...

THE FACTS

1. The applicant, Mr Adrian Mihai Ionescu, is a Romanian national, who was born in 1974 and lives in Bucharest. The Romanian Government ("the Government") were represented by their Agent, Mr Răzvan-Horaţiu Radu, of the Ministry of Foreign Affairs.

A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

3. In an action before the Bucharest District Court, the applicant claimed 90 euros (EUR) in damages from an international road transport company ("the company"), alleging that it had failed to perform its contractual obligations.

4. He claimed that in respect of a return journey between Bucharest and Madrid, which had cost him EUR 190, the company had failed to observe the safety and comfort requirements set out in its advertising material, namely the provision of fully reclining seats, a change of coach in Luxembourg and the availability of six drivers.

5. On 6 January 2004 he requested the production of the relevant transport documents held by the defendant company.

6. In a judgment of 7 January 2004 the court dismissed his action. After examining the clauses of the contract of carriage, it found that none of the conditions referred to by the applicant were mentioned. The court did not rule on the request for the production of certain items of evidence.

7. In an appeal on points of law received in the court's registry on 22 January 2004, the applicant challenged that judgment. In his grounds of appeal, filed in the registry on the same day, he alleged that the impugned judgment was based on contradictory grounds, that it was the result of an erroneous application of the law and that it infringed the law. The applicant added that the court had failed to rule on certain defences that were crucial for the outcome of the dispute and that it had misinterpreted the subject-matter of the proceedings.

8. He developed his arguments relying on provisions of the Civil Code and on the interpretation of the contractual clauses.

9. The case was referred to the High Court of Cassation and Justice ("the High Court"). Under the Code of Civil Procedure as then in force, the appeal was subject to a two-stage examination: first, the High Court would adjudicate in private on its admissibility and, if it was declared admissible, the merits of the impugned judgment would then be examined in a public hearing.

10. On 26 February 2004 the applicant submitted "pleadings concerning the admissibility of the appeal" in which he argued that it should be declared admissible because the substantive and procedural conditions were satisfied.

11. In a final judgment delivered in private on 2 April 2004 in the absence of the parties, who had not been summoned to appear, the High Court declared the appeal null and void, under Article 302-1 § 3 of the Code of Civil Procedure as then in force, on the ground that it had not stated the reasons why the District Court's decision was alleged to be unlawful.

12. On 3 August 2004 the applicant applied to have that judgment set aside, alleging that it was the result of a manifest error on the part of the High Court, because he had set out his grounds of appeal in the document filed on 22 January 2004. In addition, he complained about the lack of publicity of the proceedings before the High Court.

13. In a judgment of 26 January 2005 the High Court rejected his application on the ground that no appeal lay against the judgment of 2 April 2004.

B. Relevant domestic law

14. The Code of Civil Procedure (as amended by the Government's Emergency Order no. 58 of 25 June 2003), as worded at the material time, contained the following provisions:

Article 299

"Appeals on points of law shall be heard by the High Court of Cassation and Justice, unless otherwise provided by law."

Article 302-1 § 3

"Statements of appeal on points of law shall, if they are not to be declared null and void, ... indicate the grounds of illegality raised and contain the corresponding reasoning ..."

Article 304

"The setting-aside or quashing of a judgment may be sought only in the following cases and for the following reasons:

1. if the bench was composed in breach of the statutory provisions;

2. if the judgment was delivered by judges other than those who heard the case on the merits;

3. if the judgment was rendered in disregard of the jurisdiction of another court;

4. if the court exceeded its jurisdiction;

5. if the judgment was rendered contrary to rules of procedure of which a breach carries the sanction of nullity ...;

6. if the judgment was rendered *ultra petita*;

7. if the judgment did not give reasons or if it was based on reasoning that was contradictory or unrelated to the subject-matter of the proceedings;

8. if, on account of misinterpretation, the court modified the subject-matter of the proceedings whereas that subject-matter had been clear and undisputed;

9. if the judgment was not based on the law, if it infringed the law, or if it was the result of an erroneous application of the law;

10. if the court failed to rule on certain defences or certain documents in the file that were crucial for the outcome of the dispute."

