



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

THIRD SECTION

CASE OF URSAN v. ROMANIA

(Application no. 35852/04)

JUDGMENT

STRASBOURG

6 April 2010

FINAL

06/07/2010

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

In the case of Ursan 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,

Ineta Ziemele,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 16 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 35852/04) 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, Ms Dorina Ursan (“the applicant”), on 28 September 2004.

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

3. On 17 October 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1953 and lives in Iași.

5. On 1 October 2002 the applicant was appointed to the post of director of the Economics Department of the Romanian Waters Agency (“the Agency”), a public institution under the authority of the Ministry of Agriculture, Forestry, Water and the Environment (“the Ministry”).

A. The Agency's decision of 21 July 2003 to dismiss the applicant

6. In July 2003 the audit office of the Ministry investigated the Agency's activity and discovered some irregularities. As a result, on 21 July 2003 the Agency dismissed the applicant for alleged mismanagement.

7. On 5 August 2003 the Ministry certified mismanagement on the applicant's part and on 12 August 2003 it lodged a criminal complaint against her. It appears from the file that the proceedings are still pending.

8. On 26 November 2003 the Bucharest County Court set aside the decision of 21 July 2003 and ordered the applicant's reinstatement and payment of the salary due until her effective reinstatement. The court found that no preliminary investigations had been carried out prior to that decision.

That judgment was quashed on grounds of incompatibility *ratione loci*, but on 15 April 2005 the Iași County Court set aside that decision and ordered the applicant's reinstatement and payment of the difference between the salary earned before and after the decision, until the applicant's effective reinstatement. That ruling was upheld by a final decision of 4 October 2005 by the Iași Court of Appeal.

B. The Agency's decision of 2 February 2004 to suspend the applicant

9. On 12 January 2004 the agency reinstated the applicant in her previous position, but on 2 February 2004 it suspended her from office. That decision was based on the existence of a criminal complaint against the applicant, and stated that during the applicant's suspension, which would remain in place until the end of the criminal proceedings, she would be offered another post corresponding to her qualifications. On 3 February 2004 she was appointed as economic adviser in a local branch of the Agency.

10. On 30 June 2004 the Iași County Court set aside the decision of 2 February 2004 and ordered the Agency to reinstate the applicant in her previous position as director of the Economics Department and to pay her the difference between the salary earned before and after that decision. The court considered that decision to be unlawful, *inter alia*, because the criminal complaint against the applicant had not been lodged by the Agency, which was the applicant's employer, but by the Ministry, which had no professional relationship with the applicant.

11. On 27 July 2004 the Agency therefore declared void its decision of 2 February 2004, reinstated the applicant in her previous post and paid her the outstanding salary.

12. However, on 2 December 2004 the Iași Court of Appeal, by a final decision, allowed an appeal on points of law by the Agency and dismissed the applicant's complaint against the decision of 2 February 2004.

C. The Agency's decision of 16 August 2004 to suspend the applicant

13. According to the Agency, on 6 August 2004 it lodged a criminal complaint against the applicant.

14. On 16 August 2004 the Agency again suspended her from her post, on the basis of that criminal complaint.

15. On 29 October 2004 the Iași County Court set aside that decision and ordered the Agency to reinstate the applicant in her previous post and to pay her, from 16 August 2004 until her effective reinstatement, compensation for pecuniary damage in the form of an increased and updated salary, together with all the other benefits to which she would have been entitled. The court held that the Agency had not proved that it had lodged a criminal complaint against the applicant.

16. On 20 January 2005 the Iași Court of Appeal, by a final decision, dismissed an appeal on points of law by the Agency. However, in its reasoning the court found that the decision of 16 August 2004 had been unlawful because the courts had eventually confirmed the previous decision of 2 February 2004 suspending the applicant (see paragraph 12 above).

D. Attempts by the applicant to secure enforcement of the judgment of 29 October 2004

17. On 31 January 2005 the applicant requested the Agency to enforce the judgment of 29 October 2004 (see paragraph 15 above). Following a refusal by the Agency, the applicant lodged a criminal complaint on 27 February 2005 against its Director-General. Eventually, on 5 February 2007, the Bucharest District Court acquitted the Director-General on the ground that his conduct had not amounted to a criminal offence, but ordered him to pay a criminal fine. The court also noted that the Agency's decision of 2 February 2004 had been declared void by its subsequent decision of 27 July 2004 reinstating the applicant (see paragraph 11 above). That judgment became final.

