



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

THIRD SECTION

CASE OF MARTIN v. ROMANIA

(Application no. 14466/02)

JUDGMENT

STRASBOURG

10 March 2009

FINAL

06/07/2009

This judgment may be subject to editorial revision.

In the case of Martin v. Romania,

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Ineta Ziemeļe,

Luis López Guerra,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 17 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 14466/02) 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 national, Ms Ludmila Martin (“the applicant”), on 18 February 2002.

2. 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 was born in 1949 and lives in Tulcea.

5. The applicant worked in the Deltapan company (“the company”) until 30 November 1998, when she was dismissed from her job, together with some eighty-seven other employees, owing to a decrease in the company’s activity. Her post was abolished, the company being unable to offer her another job.

6. In 1995 the employees and managers of the company created the PAS Deltapan association (“the association”), with the aim of acquiring shares in

the company, which was being privatised. The applicant was elected to the board of directors with a two-year mandate. In 1997 the association's general assembly elected a new board of directors, to which the applicant was not elected.

A. Proceedings to overturn a decision of the association

7. On 9 December 1998 the applicant lodged an action seeking to have a decision of 12 October 1998 of the association's general assembly overturned. She alleged that the meeting of the general assembly which modified the statute and leadership of the association had not been legally convened.

8. On 2 March 1999 the Tulcea County Court ("the County Court") allowed the action.

9. On 28 October 1999 the Constanța Court of Appeal ("the Court of Appeal") allowed an appeal by the association, quashed the previous judgment and sent the case back for a fresh examination. It found that while the applicant had lodged the action against the association, the procedural acts had been performed in respect of the company.

10. This decision was confirmed on 20 November 2001 by the Supreme Court of Justice, which considered null and void a further appeal by the applicant because she had submitted her reasons out of time.

11. During the retrial on 25 April 2002 the County Court held that, in accordance with Government Ordinance no. 26 of 30 January 2000 regarding associations and foundations, it had no jurisdiction *ratione materie* to examine the case, which came within the competence of the Tulcea Court of First Instance ("the Court of First Instance").

12. The proceedings were stayed between 1 July and 17 October 2002 at the applicant's request, as she had lodged an appeal against the refusal to exercise jurisdiction.

13. On 3 October 2002 the Court of Appeal, by a final decision, dismissed as groundless the appeal against the judgment of 25 April 2002. On 23 January 2003 the court further dismissed, by an interlocutory decision, a request by the applicant to rectify factual errors.

On 12 February 2003 the applicant lodged a further appeal against the interlocutory decision and, considering that it could influence the trial, on 14 August 2003 she requested adjournment of the main proceedings. On 21 January 2004 the High Court of Cassation and Justice declared the applicant's appeal against the interlocutory decision inadmissible.

14. On 30 November 2005 the Court of First Instance dismissed the applicant's action as groundless.

15. On 12 May 2006 the County Court confirmed that judgment by a final decision.

B. Proceedings for reinstatement

16. On 4 January 1999 the applicant challenged the dismissal decision, seeking reinstatement and payment.

17. On 5 April 1999 the Court of First Instance dismissed the action, considering the dismissal decision lawful and well-founded.

18. The applicant appealed. Of thirteen hearings held between 15 July 1999 and 12 September 2003 seven were adjourned at the applicant's request. This includes a stay of proceedings for non-appearance of both parties before the court between 15 July 1999 and 26 June 2000, when the applicant requested the reopening of the proceedings.

The proceedings were also stayed between 6 October 2000 and 28 March 2003, when the applicant requested their adjournment pending investigations brought about by her criminal complaints against certain employees of the company.

19. On 12 September 2003 the County Court dismissed her appeal. On 4 October 2004 the court, by an interlocutory decision, dismissed a request by the applicant to rectify factual errors in the judgment. On 29 November 2004 it also dismissed, by a final decision, a further appeal by the applicant against the interlocutory decision.

20. The applicant lodged an appeal on points of law. After the changes introduced in the Code of Civil Procedure by Law no. 195/2004, the file was sent to the Court of Appeal.

21. On 15 July 2004 the Court of Appeal, after raising on its own motion a plea of incompatibility *ratione materiae*, allowed the appeal on points of law and referred the case back to the County Court, considering that the dispute was one of labour law and therefore it was in the latter's jurisdiction to hear the case as a first-instance court.

22. During the trial by the County Court, of the eight hearings held between 22 September 2004 and 3 May 2006 three were adjourned at the applicant's request. This includes a stay of proceedings between 13 October 2004 and 15 June 2005, as the applicant raised a plea of unconstitutionality in respect of a legal provision establishing a transitional application of certain rules regarding the courts' competence. The Constitutional Court eventually dismissed the request on 17 March 2005 and on 26 May 2005 returned the file to the County Court.