Article 304-1

"An appeal on points of law against a judgment which is not subject to an ordinary appeal shall not be limited to the situations provided for in Article 304, as the appellate court shall be entitled to examine all the aspects of the case."

Article 308 §§ 1 and 4

"The president of the court which receives the appeal on points of law shall appoint a bench of three judges to rule on its admissibility ...

If the judges are unanimous in finding that the admissibility conditions are not satisfied, or if they find that the grounds of appeal and the accompanying arguments do not correspond to those set out in Article 304, they shall declare the appeal null and void or, if appropriate, reject it in a reasoned decision without summoning the parties, that decision not being subject to appeal."

15. Law no. 195 of 25 May 2004, further amending the Code of Civil Procedure, repealed the provisions of Emergency Order no. 58/2003 concerning the exclusive jurisdiction of the High Court of Cassation and Justice to hear appeals on points of law, together with the provisions concerning the preliminary examination of their admissibility. Appeals on points of law are now examined by the courts that are immediately above those that gave the judgments at first instance or on appeal, without any preliminary examination of admissibility, and in accordance with the ordinary procedure provided for by the Code of Civil Procedure.

COMPLAINTS

16. Relying on Article 6 § 1 of the Convention, the applicant complained that the District Court had failed to rule on his request for the production of evidence, that the proceedings in the High Court had not been public, and lastly that he had not had access to the High Court for the purpose of appealing against the judgment of 7 January 2004.

17. Referring to Article 13 of the Convention, he complained that the appeal against the above-mentioned judgment had not constituted an effective remedy and that there had been no remedy by which to challenge the judgment of 2 April 2004.

THE LAW

18. The applicant submitted a number of complaints under Article 6 § 1 and Article 13 of the Convention, which 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 13

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority ..."

19. First, as regards the proceedings before the District Court, the applicant alleged that the court had omitted to rule on his request for the production of evidence.

20. The Court reiterates at the outset that the admissibility of evidence is primarily a matter for regulation by national law and that it is for the national courts to assess whether it is appropriate to take evidence. Nor is it for the Court to examine an application concerning errors of fact or law allegedly committed by domestic courts.

21. In view of all the material in its possession, and to the extent that it is competent to examine the allegations made, the Court finds that the District Court carried out a wholly independent assessment of all the circumstances of the case and the various evidence adduced by the parties and gave adequate reasons for its judgment. The judgment was given after adversarial proceedings during which the applicant had been able to present the

observations and legal grounds that he deemed necessary, together with arguments in support of his position. It cannot therefore be considered that the proceedings failed to meet the requirements of fairness under Article 6 § 1 of the Convention.

22. It follows that this complaint must be rejected as manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

23. Secondly, as regards the examination by the High Court of Cassation and Justice of his appeal on points of law, the applicant complained that the procedure had not been public and that the appeal had been declared null and void. He also complained that there was no remedy by which to challenge the High Court's judgment.

24. The Government admitted that the applicant's right of access to a court had been subjected to limitations, but argued that the conditions of admissibility of the appeal on points of law had been compatible with Convention requirements. They alleged that the applicant had not satisfied the procedural conditions laid down in the Code of Civil Procedure, as he had failed to refer expressly to the cases he sought to submit in which such an appeal was available.

25. They further pointed out that the High Court had examined the applicant's pleadings and had concluded that his arguments did not enable it to relate his complaints to the cases in which such an appeal was available. The Government concluded that the annulment of the appeal had been the result of negligence on his part.

26. The applicant maintained that the decision declaring null and void his appeal on points of law had breached his right of access to a court. He stated that in his pleadings of 22 January 2004 he had cited and developed the provisions of Article 304 of the Code of Civil Procedure. He thus took the view that the High Court had confined itself to a purely formal examination of his appeal and had dismissed it arbitrarily.

27. The Court finds at the outset that the applicant's complaints about the proceedings before the High Court underlie those concerning the annulment of his appeal and may be seen in the context of his right of access to a court.

28. The Court further notes that Article 35 of the Convention, as amended by Protocol No. 14, which entered into force on 1 June 2010, provides as follows:

> "3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that :
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> a. the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or
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> b. the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination

of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal."

