



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

THIRD SECTION

CASE OF BÎRLĂ v. ROMANIA

(Application no. 18611/04)

JUDGMENT

STRASBOURG

27 May 2010

FINAL

27/08/2010

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

In the case of Bîrlă v. Romania,

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

Josep Casadevall, *President*,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Egbert Myjer,

Luis López Guerra,

Ann Power, *judges*,

and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 4 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 18611/04) 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, Mrs Graziela Elena Bîrlă (“the applicant”), on 22 December 2003.

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

3. On 10 July 2007, the President of the Third Section decided to communicate to the Government the complaint concerning the quashing of the final decision by means of an extraordinary appeal. 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 1960 and lives in Bucharest.

5. The applicant lodged a criminal complaint of defamation against a journalist, A.A., together with a civil claim for damages. At a hearing held on 19 December 2001, attended by the applicant's representative, the Bucharest District Court postponed the delivery of a judgment to

28 December 2001. By a first-instance judgment delivered on the latter date the Bucharest District Court dismissed both the criminal complaint and the civil claim.

6. On 9 January 2002, the applicant lodged an appeal on points of law. The Bucharest County Court, by a final decision of 15 May 2002, upheld the first-instance judgment in respect of the criminal complaint and reversed the decision in respect of the civil claim. Thus, the county court established the tort liability of the journalist and awarded the applicant 100,000,000 Romanian lei (approximately 3,300 euros (EUR) at the time) in respect of non-pecuniary damage. By the same decision, the county court dismissed the objection to the effect that the appeal on points of law was inadmissible as having been lodged outside the 10-day time-limit. The county court referred to the provisions of Article 363 of the Romanian Code of Criminal Procedure (CCP), according to which the period during which an appeal may be lodged starts to elapse on the date of delivery of the judgment if the party concerned was present either at the hearing or at the delivery. As the applicant was not present at the hearing, although her representative was, the period did not start to elapse on the date of delivery of the judgment, and thus the appeal was lodged within the legal time-limit.

7. On an unspecified date the Procurator-General filed an extraordinary appeal with the Supreme Court of Justice to have the final decision quashed on the ground that the appeal on points of law had been lodged out of time and should have been dismissed as inadmissible.

8. In a decision of 26 June 2003 the Supreme Court of Justice allowed the extraordinary appeal, quashed the final decision of 15 May 2002 and dismissed the applicant's appeal on points of law as having been lodged outside the legal time-limit. The Supreme Court ruled that the presence of the party's representative at the hearing was equivalent to the presence of the party herself and therefore the time-limit had started to run on the date of delivery of the judgment.

II. RELEVANT DOMESTIC LAW

9. At the material time Article 410 § 1 II. 9 of the Romanian CCP allowed a final and binding judgment to be subject to an extraordinary appeal if the domestic court permitted procedures for appeal which were not prescribed by law, or when the prescribed time-limit had expired.

10. The provisions of the CCP governing extraordinary appeal were repealed by Law no. 576, published in Official Gazette no. 1223 on 20 December 2004.

THE LAW

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

11. The applicant complained that her right to a fair trial, as guaranteed by Article 6 § 1 of the Convention, had been violated as a result of the quashing by means of an extraordinary appeal of the final decision by which she had been awarded civil damages.

A. Admissibility

12. 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

13. The Government considered that the final decision had been quashed in order to remedy a fundamental defect in the criminal proceedings before the lower courts, namely the wrongful admission of the appeal on points of law, which had been lodged out of time. It further underlined that, unlike the factual situation in the case of *Savinskiy v. Ukraine*, (no. 6965/02, §§ 24-25, 28 February 2006), in the instant case no re-examination of the merits of the case had been carried out. The Government further observed that the relevant provisions of the CCP had been repealed in the meantime.

14. The Court reiterates that, under its settled case-law, the right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 must be interpreted in the light of the Preamble of the Convention, which declares, among other things, the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, *inter alia*, that where the courts have finally determined an issue, their rulings should not be called into question (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII).

