



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

THIRD SECTION

CASE OF MUREȘANU v. ROMANIA

(Application no. 12821/05)

JUDGMENT

STRASBOURG

15 June 2010

FINAL

15/09/2010

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

In the case of Mureșanu 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,

Ineta Ziemele,

Luis López Guerra,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 25 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 12821/05) 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 Iuliu Alexandru Mircea Mureșanu (“the applicant”), on 29 March 2005.

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

3. On 8 September 2009 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 1948 and lives in Cluj Napoca.

5. The applicant worked as a consultant veterinary surgeon in the Sanitary Veterinary Direction of Cluj County (“the DSV”), a public institution. He was the chief of the food control division. In 2001, the Ministry of Agriculture, Alimentation and Forests requested the DSV to reorganise its activity and to abolish a number of posts. The applicant's salary in May 2001 was 5,368,605 old Romanian lei (ROL).

6. On 29 May 2001, following reorganisation, the applicant was given a post of veterinary surgeon in a regional sanitary-veterinary station, with effect from 1 June 2001.

7. On 20 June 2001 the DSV, following an assessment of the applicant's professional achievements, reduced his salary to ROL 2,075,000, with effect from 1 July 2001.

The applicant challenged the two decisions before the courts.

8. On 1 October 2001 the Cluj County Court ("the County Court") dismissed the complaint against the decision of 20 June 2001, since the applicant had not used the correct administrative complaints procedure before addressing the courts. The applicant did not lodge an appeal and that judgment became final.

9. On 10 October 2001 the County Court set aside the DSV's decision of 29 May 2001, on the grounds that the applicant's previous post had not been discontinued following reorganisation and that the new post had invested him with attributions totally different than those he had previously. Therefore, it ordered the applicant's reinstatement in his previous job and payment by the DSV of the difference between the salary earned before that decision and his present salary, with effect from 1 June 2001 until the date of his reinstatement.

10. The DSV appealed alleging, *inter alia*, that following an assessment of the applicant's professional achievements he was found unsuitable for the post and therefore reallocated another post.

On 3 April 2002 the Cluj Court of Appeal ("the Court of Appeal") dismissed that appeal by a final decision. It held, *inter alia*, that the applicant's professional unsuitability had not been taken into account when he was allocated a new post. That allocation was determined by the need to abolish a number of posts.

11. On 22 February 2002 the DSV granted the applicant, for the month of June 2001, an indemnity corresponding to his leadership position.

12. On 17 April 2002 the DSV authorised the applicant's reinstatement in his previous job, with effect from 22 April 2002, with a salary of ROL 3,794,000.

The applicant contested that decision and on 17 October 2002 the Court of Appeal, by a final decision, set it aside. The court considered that the DSV had infringed the judgment of 10 October 2001, which stated that the applicant was to be given not only his previous job, but also the salary he had before 1 June 2001.

13. On 24 June 2002 the bailiff certified that the applicant had been reinstated in his previous job, in accordance with the judgment of 10 October 2001, and ordered the DSV to pay the amount due between 1 June 2001 and effective reinstatement.

14. The DSV raised an objection to this, considering that the judgment of 10 October 2001 had been enforced, since the applicant had been

reinstated in his previous job and since his salary was in accordance with the judgment of 1 October 2001.

15. On 22 July 2002 the Cluj-Napoca District Court upheld the objection and ordered the bailiff to cease execution. The court considered that on 1 June 2001 there had been no difference between the applicant's previous and present wage, since the order of 20 June 2001 had reduced the applicant's salary. That judgment was upheld by a final decision of the County Court of 18 October 2002.

16. In May 2003 the DSV started paying the applicant a 30 % indemnity corresponding to his leadership position. The applicant lodged administrative proceedings to claim the same indemnity for the period of July 2001-May 2003, as provided for by the judgment of 10 October 2001. On 7 October 2004 the Court of Appeal, by a final decision, allowed his action, considering that he had a right to that indemnity on the basis of the judgments of 10 October 2001 and 17 October 2002. The DSV paid the indemnity due to the applicant.

II. RELEVANT DOMESTIC LAW

17. The relevant domestic law is described in *Roman and Hogeia v. Romania* ((dec.), no. 62959/00, 31 August 2004).

THE LAW

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

18. The applicant complained of partial non-enforcement of the judgment of 10 October 2001 regarding payment of a difference in salary. He invoked 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.”

19. The Government contested that argument.

A. Admissibility

20. The Government raised an objection of incompatibility *ratione materiae* in respect of the complaint under Article 1 of Protocol No. 1. They considered that the applicant had no “possession” within the meaning of the Convention because, as the domestic courts had decided by a final decision, there was no difference between the applicant's previous and present wage (see paragraph 15 above).

21. The applicant contested that argument.

22. The Court considers that the objection raised by the Government is very closely linked to the substance of the applicant's complaint under Article 1 of Protocol No. 1. It therefore considers it appropriate to join this objection to the merits.