18. On 2 February 2005 the applicant requested assistance from the re-named Ministry of the Environment and Water, under whose authority the Agency continued to function, with a view to her reinstatement. On 13 May 2005 the Ministry replied that the judgment of 29 October 2004 was enforceable.

19. Between 8 February 2005 and 4 July 2007 the applicant made successive requests to a bailiff to attach the Agency's bank assets in order to recover the salary due to her, increased and updated in line with inflation. Several account statements issued between June 2005 and December 2007 certified payment by the Agency of the amounts claimed by the applicant.

In particular, on 31 March 2005 she requested the bailiff to oblige the Agency to reinstate her. In her request of 4 July 2007, the applicant

acknowledged that she had recovered salary for the period between 16 August 2004 and 31 March 2007, but that the Agency had still not reinstated her.

20. On 30 August 2006 the Ministry of the Environment and Water informed the applicant that it had requested the Agency to enforce the judgment in her favour.

21. According to the Agency, the applicant had not asked to be reinstated, preferring to claim the corresponding salary. The applicant contested this assertion.

E. Action by the applicant against the Agency seeking reassessment of her salary and payment of social security contributions

22. On 1 October 2007 the applicant brought civil proceedings against the Agency seeking reassessment of her salary on the basis of increases and updates for the period 2003-2007, alleging that she was still receiving a salary at the 2003 level. She also claimed payment of social security contributions on her behalf.

23. On 12 September 2008 the Iași County Court refused her request. Having regard to the date on which it was lodged, the court found that her claim relating to the period from 21 July 2003 to 1 October 2004 was time-barred. As to the rest of the period, it considered that the decision of 2 February 2004 which had suspended her from office was still in effect and therefore the applicant was not entitled to a salary corresponding to the post of director. Since it had dismissed her main claim for payment of salary, the court also dismissed her secondary request for payment of social security contributions.

24. On 20 January 2009 the Iași Court of Appeal, by a final decision, dismissed an appeal on points of law by the applicant and upheld the decision of the first-instance court, but varied its reasoning. Thus, it found that the decision of 2 February 2004 had been actually rendered void by the subsequent decision of 27 July 2004 to reinstate the applicant (see paragraph 11 above). The court further noted that the decision of 27 July 2004 had been issued in accordance with the judgment of 30 June 2004, but had not been annulled by the Agency following the final decision of 2 December 2004 (see paragraph 12 above). Therefore, the professional relationship between the applicant and the Agency had not been suspended.

The court further noted that, under the judgments of 15 April 2005 (see paragraph 8 above) and 29 October 2004 (see paragraph 15 above), the Agency had an obligation to reinstate the applicant in her previous post and to pay her, until her effective reinstatement, compensation for pecuniary damage in the form of an increased and updated salary. It also found that

following the attachment of the Agency's accounts she had received the amounts due from the Agency.

While her claim for the period from 21 July 2003 to 1 October 2004 was time-barred, the applicant was not entitled to a salary after that date either, since she had not been reinstated, but only to damages corresponding to an increased and updated salary. The court held that the above-mentioned judgments had already been enforced by means of attachment of the Agency's accounts. However, the amount of damages paid could be challenged by an objection to execution under Article 399 of the Code of Civil Procedure, not by an action for reassessment of salary such as that brought by the applicant. Finally, since the Agency could not be ordered to pay a salary to the applicant, it could not be ordered to pay social security contributions on her behalf either.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

25. The applicant complained that the non-enforcement of the judgment in her favour had infringed her rights guaranteed by Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, which, in so far as relevant, read as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

26. The Government contested that argument.

A. Admissibility

27. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

28. In their observations of 28 March 2008 the Government argued that the non-enforcement of the judgment of 29 October 2004 of the Iași County Court, as far as the applicant's reinstatement was concerned, had been due to the objective circumstance that the final decision of 2 December 2004 of the same court had validated the Agency's decision of 2 February 2004 to suspend her from office (see paragraph 12 above).

