

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

THIRD SECTION

CASE OF APAHIDEANU v. ROMANIA

(Application no. 4998/02)

JUDGMENT

STRASBOURG

5 February 2013

This judgment is final but it may be subject to editorial revision.



In the case of Apahideanu v. Romania,

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

Alvina Gyulumyan, *President,*
Kristina Pardalos,
Johannes Silvis, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 15 January 2013,

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

PROCEDURE

1. The case originated in an application (no. 4998/02) 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 Ioana Mihaela Apahideanu ("the applicant"), on 16 February 2001.

2. The Romanian Government ("the Government") were represented by Mr Răzvan-Horațiu Radu and Ms Carmen Ciută from the Ministry of Foreign Affairs.

3. On 30 June 2010 the application was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1949 and lives in Bucharest.

5. On 23 July 1996 the applicant filed an administrative claim with the Bacău Local commission for the application of Law no. 112/1995 ("the local commission") seeking to obtain restitution in kind of real estate (a building and its appurtenant land) located in Bacău at no. 6 Cuza-Vodă Street, in the limit of a one-third share of property.

6. By a decision of 20 February 1997 the local commission rejected the applicant's claim on the ground that the property in question had been unlawfully nationalised by the State. Consequently, the procedure laid down in Law no. 112/1995 did not find its applicability, since it concerned only real estate that had undergone lawful nationalisation.

7. On 20 May 1998 the applicant brought court proceedings against the Bacău Inspectorate for Culture seeking to recover possession of the claimed share of real property.

8. By a final judgment of 24 January 2001 the Court of Appeal of Bacău rejected the action on the ground that the property had been nationalised based on the provision of the Decree-Law no. 119/1948, fact which had rendered it lawful.

9. On 21 May 2001 the applicant filed a new administrative claim ("*notificare*") pursuant to a new restitution law, that is, Law no. 10/2001, with the Bacău Inspectorate for Culture, seeking the same property rights as in 1996.

10. On 22 June 2001 the Bacău Department for Culture, Cults and Cultural Heritage (the new title of the Bacău Inspectorate for Culture, "the Department for Culture" thereon) issued a negative answer, drawn up in general terms. Consequently, the applicant brought a court action on 18 June 2002 seeking to obtain a court order to force the Department of Culture to issue a proper official answer to her claim.

11. On 14 January 2004 the County Court of Bacău allowed the action and ruled that the concerned authority was under the obligation to issue a "decision" which should, according to Article 23 of Law no. 10/2001, indicate the possibility of restitution in kind, and propose measures of compensation by equivalent where such restitution was not possible. The court stated that the answer issued in June 2001 failed to satisfy legal requirements. The judgment became final on 11 November 2005 before the High Court of Cassation and Justice.

12. On 29 April 2004 the Department for Culture complied with the court order and issued a decision whereby it rejected the restitution claim. It held that restitution in kind was not possible and that the applicant was entitled to compensation according to restitution laws.

13. On 19 May 2004, the decision was contested in court.

14. Separately, two of the applicant's uncles (the three of them claimed ownership rights in common for the same real estate) brought civil proceedings seeking restitution in kind of the same property, in the limit of a two-third share of property. The restitution claim was allowed by the Court of Appeal of Suceava by its decision of 1 March 2004, which ordered that two thirds of the real property be returned to the claimants as lawful owners. The decision became final on 15 September 2006 before the High Court of Cassation and Justice.

15. On 8 June 2005 the County Court of Bacău decided to stay the proceedings until the ones brought by the applicant's uncles had been finalised.

16. On 11 April 2007 the legal process was resumed on the applicant's request (filed on 20 February 2007).

17. On 1 November 2007 the County Court of Bacău gave its judgment. Basing itself mainly on the findings of the 2004 judgment given by the Court of Appeal of Suceava, it ordered that restitution in kind be made to the applicant for one third of the real estate. It also provided for pecuniary compensation for one third of land (326, 93 sq.m.) for which restitution in kind was not possible.