On 13 June 2005 the County Court, by interlocutory decisions, granted three requests by judges to abstain from taking part in the proceedings and refused another such request. On 12 and 22 July 2005 and 4 May 2006 the court dismissed, by interlocutory decisions, requests by the applicant to challenge either individual judges or the whole section.

The proceedings were also stayed between 18 August 2005 and 20 April 2006 at the applicant's request, following her demand that the judgment of 15 July 2004 be set aside.

23. On 6 July 2005 the Court of Appeal rejected as groundless the applicant's request for the final decision of 15 July 2004 to be set aside and on 21 November 2005 the High Court of Cassation and Justice declared a further appeal by the applicant inadmissible.

24. On 8 May 2006 the County Court dismissed the applicant's action, considering the dismissal decision lawful and well-founded.

25. The applicant appealed alleging, *inter alia*, that in her capacity as the chairman of the company's trade union she was under the protection of Law no. 54/1991 which prohibited dismissal from their jobs within one year of the end of their mandate of those involved in the leadership of a trade union.

26. On 12 September 2006 the Court of Appeal confirmed the solution by a final decision. It held that the applicant's activity as chairman of the trade union had ceased on 17 December 1996.

On 13 February 2007 the court dismissed as groundless the applicant's request for the final decision to be set aside. On 21 November 2007 the High Court of Cassation and Justice, by a final decision, declared a further appeal by the applicant inadmissible.

C. Proceedings to recover salary

27. On 4 October 1999 the applicant brought proceedings to recover salary between 1 October 1996 and 8 December 1998 in the amount of 6,221,883 old Romanian lei (ROL).

28. On 28 March 2000 the Court of First Instance dismissed the action as groundless, considering that the applicant's salary had been adapted to her qualification and that the amounts stopped out of her wages had been justified either by disciplinary sanctions, unchallenged before the courts, for systematic failure to fulfil her duties, or by the fact that she had ceased to be the leader of the trade union on 13 January 1997. The court ordered the applicant to pay the company ROL 3,500,000 for the cost of proceedings.

29. On 29 March 2001 the County Court upheld in part an appeal by the applicant and, on the basis of an accounting expert report, ordered the company to pay the amount of ROL 3,657,262, noting that the rest of money to which the applicant was entitled had already been returned to her. The court also ordered the company to pay the applicant ROL 3,000,000 for the cost of the proceedings at first instance and on appeal.

That judgment became final on 24 August 2001.

30. The applications for review of the judgment of 29 March 2001 and of the final decision of 24 August 2001 lodged by the applicant were rejected as groundless and her further appeals were either dismissed as groundless or declared inadmissible.

31. On 13 August 2003 the applicant requested enforcement of the judgment of 29 March 2001. The Court of First Instance declared that the judgment had become enforceable and that it could be enforced.

32. On 18 February 2004, at the company's request, the Court of First Instance, by an interlocutory decision, declared that the judgment of 28 March 2000 became enforceable. The court then found that in spite of the fact that that judgment had been declared enforceable, it could not be enforced because it had been varied by a hierarchically superior court.

33. The applicant contested the interlocutory decision of 18 February 2004. On 26 April 2004 the Court of Appeal allowed the action, varied the interlocutory decision and rejected the company's request to declare the judgment of 28 March 2000 enforceable, as the latter had been changed by a subsequent appeal.

34. On 24 May 2004 the bailiff informed the applicant that the enforcement of the judgment of 29 March 2001 in respect of due salaries by the company had been effected by offsetting the salaries that the company should have paid her with the amounts due by the applicant to the company for costs in domestic proceedings subsequent to that judgment (paragraph 30 above).

D. Criminal proceedings

35. On 17 February 2005 the High Court of Cassation and Justice, by a final decision, dismissed a complaint by the applicant against the prosecutor's refusal to commit for trial three judges and a clerk from the County Court as groundless.

36. On 16 June 2005 the High Court of Cassation and Justice, by a final decision, dismissed a complaint by the applicant against the prosecutor's refusal to commit for trial two judges from the Court of First Instance, a judge from the County Court and a bailiff as groundless.

THE LAW

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

37. The applicant complained that the length of the proceedings for reinstatement and of those for the decision of the association to be overturned 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..."

38. The Government argued that the proceedings for reinstatement were complex due to what was at stake and to legislative provisions which had modified the procedural framework. They also submitted that there were no substantial periods of inaction and that the applicant had caused delays in the proceedings by lodging a criminal complaint against some employees of the company and by making full use of the procedures available to her under domestic law, including a plea of unconstitutionality.

