandis*, *Androne*, §§ 17 and 19, cited above). For the same reason

the Court will not examine further the applicant's claim that the company lacked *locus standi* for the extraordinary appeal.

30. The foregoing considerations are sufficient to enable the Court to conclude that, by allowing the final decision of 17 June 2002 (as amended on 12 September 2002) to be quashed, the authorities failed to strike a fair balance between the interests at stake and thus infringed the applicant's right to a fair hearing.

There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. On 24 March 2008 the applicant claimed 32,693 euros (EUR) in respect of pecuniary damage, representing the daily penalty imposed by the final decision of 17 June 2002 for the period from 3 February 2000 to 31 March 2008. He also claimed EUR 31,538 in respect of non-pecuniary damage.

Lastly, he made additional claims for the damage allegedly sustained as a result of the quashing of the final decision of 1 April 2002.

33. The Government pointed out that the debtor in the case is a private entity, and the State should not be held responsible for M.'s failure to pay, in so far as the State's sole obligation in the matter is to provide the creditor with an effective enforcement mechanism. Furthermore, they reiterated that the only complaint raised by the applicant was that under Article 6 § 1, and that no issue connected with the property rights had been communicated to the Government.

Lastly, they considered that there was no causal link between the complaints raised before the Court and the alleged non-pecuniary damage, and contended that the claims under that head were in any case excessive.

34. The Court notes that it has already decided that a penalty similar to that imposed on M. in the present case cannot be directly enforced, as the interested party must seek its quantification by the domestic courts, on the basis of the damage actually incurred (see *Gavrileanu v. Romania*, no. 18037/02, § 66, 22 February 2007). The Court cannot speculate on the outcome of such proceedings. It therefore rejects this claim.

35. On the other hand, it considers that the applicant must have sustained non-pecuniary damage and awards him EUR 3,000 under this head.

B. Costs and expenses

36. The applicant also claimed EUR 1,183 for fees and stamp duty and EUR 317 for translation, editing and copying costs. He informed the Court that he was unable to present invoices, as he had not kept the receipts for the costs incurred throughout the proceedings. He sent invoices for the payment, on 24 March 2008, of 1,000 New Romanian Lei (RON) for translations and RON 84 for postage stamps.

37. The Government argued that the applicant had not proved that these costs had actually been incurred and pointed out that, for the same reason, the two invoices could not be taken into account by the Court.

38. According to the Court's case-law, an applicant is entitled to the reimbursement of 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, the Court notes that the two invoices are dated 24 March 2008, that being the date the applicant's observations were sent to the Court. These costs must have been incurred in connection with the present proceedings. Therefore, having regard to the information in its possession and the criteria mentioned above, the Court considers it reasonable to award the sum of EUR 500 covering costs under all heads.

C. Default interest

39. 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 quashing of the final decision of 17 June 2002 (as amended on 12 September 2002) 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 applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention:

- (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; and
 - (ii) EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicant, for costs and expenses;
 - (b) that these amounts are to be converted into the respondent State's national currency at the rate applicable at the date of settlement;
 - (c) 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 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