As far as payment of the salary arrears was concerned, the Government submitted that the domestic courts had endorsed the attachment by the bailiff of the Agency's assets; the judgment of 29 October 2004 had therefore been enforced in that respect.

29. The applicant contested those arguments, arguing that her right to be reinstated had been recognised by a final court decision and that the Agency had refused to perform that obligation. She further submitted that she had recovered salary only at the 2003 level, without benefitting from increases and updates in line with inflation as provided for by the judgment of 29 October 2004. Moreover, the Agency had not paid the social security contributions due on her behalf.

30. The Court reiterates that execution of a final judgment given by any court must be regarded as an integral part of the “trial” for the purposes of Article 6 of the Convention. (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II, and *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 63, ECHR 1999-V). When the authorities are obliged to act in order to enforce a judgment and they fail to do so, their inactivity can engage the State's responsibility on the ground of Article 6 § 1 of the Convention (see *Scollo v. Italy*, 28 September 1995, § 44, Series A no. 315-C).

31. The Court notes in the present case that by a judgment of 29 October 2004 the Iași County Court ordered a public institution to reinstate the applicant in her previous post and to pay her compensation for pecuniary damage until her effective reinstatement. That judgment gave rise to a “possession” within the meaning of Article 1 of Protocol No. 1.

32. The Court further observes that the applicant has not been reinstated in her previous post, although the domestic authorities have not found, in a definitive manner, that it is impossible to reinstate her (see *Ștefanescu v. Romania*, no. 9555/03, § 25, 11 October 2007). Moreover, by a final

decision of 20 January 2009 the Iași Court of Appeal confirmed the Agency's obligation to reinstate the applicant (see paragraph 24 above). That judgment also invalidates the Government's plea of objective conditions preventing enforcement of that obligation in the form of a decision by the Agency to suspend her from office which was still in force. The Court also finds that the Agency has not made any attempt to reinstate the applicant.

33. As to the obligation to pay compensation for pecuniary damage until the applicant's effective reinstatement, the Court notes that the Agency paid the amounts claimed by the applicant, at least for the period between February 2005 and July 2007 (paragraph 19 above), and that the Iași County Court also stated in its final decision of 20 January 2009 that the judgments in the applicant's favour had already been enforced by means of the attachment of the Agency's accounts (see paragraph 24 above). The Court sees no reasons to depart from those findings. However, since the obligation to pay persists until the applicant's effective reinstatement, the Court cannot consider that it has been fully enforced.

34. The Court further notes that, invoking the same judgment of 29 October 2004, the applicant claimed a higher amount of damages, as well as payment by the Agency of social security benefits on her behalf. On this point, the Court considers that the domestic courts have already examined and decided on that matter (see paragraph 24 above). Accordingly, in the present case the Court cannot substitute its view for that of the domestic courts with regard to the amount of damages and payment of social security contributions.

35. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the ones in the present case (see, among others, *Miclici v. Romania*, no. 23657/03, 20 December 2007, and *Vasile Nițescu v. Romania*, no. 20763/03, 21 April 2009).

36. 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. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

37. The applicant complained under Article 6 § 1 that the proceedings terminated by the final decision of 20 January 2009 had been unfair, that the domestic courts had been neither independent nor impartial, and that they had failed to assess the facts correctly and had misinterpreted the domestic law. She further complained that the courts had not awarded her the

difference in salary claimed and had not ordered the Agency to pay social security contributions on her behalf.

38. 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.

39. 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

40. 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

41. The applicant claimed 26,189 euros (EUR) in respect of pecuniary damage, representing the difference between the amount of EUR 60,000 allegedly due and the amount of EUR 33,811 that she had already recovered. The amount claimed included the increases in salary and the social security contributions. In a subsequent letter, she brought that amount up to date. The applicant further claimed EUR 182,500 as a pecuniary penalty for the delay in enforcement. In respect of non-pecuniary damage she claimed EUR 150,000.

42. The Government submitted that the Agency had paid the amounts due under the judgment of 29 October 2004. Furthermore, they considered that the finding of a violation would constitute in itself sufficient just satisfaction for any non-pecuniary damage which the applicant might have suffered.