The Government did not express an opinion in respect of the alleged unreasonable length of the proceedings to overturn a decision of the general assembly.

39. The period to be taken into consideration in respect of the proceedings for reinstatement began on 4 January 1999 and ended on 12 September 2006. It thus lasted seven years, eight months and ten days at three levels of jurisdiction.

The period to be taken into consideration in respect of the proceedings for annulment of the decision of the general assembly began on 9 December 1998 and ended on 12 May 2006. It thus lasted seven years, five months and four days for three levels of jurisdiction.

A. Admissibility

40. 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

41. 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). Special diligence is necessary in employment disputes (see *Ruotolo v. Italy*, 27 February 1992, § 17, Series A no. 230-D).

42. In addition, only delays attributable to the State may justify a finding of a failure to comply with the “reasonable time” requirement (see *H. v. France*, 24 October 1989, § 55, Series A no. 162-A). However, a delay at some stage may be tolerated if the overall duration of the proceedings cannot be deemed excessive (see, for example, *Nuutinen v. Finland*, no. 32842/96, § 110, ECHR 2000-VIII).

43. The Court considers that the proceedings at issue did not disclose any particular complexity.

44. As regards the conduct of the applicant in the proceedings for reinstatement, the Court notes that she did not appear before the courts between 15 July 1999 and 26 June 2000, and that she requested adjournment of the proceedings between 6 October 2000 and 28 March 2003, as she had lodged criminal complaints against third persons (paragraph 18 above). It further notes that the proceedings were also stayed between 13 October 2004 and 15 June 2005 due to her plea of unconstitutionality and between 18 August 2005 and 20 April 2006 at her request (paragraph 22 above).

These delays amounted to approximately four years and nine months, the total length of the proceedings being seven years and eight months.

45. In so far as the behaviour of the applicant in the proceedings to overturn the decision is concerned, the Court notes that she had not conducted her appeal against the judgment of 28 October 1999 diligently, and that it was eventually dismissed on 20 November 2001 as the applicant had submitted her reasons out of time (paragraph 10 above). It further notes that the applicant lodged multiple complaints against the refusal to exercise jurisdiction, which were eventually rejected or declared inadmissible (paragraphs 12-13 above).

These delays amounted to around three years and nine months, the total length of the proceedings being seven years and five months.

46. As to the applicant's conduct, the Court reiterates that an applicant cannot be required to cooperate actively with the judicial authorities, nor can he or she be criticised for having made full use of the remedies available under the domestic law in the defence of his or her interests. Nonetheless, her conduct referred to above constitutes an objective fact, not capable of being attributed to the respondent State, which is to be taken into account when determining whether or not the proceedings lasted longer than the reasonable time referred to in Article 6 § 1 (see, *mutatis mutandis*, *Erkner and Hofauer v. Austria*, 23 April 1987, § 68, Series A no. 117, and *Zabelina v. Ukraine* (dec.), no. 31094/02, 15 January 2008).

47. The Court cannot detect any particular instance in these delays for which the authorities could be held responsible in either set of proceedings, although they bear responsibility for some procedural defects (paragraph 9 above). However, the changes of venue occurred in accordance with the new legal provisions. Moreover, the applicant failed to demonstrate any period of substantial inactivity that could be attributable to the judicial authorities during the conduct of the proceedings (see, *mutatis mutandis*, *Beshiri and Others v. Albania*, no. 7352/03, § 45, 22 August 2006). Thus, it cannot be said that the authorities failed in their duty to administer justice expeditiously or that their conduct was in this case primarily responsible for the length of the proceedings.

48. In sum, the Court considers that there were significant delays in the two sets of proceedings, which were attributable to the applicant, and therefore the length of the proceedings at three levels of jurisdiction during the period under consideration was not such as to amount to a breach of the “reasonable time” requirement in Article 6 § 1 of the Convention.

49. There has accordingly been no violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

50. The applicant complained that the proceedings and the solutions had been unfair, that her dismissal while she was the leader of the trade union had been abusive, that the domestic courts had failed to assess the facts correctly, had misinterpreted the domestic law, had artificially created over 300 files and had not been independent and impartial.

51. She also complained that the courts had declared that the judgment of 28 March 2000 could be enforced, that she had not received the salary to which she was entitled and that the judgment of 29 March 2001 had not been enforced, considering that the bailiffs should not have offset the salaries that the company should have paid her with the amounts that she owed to the company for the cost of domestic proceedings.

52. The applicant further relied on internal legislation and on some other international conventions in respect of alleged violations of her rights to life, to work, to protection in her capacity as a workers’ representative, to a standard of living and to a pension.

53. 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.

54. 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.

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 no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 10 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President