23. The Court concludes that the application 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

24. The Government contested the existence of an infringement with the applicant's rights. They submitted that his salary had been reduced before the judgment of 10 October 2001 and that that course of action had been subsequently upheld by the courts. Therefore, there was no difference in the applicant's salary.

25. The applicant disagreed, considering that the final decision of 18 October 2002 of the Cluj County Court had hindered the enforcement of the judgment in his favour.

26. The Court notes that the judgment of 10 October 2001 ordered the DSV, *inter alia*, to pay the difference between the salary earned before the decision of 29 May 2001 and the applicant's present salary, with effect from 1 June 2001 until the date of his reinstatement. It thus conferred on the applicant a legitimate expectation of being able to take possession of that sum of money. The Court therefore considers that that judgment constituted a “possession” within the meaning of Article 1 of Protocol No. 1 (see

Gavrileanu v. Romania, no. 18037/02, § 52, 22 February 2007) and dismisses the Government's objection of incompatibility *ratione materiae*.

27. The Court considers that although the authorities have an obligation to enforce court judgments, in this case by compensating the applicant with the difference in salary earned before and after he was given another post, the judgment of 10 October 2001 remains unenforced to date. That judgment is nevertheless still valid, no proceedings having been instituted under Romanian law to have it varied or annulled by the domestic courts. Apart from enforcement, it is only by means of such annulment or amendment by courts with an equivalent obligation that the continuing situation of non-enforcement may come to an end (see *Sabin Popescu v. Romania*, no. 48102/99, § 54, 2 March 2004).

28. The Court does not accept the Government's argument that the authorities had no obligation to enforce that judgment in respect of payment of the difference in salary, on the grounds that the domestic courts had decided by a final decision that there was no such difference. On this point, it notes that the applicant was given a new post and then his salary was reduced following an assessment of his professional achievements (see paragraphs 6 and 7 above). The judgment of 10 October 2001 then ordered the applicant's reinstatement in his previous job and payment of the difference between the salary earned before his reallocation to the new post and his present salary, until his effective reinstatement. The DSV invoked that assessment in its appeal against the judgment of 10 October 2001, but the Court of Appeal did not uphold that argument (see paragraph 10 above).

29. Therefore, the Court does not consider that the subsequent judgment of 22 July 2002 (see paragraph 12 above) led to an objective impossibility of performance of the judgment of 10 October 2001; it has rather infringed upon the principle of legal certainty, as the judgment of 10 October 2001 had already ordered the payment of the difference between the salary earned by the applicant in his previous job and his present salary, which was reduced in comparison with his previous salary. Moreover, the judgment of 17 October 2002 of the Court of Appeal pointed out that the DSV had infringed the judgment of 10 October 2001, which stated that the applicant was to be given not only his previous post, but also the salary he had before 1 June 2001 (see paragraph 12 above). Furthermore, both the DSV on its own motion and the domestic courts have ordered payment to the applicant of an indemnity corresponding to his leadership position (see paragraphs 11 and 16 above), position which corresponded to his previous post.

30. 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, *Sabin Popescu*, cited above, and *Dragne and Others v. Romania*, no. 78047/01, 7 April 2005).

31. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant sought to recover the difference in salary, as provided for in the judgment of 10 October 2001. He submitted a copy of his employment record. In his application form, he claimed 26,146,942 old Romanian lei in respect of pecuniary damage for a period of seven months, amount that he considered that should be brought up to date, and 30,000 euros (EUR) in respect of non-pecuniary damage.

34. The Government submitted that the applicant's allegations should not give rise to an award of any compensation for pecuniary damage and considered that the applicant had not submitted a claim in respect of non-pecuniary damage.

35. 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).

36. The Court considers, in the circumstances of the case, that the full enforcement of the judgment of 10 October 2001 would put the applicant as far as possible in a situation equivalent to the one in which he would have been if there had not been a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

37. The Court further considers that the serious interference with the applicant's right of access to a court and to the peaceful enjoyment of his possessions could not 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.

38. Making an assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the global sum of EUR 6,000 in respect of pecuniary and non-pecuniary damage.

B. Costs and expenses

39. In his application form, the applicant claimed reimbursement of the costs and expenses, without quantifying them or submitting any supporting documents.

40. The Government considered that the applicant had not submitted a claim in respect of costs and expenses.

41. The Court reiterates that under Article 41 of the Convention it will reimburse only the costs and expenses that are shown to have been actually and necessarily incurred and are reasonable as to quantum (see *Arvelakis v. Greece*, no. 41354/98, § 34, 12 April 2001). Furthermore, Rule 60 § 2 of the Rules of Court provides that itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part.

42. In the instant case, the Court observes that the applicant has not substantiated his claim in any way, as he has neither quantified his costs nor submitted any supporting documents. Accordingly, the Court does not award any sum under this head (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, §§ 133-134, ECHR 2004-XI).

C. Default interest

43. 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. *Joins to the merits* the Government's preliminary objection of incompatibility *ratione materiae* in respect of the complaint under Article 1 of Protocol No. 1 and *dismisses* it;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1;
4. *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 6,000 (six thousand euros) in

respect of pecuniary and non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(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 15 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President