



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

THIRD SECTION

CASE OF PĂUNOIU v. ROMANIA

(Application no. 32700/04)

JUDGMENT

STRASBOURG

16 September 2008

FINAL

16/12/2008

This judgment may be subject to editorial revision.

In the case of Păunoiu v. Romania,

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Corneliu Bîrsan,

Egbert Myjer,

Ineta Ziemele,

Luis López Guerra,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 26 August 2008,

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

PROCEDURE

1. The case originated in an application (no. 32700/04) 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, Ms Ileana Păunoiu (“the applicant”), on 16 July 2004.

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

3. On 10 July 2007 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1961 and lives in Oreovica (Serbia).

A. Claim for damage in criminal proceedings against M.I.

5. On 10 July 1995 the applicant was injured in a car accident caused by M.I. She claimed damages in criminal proceedings that were instituted against M.I.

6. In a final decision of 19 November 1998, the Pitești Court of Appeal (“the Court of Appeal”) made awards in respect of pecuniary and non-pecuniary damage to both the applicant and her husband. It also ordered

M.I. to pay a monthly amount to the applicant until her state of dependency ceased. On 7 July and 15 December 2000 the quantum of damages and the level of the monthly instalments to the applicant were brought up to date.

7. On 15 November 2002 an application by the Prosecutor General at the Supreme Court of Justice to have the judgments in the criminal proceedings quashed (*recurs în anulare*) was granted by the Supreme Court of Justice, which therefore set aside the award for damage in respect of the applicant's husband.

B. Partition proceedings

8. On 21 September 1999 the applicant and her husband brought an action seeking the division of property that was jointly owned by M.I. and his wife. They alleged that the community of property between spouses had hindered the enforcement of the judgment in their favour, which concerned only M.I.

9. On 7 November 2000 the Pitești Court of First Instance ("the Court of First Instance") upheld their claims in part, severed the joint tenancy between M.I. and his wife, and allocated their apartment to M.I.

10. On 19 April 2001 the Argeș Regional Court ("the Regional Court") struck out an appeal by M.I. and his wife because they had failed to pay the prescribed fee.

11. On 4 September 2001 the Court of Appeal by a final decision upheld an appeal by M.I. and his wife and quashed the judgment of the Regional Court, sending the case back for a fresh examination of their appeal. It found that M.I. and his wife had not been informed of the obligation to pay the fee or of the amount due.

12. After a retrial, on 29 April 2002 the Regional Court rejected the appeal of M.I. and her wife as groundless.

13. On 16 February 2004 the Court of Appeal by a final decision allowed a subsequent appeal by M.I.'s wife, on the ground that the courts had not examined her counterclaim, and quashed the judgment of the Regional Court. It retained the case for further consideration. On 22 November 2004 the same court decided that the case was within the competence of the Regional Court.

14. On 15 April 2005 the Regional Court upheld the appeal of M.I.'s wife and varied the judgment of 7 November 2000 as follows: it allowed the applicant's claims but rejected her husband's, it severed the joint tenancy between M.I. and his wife, and it allocated their apartment to M.I. to enable the applicant to recover her financial claims. The judgment was enforceable.

15. On 31 October 2005 the Court of Appeal upheld that judgment in a final decision.

C. Attempts to recover the damage

16. Between 2001 and 2005 the applicant requested seven different bailiffs to enforce the judgment in her favour. The bailiffs took various steps, including requesting expert reports and putting M.I.'s apartment on sale by public auction.

17. On 12 June 2001 the Court of First Instance requested the Inspectorate of Police in Argeş to assign a police officer to accompany the bailiff to M.I.'s apartment. On 20 December 2002 it ordered M.I. to pay the judgment debt to the applicant, and stipulated that his apartment would be put on sale if he did not.

18. On 19 December 2005 the bailiff recorded that the applicant had received part of the amount due and had requested continued execution for the remainder.

19. On 29 December 2005 M.I. sold the apartment. The applicant and her husband lodged a civil action seeking a declaration that the sale contract was null and void on the ground that M.I. had attempted to become insolvent. On 19 October 2007 the Regional Court by a final decision dismissed the action as groundless.

20. On 10 November 2006 the applicant, through the bailiff, requested the court to validate a seizure of property. On 19 January 2007 the Court of First Instance rejected the application as being statute-barred.

THE LAW

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

21. The applicant complained that the length of the partition 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..."

22. The Government contested that argument.

23. The period to be taken into consideration began on 21 September 1999 and ended on 31 October 2005. It thus lasted six years, one month and ten days for three levels of jurisdiction.

A. Admissibility

24. 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

25. 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).

26. 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).

27. 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 was related to compensation for damage to health. 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*, *Marchenko v. Russia*, no. 29510/04, § 40, 5 October 2006).

28. 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

29. The applicant made various complaints under Article 6 § 1 with respect to the partition proceedings, alleging that the domestic courts had failed to assess the facts correctly, had misinterpreted the domestic law and had not been impartial. She also complained of her inability to enforce the judgment in her favour and to compel M.I. to pay her the outstanding part of the award in respect of damage.

30. Having carefully considered the applicant’s submissions in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention. Moreover, as regards the complaint about the partial

non-execution of a final judgment in civil proceedings between private individuals, there is no appearance of a lack of diligence by the authorities (see, *mutatis mutandis*, *Fociac v. Romania*, no. 2577/02, §§ 68-78, 3 February 2005).

31. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to 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 30,000 euros (EUR) in respect of pecuniary damage, representing living expenses incurred as a consequence of the accident. She also claimed EUR 150,000 in respect of non-pecuniary damage.

34. The Government contested the claim for pecuniary damage on the ground that no causal link between the pecuniary damage sought and the alleged length-of-proceedings violation could be found. Further, they considered that a finding of a violation would constitute in itself sufficient just satisfaction for any non-pecuniary damage the applicant may have suffered. In any event, they considered that the amount claimed in that respect was too high.

35. 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 applicant must have sustained non-pecuniary damage in respect of the violation found. Ruling on an equitable basis, it awards a total sum of EUR 700 under that head.

B. Costs and expenses

36. The applicant also claimed EUR 4,282 for the costs and expenses incurred in the proceedings in the domestic courts and before this Court, broken down as follows: EUR 782 for lawyer’s fees and sundry expenses, and EUR 3,500 for transport from Serbia to Romania and translations. She submitted invoices for lawyer’s fees dated April 2000, December 2005 and January 2006, and for the payment of expert’s fees, stamp duty and fuel.

37. The Government contested these claims. They considered that two of the contracts for judicial assistance had been concluded after the end of the proceedings, that the expert's fees had been recovered by the applicant in the domestic proceedings, and that the stamp duty and the fee for the lawyer paid in April 2000 could have been recovered by the applicant, had they been requested.

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 were actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and to the above criteria, and making an assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 500 in respect of costs and expenses.

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 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 applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 700 (seven hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (b) that the respondent State is to pay the applicant, within the same three months, the amount of EUR 500 (five hundred euros), plus any tax that may be chargeable to her, in respect of costs and expenses;
 - (c) that the aforementioned amounts shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (d) 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 16 September 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President