



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

THIRD SECTION

CASE OF DRĂGĂNESCU v. ROMANIA

(Application no. 29301/03)

JUDGMENT

STRASBOURG

30 September 2008

FINAL

06/04/2009

This judgment may be subject to editorial revision.

In the case of Drăgănescu v. Romania,

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

Josep Casadevall, *President*,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Ineta Ziemeļe,

Luis López Guerra,

Ann Power, *judges*,

and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 9 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 29301/03) 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 Remus Drăgănescu and Ms Ecaterina Drăgănescu (“the applicants”), on 19 July 2003.

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 applicants were born in 1936 and 1947 respectively and live in Bucharest.

5. On 28 May 1994 the applicants were injured in a car accident caused by B.F. On 17 October 1994 the Public Prosecutor attached to the Alexandria Court of First Instance committed B.F. for trial, mentioning that the first applicant had applied to join the criminal proceedings as a civil party seeking damages. On 16 February 1995 the second applicant claimed damages as well.

6. On 6 May 1996 the Alexandria Court of First Instance convicted B.F. of having negligently caused bodily harm, held him personally liable and awarded both pecuniary and non-pecuniary damages to the applicants. It also ordered B.F. to pay the first applicant a monthly sum pending his recovery.

7. On 15 November 1996 the Teleorman Regional Court upheld the appeals lodged by all the parties and ordered that the case be severed, fixing a hearing for the continuation of the ruling on the civil action. It considered that the first-instance court should have brought the technical and medical expert reports up to date and should have ordered an expert accountant's report. This ruling was upheld on 10 April 1997 by a final decision of the Bucharest Court of Appeal.

8. Of the thirty-eight hearings held between 1 July 1996 and 10 December 1999 six were adjourned at the first applicant's request. On 26 June 1998, at the first applicant's request, the case was transferred to the Bucharest Regional Court.

9. On 17 December 1999 the Bucharest Regional Court rejected the applicants' appeal against the amount of damages awarded by the judgment of 6 May 1996 and on 16 February 2000 the Bucharest Court of Appeal upheld this decision in a final judgment.

10. On 6 July 2001 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 judgments of 17 December 1999 and 16 February 2000 and sent the case back to the Regional Court for fresh examination. It considered that the courts had misinterpreted the law, that the quantum of damages had not been correctly assessed and that the Bucharest Regional Court had, on 3 December 1999, unjustifiably rejected the expert report proposed and paid for by the applicants. It further considered an expert accountant's report necessary.

11. During the retrial, seventeen hearings were held before the Regional Court, none of which was adjourned as a result of requests by the applicants.

12. On 9 December 2002 the Bucharest Regional Court upheld the applicants' appeal against the judgment of the first-instance court and increased the amount of damages. The court also held that the applicants had renounced their claim for a vehicle adapted to their disability.

13. The applicants appealed again. During the hearing of 17 April 2003, they maintained before the Bucharest Court of Appeal that they had not renounced the claim in relation to the vehicle.

14. On 24 April 2003 the Bucharest Court of Appeal gave a final decision rejecting as unfounded the applicants' subsequent appeal on the grounds that their allegations were not supported by the evidence.

15. On 12 May 2006 the High Court of Cassation and Justice, in a final decision, rejected the applicants' objection to the execution of the judgment of 9 December 2002. The court considered that the applicants' request to increase the amount of damages was of a civil nature and could not be raised as an objection to the execution of the judgment.

THE LAW

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

16. 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..."

17. The Government contested that argument.

18. The period to be taken into consideration began on 17 October 1994 at the latest for the first applicant and on 16 February 1995 for the second applicant, and ended on 24 April 2003. The period between the final decision of 16 February 2000 and the annulment (*recurs în anulare*) is not taken into account as no proceedings were pending. It thus lasted seven years, one month and seventeen days for the first applicant and six years, nine months and eighteen days for the second applicant, for three levels of jurisdiction.

A. Admissibility

19. 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

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

21. 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).

22. 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).

23. 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

24. The applicants complained under Article 3 of inhuman and degrading treatment as they had no pecuniary resources to afford an appropriate medical treatment, that the long proceedings had caused them stress and tension and that the low amount of non-pecuniary damages awarded had not adequately reflected the suffering they had experienced.

25. The applicants complained under Article 6 § 1 that both the proceedings and the outcome had been unfair, that the domestic courts had neither been independent nor impartial, that they had failed to assess the facts correctly, and had misinterpreted the domestic law. They also complained of the quantum of damages and the first applicant alleged that he had no access to a court because his request for a vehicle adapted to his needs, although reiterated in an appeal, had not been considered by the courts.

26. The applicants complained under Article 14 of the Convention and Article 1 § 1 of Protocol No. 12 that they had been discriminated against with respect to damages because of their wealth and their social status.

27. Having carefully considered the applicants’ 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 or its Protocols.

28. 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

29. 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

30. The applicants claimed in respect of pecuniary damage 13,475 euros (EUR) and EUR 2,060 respectively, and a monthly sum of EUR 310 and EUR 116 respectively to commence on 1 June 1996 and pending their recovery, representing losses relating to apiculture and gardening, a vehicle adapted to their needs, lost salaries and living expenses incurred as a consequence of the accident. They also claimed EUR 20,000, EUR 10,000 each in respect of non-pecuniary damage.

31. The Government contested these claims on the grounds that no causal link between the 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 applicants may have suffered. In any event, they considered that the amount claimed in that respect was too high.

32. 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 them jointly a total sum of EUR 2,600 under that head.

B. Costs and expenses

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

C. Default interest

34. 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 applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,600 (two thousand six hundred euros), plus any tax that may be chargeable, 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;
 - (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 30 September 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Deputy Registrar

Josep Casadevall
President