



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

1959 · 50 · 2009

THIRD SECTION

CASE OF MARINICĂ TIȚIAN POPOVICI v. ROMANIA

(Application no. 34071/06)

JUDGMENT

STRASBOURG

27 October 2009

FINAL

27/01/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Marinică Tițian Popovici v. Romania,

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

Josep Casadevall, *President*,

Elisabet Fura,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Luis López Guerra,

Ann Power, *judges*,

and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 6 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 34071/06) 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 Marinică Tițian Popovici (“the applicant”), on 25 July 2006.

2. The applicant was represented by Mr Viorel Pașca, a lawyer practising in Timișoara. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu.

3. On 7 November 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 1954 and lives in Nădrag.

5. In 1993 the public prosecutor initiated a criminal action against the applicant for homicide and grievous bodily harm. On 14 September 1993 he was placed in pre-trial detention, where he remained until 25 October 1994. On 7 May 1997 the Timiș County Court (“the County Court”) acquitted the applicant, finding that he had not committed the crimes concerned. That judgment became final on 30 November 1999.

6. On 2 November 2000 the applicant lodged an action for pecuniary and non-pecuniary compensation for illegal detention.

7. On 16 February 2001 the County Court dismissed the request because the applicant had not paid a deposit of 5 % of the amount claimed, as provided for by Government Emergency Ordinance no. 53/2000.

8. On 26 April 2001 the Timișoara Court of Appeal (“the Court of Appeal”) allowed an appeal by the applicant, quashed the previous judgment and sent the case back for a fresh examination. The court held that the above-mentioned ordinance applied only to violations of non-pecuniary rights committed through the press.

9. On 30 November 2001 the Supreme Court of Justice dismissed an appeal by the authorities and upheld that ruling.

10. After the retrial, on 8 March 2002 the County Court made awards in respect of pecuniary and non-pecuniary damage.

11. On 15 May 2002 the Court of Appeal allowed an appeal by the applicant and awarded the whole amount claimed by him for pecuniary and non-pecuniary damage.

12. On 31 January 2003 the Supreme Court of Justice upheld an appeal on points of law by the authorities, quashed the two previous judgments and sent the case back for fresh consideration. It reiterated that a claimant needs to provide proof of damage, but that judges are also obliged to avoid investigative errors, if necessary by ordering certain evidence to be produced even if the parties refuse. The lower courts had estimated the damage without taking into account that damage must be demonstrable and uncompensated and without giving reasons.

13. On 25 June 2003 the case was registered with the County Court. The court questioned the applicant, heard a witness, requested information from different institutions, and ordered two expert reports.

14. After the fresh examination, on 6 April 2004 the County Court awarded the applicant 54,476,856 old Romanian lei (ROL) in respect of pecuniary damage and ROL 300,000,000 for non-pecuniary damage. It also awarded costs and expenses.

15. On 16 July 2004 the Court of Appeal allowed an appeal by the applicant and increased the amount in respect of non-pecuniary damage.

16. The parties appealed on points of law. On 25 August 2004 the High Court of Cassation and Justice received the case file from the Court of Appeal and fixed the first hearing for 9 February 2006.

17. On 17 February 2006 the High Court, in a final decision, upheld the appeal by the applicant and awarded him the full amount of ROL 900,000,000 claimed in respect of non-pecuniary damage, as well as ROL 53,120,000 for costs and expenses.

On 19 May 2006 it sent the case file back to the Court of Appeal.

18. On 30 June 2006 that judgment was endorsed with a writ of execution. On 3 August 2006 the applicant requested the Ministry of Public Finance to pay the above-mentioned amounts. After securing the official authorisations, the Ministry paid the debt on 14 November 2006.

THE LAW

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

19. 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 ...”

A. Admissibility

20. The Court concludes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *Period to be taken into consideration*

21. The applicant argued that the period to be taken into consideration should also include the period from delivery of the final judgment until effective execution.

22. The Government submitted that the period to be taken into consideration had terminated on 17 February 2006. They relied on the case of *Silva Pontes v. Portugal* (23 March 1994, §§ 30 and 33, Series A no. 286-A), and submitted that in the instant case the execution phase concerned only the payment of the amount established by the final decision of 17 February 2006.

23. The Court reiterates that Article 6 § 1 of the Convention requires that all stages of legal proceedings for the “determination of ... civil rights and obligations”, not excluding stages subsequent to judgment on the merits, be resolved within a reasonable time (see *Robins v. the United Kingdom*, 23 September 1997, § 28, *Reports of Judgments and Decisions* 1997-V, and *Estima Jorge v. Portugal*, 21 April 1998, § 35, *Reports* 1998-II). Execution

of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6 (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports* 1997-II). Consequently, whether the length issue is raised in respect of a trial or enforcement proceedings, the principles applicable are broadly similar. The margin of tolerance as regards a delay in honouring a judgment debt will depend on different factors, such as the complexity of the enforcement proceedings, the applicant's own behaviour and that of the competent authorities, and the amount and nature of the court award (see *Gorokhov and Rusyayev v. Russia*, no. 38305/02, § 31, 17 March 2005).

24. Therefore, in the instant case, the Court will not confine its examination to the first phase, before the courts, which ran from 2 November 2000 until 17 February 2006 (five years, three months and seventeen days before three levels of jurisdiction), but will also consider the period of almost nine months until the debt was paid.

2. Reasonableness of the length of proceedings

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).

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, the repeated remittal of cases for re-examination discloses a serious deficiency in the judicial system, since it is usually ordered as a result of errors committed by lower courts. 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).

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 illegal detention. 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*, *Damian-Burueana and Damian v. Romania*, no. 6773/02, § 97, 26 May 2009).

28. Although the Court does not consider the subject matter of the case to be complex and the overall length of the proceedings does not appear to be excessive, the Court observes that the domestic courts twice quashed previous judgments owing to procedural errors for which responsibility rested entirely with the authorities. Moreover, the High Court of Cassation and Justice fixed a first hearing in the case for about one year and five months after receipt of the case file (see paragraph 16 above). No explanations have been given by the Government in respect of this period of inactivity. Nor have they explained the three-month period it took the High Court to send the file back to the Court of Appeal for the final judgment to be endorsed with a writ of execution (see paragraphs 17-18 above).

29. 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

30. The applicant also complained under Article 5 § 5 of the Convention of the length of the proceedings. Before the communication of the present application to the Government, he had raised a complaint under Article 6 § 1 in respect of the non-enforcement of the final decision of 17 February 2006.

31. 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.

32. 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

33. 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

34. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

35. The Government contested any causal link between the violation alleged and the non-pecuniary damage claimed.

36. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 1,000 under that head.

B. Costs and expenses

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

C. Default interest

38. 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 1,000 (one thousand 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 27 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Deputy Registrar

Josep Casadevall
President