



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

THIRD SECTION

CASE OF S.C. COMPRIMEX S.A. v. ROMANIA

(Application no. 32228/02)

JUDGMENT

STRASBOURG

30 September 2008

FINAL

06/04/2009

This judgment may be subject to editorial revision.

In the case of S.C. Comprimex S.A. 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 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. 32228/02) 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 company, S.C. Comprimex S.A. (“the applicant”), on 21 January 2002.

2. The applicant was represented by Mr Francisc Andras, its managing director. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu.

3. On 23 May 2007 the President of the Third Section decided to give notice of the application to the Government. It was 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 is a joint stock company based in Braşov.

5. On 25 August 1994 the applicant brought proceedings against the Transilvania University of Braşov seeking payment by the latter of an amount of money allegedly resulting from a contract they had entered into, which concerned repairs that had to be carried out by the applicant to one of the university’s halls of residence.

6. On 27 October 1995 the Braşov Regional Court (“the Regional Court”) dismissed the action as premature, considering that the contract had not come to an end.

7. On 8 February 1996 the Braşov Court of Appeal (“the Court of Appeal”) allowed an appeal by the applicant, quashed the previous judgment and sent the case back to the Regional Court for fresh examination. It considered that the first-instance court had come to a decision on the basis of an exception that was inapplicable.

8. During the retrial, of the nine hearings held between 25 June 1996 and 4 February 1998, two were adjourned at the applicant’s request. This included the hearing of 25 June 1996 when it requested an adjournment to allow the Supreme Court of Justice to decide on its demand to transfer the case to another court, the hearing being fixed for 16 July 1996. The Regional Court adjourned the hearings until 29 October 1996.

According to the applicant, on 16 July 1996 the Supreme Court of Justice dismissed its request.

9. On 11 February 1998 the Regional Court rejected the applicant’s action as being groundless.

10. On 25 June 1998 the Court of Appeal dismissed an appeal by the applicant.

11. On 18 March 1999 the Supreme Court of Justice allowed by a final decision an appeal on points of law by the applicant, quashed the previous judgment and remitted the case to the court of appeal for fresh consideration. It found that one of the judges had also taken part in the proceedings when the first-instance court had given the judgment of 27 October 1995.

12. During the retrial, on 15 November 1999 the applicant informed the Court of Appeal that it had made a request before the Supreme Court of Justice to have the case transferred to another court, the hearing being fixed for 17 February 2000. The Court of Appeal decided to stay the proceedings and sent the file to the archives. The hearings were resumed on 21 April 2000.

The Supreme Court of Justice dismissed the applicant’s request.

13. On 3 May 2000 the Court of Appeal dismissed an appeal by the applicant against the judgment of 11 February 1998, on the grounds that the applicant’s claims had not been proved.

14. On 22 June 2001 the Supreme Court of Justice by a final decision rejected as groundless an appeal on points of law by the applicant.

THE LAW

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

15. The applicant 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...”

16. The Government contested that argument.

17. The period to be taken into consideration began on 25 August 1994 and ended on 22 June 2001. It thus lasted six years, nine months and twenty-eight days for three levels of jurisdiction. Seven courts examined the case during this period.

A. Admissibility

18. 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

19. 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).

20. 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).

Moreover, the Court has already found that, although it 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 discloses a serious deficiency in the judicial system. Moreover, this deficiency is imputable to the authorities and not the applicants (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003, and *Matica v. Romania*, no. 19567/02, § 24, 2 November 2006).

21. 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

22. The applicant complained under Article 6 § 1 that the outcome was unfair, that the domestic courts had failed to assess the facts correctly, had misinterpreted the domestic law, had not been independent and impartial and had not considered the case on the merits. It also relied on Articles 7, 14 and 17 of the Convention and Article 1 of Protocol No. 1.

23. 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 or its Protocols.

24. 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

25. 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

26. The applicant claimed 1,210,910 United States Dollars (USD) in respect of pecuniary damage. On 15 February 2008 it claimed 20,403,573 euros (EUR) under that head. It also claimed USD 1,000,000 in respect of non-pecuniary damage.

27. The Government contested these claims.

28. 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 (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 35,

ECHR 2000-IV). Ruling on an equitable basis, it awards it EUR 1,200 under that head.

B. Costs and expenses

29. The applicant also claimed EUR 10,000 for the costs and expenses incurred in the domestic courts and before the Court. It did not provide any supporting documents.

30. The Government contested the claim as unsubstantiated.

31. The Court reiterates that under Article 41 of the Convention it will reimburse only the costs and expenses that are shown to have been actually and necessarily incurred and are reasonable as to quantum (see *Arvelakis v. Greece*, no. 41354/98, § 34, 12 April 2001). Furthermore, Rule 60 § 2 of the Rules of Court provides that itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part.

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

C. Default interest

33. 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 1,200 (one thousand two 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 applicant's 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