



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

THIRD SECTION

CASE OF ȚULUȘ AND OTHERS v. ROMANIA

(Application no. 40892/04)

JUDGMENT

STRASBOURG

26 January 2010

FINAL

26/04/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Țuluș and Others v. Romania,

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

Josep Casadevall, *President*,

Elisabet Fura,

Corneliu Bîrsan,

Alvina Gyulumyan,

Egbert Myjer,

Luis López Guerra,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 5 January 2010

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

PROCEDURE

1. The case originated in an application (no. 40892/04) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by forty-seven Romanian nationals, Ms Andrea AnnaMaria Țuluș and forty-six other applicants, on 9 November 2004.

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

3. The applicants alleged that their right to a fair hearing had been breached in so far as the final decision of 2 July 2002 of the Cluj Court of Appeal was quashed and reversed by means of an extraordinary appeal (*recurs în anulare*).

4. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants, Ms Andrea AnnaMaria Țuluș and forty-six other applicants are Romanian nationals. They are judges and auxiliary personnel of the Cluj County Court.

6. Twenty of the forty-seven applicants have two given names. However, only one of these names appeared in the decisions of the domestic

courts. For example, the main applicant's full name is Andrea AnnaMaria Țuluș, while in the domestic decisions she is referred to as Andrea Țuluș.

7. In a judgment of 17 May 2002, the Cluj County Court allowed an action concerning the restitution of the amounts retained as health insurance contributions from the salaries of the applicants for the period between 1 January 2000 and 30 March 2001. The action was lodged by the applicants against the County Court of Cluj and the Ministry of Justice.

8. In a final decision of 2 July 2002, the Cluj Court of Appeal dismissed the appeal filed by the Ministry of Justice against that judgment.

9. At the end of 2003, the applicants obtained the restitution of the amounts retained from their salaries through forced execution.

10. On 2 July 2003, the Procurator-General lodged an application with the High Court of Cassation and Justice to have the final decision quashed (*recurs în anulare*) on the ground that the decision had seriously infringed the law and that it was, in any case, manifestly ill-founded.

11. In its decision of 11 May 2004, the High Court allowed the extraordinary appeal, quashed the final decision of 2 July 2002 and the judgment of 17 May 2002 and, as a result, rejected the applicants' action, on the ground that the ordinary court had incorrectly interpreted the applicable law.

12. In their last letter addressed to the Court, on 7 August 2008, the applicants stated that the High Court's decision of 11 May 2004 had never been executed and consequently they had not returned the amounts obtained through forced execution.

II. RELEVANT DOMESTIC LAW

13. The relevant legal provisions are described in the judgment *Brumărescu v. Romania* [GC], no. 28342/95, §§ 32 and 33, ECHR 1999-VII).

THE LAW

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

14. The applicants complained that the quashing by means of an extraordinary appeal (*recurs în anulare*) of the Cluj Court of Appeal's final decision of 2 July 2002 had infringed their right to a fair hearing, as provided for 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 fair ... hearing ... by [a] ... tribunal ...”

A. Admissibility

15. The Government contended that twenty of the forty-seven applicants were not victims of a violation of the above provisions, because the persons who submitted the application before the Court were not the same persons as the plaintiffs in the domestic proceedings. They stated that the special procedure for the amendment of obvious material errors in a court decision, as provided for by Article 281 of the Code of Civil Procedure, had not been followed by the applicants.

16. The applicants contested this and reiterated that the existence of certain omissions regarding their names in the decisions of the domestic courts had not prevented them from obtaining the forced execution of those decisions. With respect to the argument raised by the Government that they should have followed the procedure for amending obvious material errors, the applicants contended that they had had no interest in doing so since they had obtained the execution of the domestic decisions without any difficulty.

17. The Court notes that the alleged discrepancy in the identities of those applicants in the domestic proceedings and those before the Court lies in the fact that the domestic courts had omitted the middle names of those applicants who have two given names (see above § 6). Furthermore, the Court notes that the applicants, who are judges and auxiliary staff at the Cluj County Court – the same court that gave the first domestic decision, upheld by the final decision of the Cluj Court of Appeal – obtained the execution of the final decision without anybody contesting their identity. Therefore, the Court considers that the case file does not disclose anything which would raise any doubt as to whether the applicants were the same persons as the ones standing in the domestic proceedings.

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 applicants contended that by allowing the extraordinary appeal, the Supreme Court had set at naught the final decision that had been in their favour, thereby infringing their right to a fair hearing.

20. The Government did not contest that the principle of legal certainty, and therefore Article 6 § 1, had been infringed in the present case. It noted, however, that this extraordinary procedure had been repealed from the Code of Civil Procedure. The Government contended furthermore that the High Court's decision of 11 May 2004 that had quashed the final decision which had been in the applicants' favour had never been executed and consequently they had not returned the amounts obtained through

forced execution. Therefore, it concluded that the interests of the applicants had not been significantly affected.

21. The applicants admitted that the High Court's decision had not been enforced and accordingly the sums of money obtained through forced execution of the final decision of the Cluj Court of Appeal were never returned. However, relying on the constant case law of the Court, they contended that they had not lost the status of "victim" since the national authorities had never acknowledged or afforded redress for their breach of the Convention.

22. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising similar issues to the one in the present case, as it has considered that the extraordinary appeal under review infringed the principle of legal certainty in so far as it was not open to both the parties to the proceedings but to the Procurator General alone. It has also considered that, by allowing the application, the Supreme Court of Justice had set at naught an entire judicial process which had ended in a judicial decision that was *res judicata* and which had, moreover, been executed (see, among many others, *Brumărescu*, cited above, § 62; *SC Mașinexportimport Industrial Group SA v. Romania*, no. 22687/03, § 36, 1 December 2005; and *Cornif v. Romania*, no. 42872/02, §§ 29-30, 11 January 2007).

23. In the case at hand, the courts found in favour of the applicants in an action for the recovery of the sums retained from their salaries as health insurance contributions. They decided that, according to the special law applicable to magistrates and judicial auxiliary staff, this category of civil servant benefits from free medical assistance and accordingly such contributions were not due. Upon the filing of the extraordinary appeal, the High Court gave in its decision of 11 May 2004 another interpretation to the existing legal provisions regarding the obligation to pay health insurance contributions.

24. The Court considers that this situation is nothing but a mere reinterpretation of the facts and applicable law, which, bearing in mind the circumstances of the case, does not justify the quashing of a final and binding decision.

25. The foregoing considerations are sufficient for enabling the Court to conclude that the quashing of the final decision of 2 July 2002 of the Cluj Court of Appeal has infringed the principle of legal certainty and the right to a fair trial. The fact that the High Court's decision of 11 May 2004 had never been executed does not change this conclusion.

There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No.1 TO THE CONVENTION

26. In their initial application, the applicants contended that the quashing by means of an extraordinary appeal of the final decision violated their right to peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No.1.

27. By a letter of 7 August 2008, the applicants informed the Court that the High Court's decision of 11 May 2004 had never been executed and could no longer be executed since according to domestic law it had become time-barred. Consequently, the applicants did not return the amounts obtained through forced execution.

28. Therefore, in the light of the applicants' submissions (see § 27 above), the Court considers that they may not be considered as victims of a violation of Article 1 of Protocol No. 1 to the Convention. It follows that this complaint is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

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.”

30. The applicants did not submit a claim for just satisfaction. They submitted that a judgment of the Court in their favour would in itself constitute sufficient just satisfaction for the violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint regarding the quashing by an extraordinary appeal of a final decision admissible and the reminder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 26 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President