29. In the present case, the Court finds that the complaint under Article 6 of the Convention is not incompatible with the provisions of the Convention or its Protocols, nor is it manifestly ill-founded or an abuse of the right of application within the meaning of Article 35 § 3 (a) of the Convention as amended by Protocol No. 14.

30. However, having regard to the entry into force of Protocol No. 14, the Court finds it necessary to examine of its own motion whether in the present case it should apply the new inadmissibility criterion provided for in Article 35 § 3 (b) of the Convention as amended (see, *mutatis mutandis,* among the many cases where the Court has examined compliance with admissibility conditions of its own motion, *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I; *Blečić v. Croatia* [GC], no. 59532/00, § 63, ECHR 2006-III; and *Şandru and Others v. Romania*, no. 22465/03, §§ 50 et seq., 8 December 2009).

31. As indicated in paragraph 79 of the Explanatory Report to Protocol No. 14: "The new criterion may lead to certain cases being declared inadmissible which might have resulted in a judgment without it. Its main effect, however, is likely to be that it will in the longer term enable more rapid disposal of unmeritorious cases".

32. The Court notes that the main aspect of this new criterion is whether the applicant has suffered any significant disadvantage.

33. Even though the concept of "significant disadvantage" has not been interpreted to date, it has been referred to in dissenting opinions appended to the judgments in *Debono v. Malta* (no. 34539/02, 7 February 2006), *Miholapa v. Latvia* (no. 61655/00, 31 May 2007), *O'Halloran and Francis v. the United Kingdom* ([GC], nos. 15809/02 and 25624/02, ECHR 2007-VIII) and *Micallef v. Malta* ([GC], no. 17056/06, ECHR 2009-...).

34. Those opinions show that the absence of any such disadvantage can be based on criteria such as the financial impact of the matter in dispute or the importance of the case for the applicant. In this connection it is noteworthy that the insignificance of a claim was the decisive factor in a recent decision by the Court declaring an application inadmissible (see *Bock v. Germany* (dec.), no. 22051/07, 19 January 2010).

35. In the present case the Court notes that the applicant's alleged financial loss on account of a failure to perform a contract of carriage was limited. The amount in issue, according to the applicant's own estimation, was 90 euros for all heads of damage, and there is no evidence that his financial circumstances were such that the outcome of the case would have had a significant effect on his personal life.

36. In those circumstances the Court finds that the applicant has not suffered any "significant disadvantage" in the exercise of his right of access to a court.

37. As to the question whether respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits, the Court points out that it has already held that respect for human rights does not require it to continue the examination of an application when, for example, the relevant law has changed and similar issues have been resolved in other cases before it (see *Léger v. France* (striking out) [GC], no. 19324/02, § 51, ECHR 2009-...).

38. In the present case the Court observes that the provisions concerning the preliminary examination of the admissibility of appeals on points of law have been repealed and that such appeals are now examined according to the ordinary procedure provided for by the Code of Civil Procedure.

39. In those circumstances, since the issue before the Court is of historical interest only and as the Court has already had a number of opportunities to rule on the application of procedural rules by domestic courts (see, for example, *Běleš and Others v. the Czech Republic*, no. 47273/99, § 69, ECHR 2002-IX; *Zvolský and Zvolská v. the Czech Republic*, no. 46129/99, § 55, ECHR 2002-IX; *L'Erablière A.S.B.L. v. Belgium*, no. 49230/07, § 38, ECHR 2009-...; and *Sâmbata Bihor Greco-Catholic Parish v. Romania*, no. 48107/99, § 63, 12 January 2010), the Court finds that respect for human rights does not require it to continue the examination of this complaint.

40. Lastly, as regards the third condition of the new inadmissibility criterion, namely that the case must have been "duly considered" by a domestic tribunal, the Court notes that the applicant's action was examined on the merits by the Bucharest District Court. The applicant was therefore able to submit his arguments in adversarial proceedings before at least one domestic court.

41. The three conditions of the new inadmissibility criterion having therefore been satisfied, the Court finds that this complaint must be declared inadmissible under Article 35 §§ 3 (b) and 4 of the Convention.

For these reasons, the Court by a majority,

Declares the application inadmissible.

Stanley Naismith
Deputy Registrar

Josep Casadevall
President