



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

THIRD SECTION

CASE OF NICOLAE CONSTANTINESCU v. ROMANIA

(Application no. 10277/04)

JUDGMENT

STRASBOURG

30 September 2008

FINAL

30/12/2008

This judgment may be subject to editorial revision.

In the case of Nicolae Constantinescu 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,

Egbert Myjer,

Ineta Ziemele,

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. 10277/04) 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, Mr Nicolae Constantinescu (“the applicant”), on 9 February 2004.

The applicant died on 30 March 2005. However, his widow, Ms Floarea Constantinescu, and his daughter, Ms Silvia Surcel, expressed their wish to pursue the application. For practical reasons Mr Nicolae Constantinescu will continue to be called “the applicant” in this judgment, although Ms Floarea Constantinescu and Ms Silvia Surcel are now to be regarded as such (*Dalban v. Romania* [GC], no. 28114/95, § 1, ECHR 1999-VI).

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

3. On 3 May 2007 the Court 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 was born in 1929 and lived in Sopot.

5. On 8 March 1994 the applicant, together with four relatives, lodged a civil action claiming *restitutio in integrum* of a mill, the property of their parents, which had been taken by the State in 1948.

6. Of the twenty-two hearings held between 6 April 1994 and 12 January 1996, five were adjourned at the applicant's request.

7. On 9 February 1996 the Craiova Court of First Instance ("the Court of First Instance") rejected the action, considering that the mill had been nationalised in accordance with the law and that therefore the applicant and his relatives had no right of property.

8. The applicant and his relatives appealed. Of the twenty-four hearings held between 23 August 1996 and 14 May 1998 one was adjourned at the applicant's request.

9. On 21 May 1998 the Dolj Regional Court ("the Regional Court"), taking into account the expert's report produced during the appeal, dismissed the appeal as being groundless.

10. On 1 February 1999 the Craiova Court of Appeal ("the Court of Appeal") by a final decision upheld the findings of the lower courts, considering that the nationalisation had been lawful.

11. The applicant and his relatives made use of extraordinary remedies and on 12 May 1999 the Court of Appeal allowed the application to set aside the final decision of 1 February 1999, quashed the previous judgments and sent the case back for fresh examination. The court noted that under Government Ordinance no. 447/1997 the Ministry of Finance should have been summoned to appear in the proceedings as the State's representative.

12. During the retrial, of the twenty-five hearings held between 26 August 1999 and 21 January 2002 two were adjourned at the applicant's request.

On 8 September 2000 the Court of First Instance held that it had no jurisdiction *ratione materiae*, considering the case to be within the competence of the Regional Court. On 14 December 2000 the Regional Court also refused to exercise jurisdiction. Following the dispute as to jurisdiction, the Court of Appeal decided on 12 June 2001 that it was the Court of First Instance which had jurisdiction *ratione materiae*.

13. On 28 January 2002 the Court of First Instance, having regard to the two experts' reports and to the witnesses produced during the retrial, upheld in part the action lodged by the applicant and his relatives, considering that the legal requirements for nationalisation had not been fulfilled and therefore the State had no valid title. The court granted *restitutio in integrum* in respect of the mill and of the appurtenant land.

14. The defendant party appealed. Of the eleven hearings held between 10 May 2002 and 14 February 2003 none was adjourned as a result of requests by the applicant. A new expert's report was produced.

15. On 21 February 2003 the Regional Court allowed the appeal by the defendant and rejected on the merits the action lodged by the applicant and

his relatives, considering that the nationalisation had been lawful. That decision was upheld on 7 October 2003 by a final decision of the Court of Appeal.

THE LAW

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

16. 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...”

17. The Government contested that argument considering that the case had been particularly complex because of the participation of six parties in the proceedings and the need to produce four experts’ reports.

18. The period to be taken into consideration began on 20 June 1994, when Romania ratified the Convention. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of the proceedings at the time.

The period in question ended on 7 October 2003. It thus lasted nine years, three months and seventeen days for three levels of jurisdiction. Seven courts examined the case during this period.

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 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).

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. 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

23. The applicant complained under Article 6 § 1 of the Convention of an unfair trial. He also complained under Article 1 of Protocol No. 1 in respect of the nationalisation of 1948 and as regards the courts’ refusal to grant *restitutio in integrum* of the mill and of the land appurtenant to it.

24. 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.

25. 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

26. 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

27. The applicant’s successors claimed around 271,000 euros (EUR) in respect of pecuniary damage, representing EUR 80,000-90,000 for the value of the mill, EUR 131,000 for the value of the tools inside the mill and EUR 50,000 for the loss of profit over fourteen years. They also claimed EUR 5,000 in respect of non-pecuniary damage, out of which EUR 2,000 represented the cost of the applicant’s funeral. However, they asked the

Court to determine the amount of compensation in respect of pecuniary and non-pecuniary damage.

28. The Government contested these claims.

29. 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, the Court awards a total sum of EUR 2,600 under that head to be paid jointly to the applicant's successors.

B. Costs and expenses

30. The applicant's successors sought reimbursement of the costs and expenses incurred in the proceedings in the national courts and before the Court, and quantified them only as regards the amount of EUR 142 for each expert report, between EUR 80 and 120 for lawyers' fees and EUR 280 for sundry expenses. They did not provide any supporting documents, submitting that they had no receipts.

31. The Government contested the claim as being unsubstantiated.

32. 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.

33. The Court notes that the applicant's successors did not submit any supporting documents or particulars to substantiate their claim. Accordingly, the Court does not award any sum 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 jointly to the applicant's successors, 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 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