43. The Court reiterates that, where it has found a breach of the Convention in a judgment, the respondent State is under a legal obligation to put an end to that 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 *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 32, ECHR 2000-XI). If national law does not allow – or allows only partial – reparation to be made, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate. The Court enjoys a certain discretion in the exercise of that power, as the adjective “just” and

the phrase “if necessary” attest. In particular, if one or more heads of damage cannot be calculated precisely or if the distinction between pecuniary and non-pecuniary damage proves difficult, the Court may decide to make a global assessment (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 29, ECHR 2000-IV).

44. The Court observes that in the present case it has found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in that the applicant was not reinstated in her previous post and was also not paid full compensation in respect of pecuniary damage until her effective reinstatement.

45. Therefore, the Court considers that, in so far as the judgment of 29 October 2004 remains in force, the State's outstanding obligation to enforce it cannot be disputed. Accordingly, the applicant is still entitled to enforcement of that judgment. The Court reiterates that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant as far as possible is put in the position he would have been in had the requirements of Article 6 not been disregarded (see *Piersack v. Belgium* (Article 50), 26 October 1984, § 12, Series A no. 85). The Court finds that this principle also applies in the present case, having regard to the violations found. It therefore considers that the Government must secure, by appropriate means, the enforcement of the judgment of 29 October 2004, namely the reinstatement of the applicant in her previous post and payment of compensation for pecuniary damage until her effective reinstatement.

46. The Court further points out that its judgments are essentially declaratory in nature. In general, it is primarily for the State concerned to choose the means to be used in its domestic legal order in order to discharge its legal obligation under Article 46 of the Convention (see *Shofman v. Russia*, no. 74826/01, § 53, 24 November 2005, with further references). By finding a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in the present case, the Court has established the Government's obligation to take appropriate measures to remedy the applicant's individual situation, that is, to ensure compliance with the applicant's enforceable claim under the judgment of 29 October 2004 (compare with *Fadeyeva v. Russia*, no. 55723/00, § 142, ECHR 2005-...). Whether this involves reinstating the applicant in her previous job or in an equivalent job or, if this is not possible, granting her reasonable compensation for non-enforcement, or a combination of these and other measures, is a decision that falls to the respondent State (see *Tarverdiyev v. Azerbaijan*, no. 33343/03, § 66, 26 July 2007). The Court, however, emphasises that any measures adopted must be compatible with the conclusions set out in the Court's judgment (see *Assanidze v. Georgia* [GC], no. 71503/01, § 202, ECHR 2004-II, with further references).

47. As regards the amount of money claimed by the applicant in respect of the difference in salary and of social security contributions, the Court

reiterates its findings in paragraph 34 above and will not make an award under this head.

48. As regards the amount claimed by the applicant as the equivalent of a periodic pecuniary penalty, the Court reiterates that under Romanian law a coercive fine is an indirect means of securing enforcement (see *Gavrileanu v. Romania*, no. 18037/02, § 66, 22 February 2007). In the present case, as the applicant has not made use of the judicial mechanism of the coercive fine, the Court will not speculate as to its amount and therefore will not make an award under this head.

49. The Court further considers that the serious interference with the applicant's right of access to a court and to the peaceful enjoyment of her possessions cannot be adequately compensated for by the simple finding of a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

50. Making an assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 4,800 in respect of non-pecuniary damage.

B. Costs and expenses

51. The applicant also claimed EUR 10,253 for costs and expenses, covering lawyers' fees, translations, postal costs, transport, accommodation and the production of an expert report. She submitted invoices and copy of a legal assistance contract.

52. The Government contested these claims. In particular, they considered that the legal assistance contract had not included information proving a causal link with the present application. However, they agreed with the amount relating to fees for correspondence with the Court.

53. 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 350 covering costs under all heads.

C. Default interest

54. 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 complaints concerning Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in respect of the enforcement of a final decision admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1;
3. *Holds*
 - (a) that the respondent State shall ensure, by appropriate means, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the enforcement of the judgment of 29 October 2004 of the Iași County Court;
 - (b) that the respondent State is to pay the applicant, within the same three months, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 4,800 (four thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 350 (three hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (c) 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President