



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

THIRD SECTION

CASE OF SC VĂLIE PROD SRL v. ROMANIA

(Application no. 23507/04)

JUDGMENT

STRASBOURG

23 March 2010

FINAL

04/10/2010

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

In the case of SC Vălie Prod SRL 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 Santiago Quesada, *Section Registrar*,

Having deliberated in private on 2 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 23507/04) 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 commercial company SC Vălie Prod SRL, on 31 May 2004.

2. The applicant company was represented by Mr Gheorghe Vlădău, in his capacity as sole shareholder and administrator of the company. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu, from the Ministry of Foreign Affairs.

3. On 15 September 2006, the President of the Third Section decided to communicate 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant company is a Romanian commercial company whose registered office is in Braşov. It is represented before the Court by its sole shareholder and administrator, Mr Gheorghe Vlădău.

5. By a judgment of 11 October 2002, the Braşov District Court allowed the applicant company's claim for damages against another commercial company for non-compliance with its contractual obligations.

6. On 6 February 2003, the Braşov Court of Appeal upheld the judgment by a final decision.

7. On 2 July 2003, the Procurator-General filed an extraordinary appeal with the High Court of Cassation and Justice to have the final decision quashed (*recurs în anulare*) on the ground that the Braşov Court of Appeal's decision contained an incorrect interpretation of the applicable law. The Procurator-General stated that the penalty clause in favour of the applicant company was not valid.

8. In a decision of 3 December 2003, the High Court of Cassation and Justice allowed the extraordinary appeal, quashed the final decision of 6 February 2003 and the judgment of 11 October 2002 and, as a result, rejected the applicant company's action, for the reason given by the Procurator-General.

II. RELEVANT DOMESTIC LAW

9. The relevant provisions of the Code of Civil Procedure has been set out in the Court's judgements *Sfrijan v. Romania*, (no. 20366/04, § 24, 22 November 2007) and *Lungoci v. Romania*, (no. 62710/00, § 28, 26 January 2006).

THE LAW

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

10. The applicant company complained that the quashing by means of an extraordinary appeal (*recurs în anulare*) of the Braşov Court of Appeal's final decision of 6 February 2003 had infringed its 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

11. 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

12. The applicant company considered that its right to a fair trial, as guaranteed by Article 6 § 1, had been violated as a result of the quashing by means of an extraordinary appeal of the final decision which had recognised its right to damages against another commercial company for non-compliance with its payment obligations.

13. The Government contended that this case was different from *Brumărescu v. Romania* ([GC], no. 28342/95, ECHR 1999-VII) and *SC Maşinexportimport Industrial Group SA v. Romania* (no. 22687/03, 1 December 2005) since the Braşov Court of Appeal's final decision of 6 February 2003 had not been executed as in the cases mentioned above. Furthermore, the Government informed the Court that the provisions of the Romanian Code of Civil Procedure regarding an extraordinary appeal for the annulment of a final decision (*recursul în anulare*) relied on by the Procurator-General had been repealed by an Emergency Ordinance published in the Official Gazette no. 460 on 28 June 2003.

14. 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, 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 High Court of Cassation and Justice had set at naught an entire judicial process which had ended in a judicial decision that was *res judicata* (see, among many others, *Brumărescu*, cited above, § 62; *SC Maşinexportimport Industrial Group SA*, cited above; and *Cornif v. Romania*, no. 42872/02, §§ 29-30, 11 January 2007).

15. Having examined the material submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

16. Having regard to its case-law on the subject, the Court finds that the quashing of the Braşov Court of Appeal's final decision of 6 February 2003 infringed the principle of legal certainty and therefore the right to a fair trial.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

17. Under Article 13 of the Convention, the applicant company complained of a lack of access to a tribunal in order to challenge the extraordinary appeal of 3 December 2003 allowed by the High Court of Cassation and Justice.

18. Having regard to the finding relating to Article 6 § 1, the Court considers that it is not necessary to examine the admissibility or the merits

of the complaint under Article 13, in so far as its requirements are less strict than, and are here absorbed by, those of Article 6 § 1 (see, among other authorities, *Brualla Gómez de la Torre v. Spain*, 19 December 1997, § 41, *Reports of Judgments and Decisions* 1997-VIII and *Cornif* cited above, § 44).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. 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

20. The applicant company claimed 216,669 Romanian lei (RON) (51,060 euros (EUR)) in respect of pecuniary damage representing the late-payment penalties to which it was entitled under the final decision of the Braşov Court of Appeal. The applicant company also claimed RON 10,555 (EUR 2,487) representing the penalties it had had to pay the tax authorities for an alcohol trade tax on the merchandise sold to the commercial company. Since this amount was not paid to the tax authorities, the applicant company claimed RON 308,536 (EUR 72,709), representing additional penalties owed for the delay in payment. The applicant company also claimed EUR 60,000 for the non-pecuniary damage it had sustained.

21. The Government regarded the applicant company's claims in respect of pecuniary damage as unjustified and its claims in respect of non-pecuniary damage as excessive.

22. The Court recalls at the outset that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 19, ECHR 2001-I and *Former King of Greece and Others v. Greece* [GC] (just satisfaction), no. 25701/94, § 72).

23. The Court notes that in the present case the applicant company has not claimed a violation of his rights under Article 1 of Protocol No. 1 to the Convention and that it has found a violation of Article 6 § 1 of the Convention. In similar cases, it was taken into account that Article 322 § 9 of the Code of Civil Procedure allows the applicant to address the national courts with an extraordinary appeal (*revizuire*) in order to restore the situation existing before the breach of the Convention (*Sfrijan*, cited above,

§§ 48 and 49 and *Bindea v. Romania*, no. 32297/04, §§ 24 and 25, 5 May 2009). Having regard to the principle of subsidiary, the Court considers that in the circumstances of the present case, the applicant company should address first the national courts with an appeal in this respect (*Bindea* cited above, § 25). Therefore, the Court rejects the applicant's claim for pecuniary damage.

24. The Court also considers that the applicant company undoubtedly sustained non-pecuniary damage as a result of the quashing of the final decision of 6 February 2003. The particular amount claimed is, however, excessive. Making its assessment on an equitable basis, the Court awards the applicant company EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

25. The applicant company also claimed RON 488 for the costs and expenses incurred before the Court. It submitted the receipts for the sums paid for the translation of the documents into English and for the correspondence with the Court.

26. The Government contested this claim on the ground that it was unsupported by evidence submitted by the applicant company.

27. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 115 for costs and expenses incurred before the Court.

C. Default interest

28. 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 under Article 6 § 1 of the Convention admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there is no need to examine the admissibility or merits under Article 13;

4. *Holds*

(a) that the respondent State is to pay the applicant company, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage and EUR 115 (one hundred and fifteen euros) for costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 23 March 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President