15. 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, considering that the extraordinary appeal procedure under review had infringed the principle of legal certainty in so far as it had not been open to both the parties to the proceedings, but to the Procurator-General alone. It

has also considered that, by allowing such an application, the High Court of Cassation and Justice had set at naught an entire judicial process that had ended in a judicial decision that was *res judicata* (see, among many others, *Brumărescu*, cited above, § 62; *SC Maşinexportimport Industrial Group SA v. Romania*, no. 22687/03, 1 December 2005; and *Cornif v. Romania*, no. 42872/02, §§ 29-30, 11 January 2007).

16. The Court reiterates that no party is entitled to seek review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. The power of review of higher courts should be exercised to correct fundamental defects and miscarriages of justice; the review should not be treated as an appeal in disguise, and the mere possibility of there being two different points of view on the subject is not a ground for re-examination. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling nature (see *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-IX).

17. The Court notes that the final decision of 15 May 2002 upheld the journalist's acquittal of the criminal charges, leaving unchanged the outcome of the criminal head of the proceedings. It follows that the quashed decision did not impinge on the rights of the defendant in respect of the criminal charges, and the reopening of the proceedings by means of an extraordinary appeal was not meant to correct a miscarriage of criminal justice (see, conversely, *Lenskaya v. Russia*, no. 28730/03, §§ 38-39, 29 January 2009).

18. In the present case the Court is not convinced by the Government's argument that there was a manifest violation of law by the ordinary courts which justified the recourse to an extraordinary appeal. It notes that the county court did give its view on the objection as to the inadmissibility of the appeal on points of law and dismissed it by providing a detailed reasoning (see paragraph 6 above). The Court concludes therefore that the circumstances of the present case cannot justify the quashing of a final and binding decision.

19. Moreover, the Court does not consider it to be relevant that the extraordinary proceedings did not lead to a re-examination of the merits of the case, taking into account that since the extraordinary appeal was allowed, the effects of the final judicial decision were annulled and thus the applicant lost her entitlement to the civil damages.

20. The foregoing considerations are sufficient to enable the Court to conclude that the quashing of the final decision of 15 May 2002 infringed the applicant's right to a fair trial.

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

II. OTHER ALLEGED VIOLATIONS

21. Under Articles 6 § 1 and 13 of the Convention the applicant complained of procedural flaws in the extraordinary appeal proceedings. Having regard to the findings in paragraph 20 above, the Court considers that it is not necessary to pursue the examination of these complaints.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicant claimed EUR 5,000 in respect of pecuniary damage, representing the amount that she had to reimburse following the quashing of the final decision of 15 May 2002. She also made a claim in respect of non-pecuniary damages, leaving it to the Court's discretion to fix an appropriate amount, taking into consideration the distress caused to her by the quashing of the final decision and the publicity of the events.

24. The Government considered that the applicant had no basis for being granted the compensation for pecuniary damage sought as she had failed to prove that she had actually reimbursed the sum in question. In any case, they considered the claims to be excessive. In respect of non-pecuniary damage, the Government considered that there was no causal link between the facts examined by the Court and the applicant's claims. Moreover, they referred to the Court's case-law on the matter, citing the judgments *Raicu v. Romania*, no. 28104/03, § 48, 19 October 2006; *Bartos v. Romania*, no. 12050/02, § 70, 20 July 2006; and *Konnerth v. Romania*, no. 21118/02, § 89, 12 October 2006).

25. The Court notes that in the present case the applicant has not claimed a violation of her rights under Article 1 of Protocol No. 1 to the Convention. Moreover, the applicant failed to put forward any proof that she had actually returned the sum received in civil damages after the quashing of the final decision of 15 May 2002. Having regard to these circumstances, the Court rejects the applicant's claim in respect of pecuniary damage.

26. Nevertheless, the Court considers that the applicant undoubtedly sustained non-pecuniary damage as a result of the quashing of the final decision of 15 May 2002. Making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

27. The applicant did not submit a claim for costs and expenses. Accordingly, the Court makes no award.

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 concerning the quashing of a final decision by an extraordinary appeal 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 the merits of the remainder of the complaints;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, 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), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the respondent State's national currency at the rate applicable on 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;

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

Done in English, and notified in writing on 27 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Deputy Registrar

Josep Casadevall
President