18. On appeal brought by both parties, the Court of Appeal of Bacău quashed the judgment and remitted it to the first instance court for re-examination on the merits. By its decision of 14 April 2008 the court found that the first judgment failed to comply with the guarantees of a fair trial in respect of the applicant, whose several requests in evidence had not been considered. The court pointed to a land expert study whose findings could have been essential to clear out doubts as to the current land holders. The first-instance court had also failed to indicate the amount as well as the debtor of the compensation to which the applicant was entitled.

19. The case was registered for re-trial on 19 June 2008 before the County Court of Bacău.

20. At the hearing of 24 September 2008 the applicant specified her property claims, in that she sought that the land holders be correctly identified and that an expert study be commissioned by the court to that effect, exactly what the higher court had previously indicated in its remittal judgment.

21. On 21 January 2009 the court ordered for an expert study to be conducted on the real estate in the interest of both parties and established its costs. On 5 March 2009 the applicant partly complied by paying only half of the expert's fee. She held that the rest was to be paid for the Department for Culture, as the examination served its interests as well. The expert appointed by the court conducted the examination on 18 June 2009, but failed to submit its report to the court.

22. On 4 November 2009 the court stayed the proceedings based on Article 155^1 of the Code for Civil Procedure as the parties refused to pay the expert fee and the report was essential for the court to examine the merits of the case.

23. On 27 October 2010 subsequent to the payment of the fee by the applicant, the legal process was resumed. At the same hearing, it was postponed as the expert report had yet to be delivered.

24. On 8 December 2010 the hearings were again deferred so that a new expert examination be conducted in the case by a newly-appointed land expert (the first expert having been suspended). However, the repeated absence of an expert report had led to the postponement of the ensuing nine hearings. The next hearing was scheduled on 16 November 2012 with the court still expecting that the expert report be drafted and submitted to it. The proceedings are thus pending before the first-instance court.

THE LAW

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

25. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down 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 ... hearing within a reasonable time by [a] ... tribunal..."

A. Admissibility

26. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Period to be taken into consideration

27. Regarding the period to be taken into consideration, the Government was of the opinion that there were two cycles of proceedings to be considered separately. The first cycle started on 18 June 2002 with the applicant's action seeking to obtain a court order to force the Department for Culture to issue a proper official answer to her claim and ended on 11 November 2005. The Government argued that this set of proceedings amounted to a total length of three years and five months, which they found reasonable. They went on claiming that the second judicial cycle started on 19 May 2004 with the contestation of the administrative decision and was still pending before the domestic courts.

28. The applicant did not comment on the matter.

29. The Court notes that on 21 May 2001 the applicant filed her administrative claim. On 29 April 2004, the administrative stage ended by the decision of the Department for Culture rejecting the applicant's claim. Then, this decision was further contested before the domestic courts, where it is still pending at first-instance level. As regards the action brought by the applicant on 18 June 2002, the Court notes that it aimed at obliging the authorities to issue a proper official answer to her claim.

30. Thus, the Court cannot agree with the Government when they argue that this action marked the beginning of a judicial cycle which must be considered separately from the rest of the proceedings. It concludes that the

period to be taken into consideration began on 21 May 2001 and has so far lasted eleven years and seven months for two levels of jurisdiction, of which three years elapsed at administrative level. Proceedings are still pending before the domestic courts at first-instance level.

2. Reasonableness of the length of the proceedings

31. In the Government's view, the applicant had substantially contributed to prolonging the proceedings. She failed to pay the fees for the expert report, fact which had led to several adjournments of the hearings and finally to the stay of proceedings (see paragraphs 21-22 above). The case was adjourned three times for defence purposes in respect of the applicant (absence of lawyer, study of documents submitted by the defending authorities). The Government also stated that the applicant acquiesced to the extension of the proceedings by objecting to several motions for adjournment filed by other parties. In sum, the length of the proceedings had been attributable mainly to her conduct.

32. Referring to the conduct of the relevant authorities, the Government pointed out that there had been no sign of inactivity on their part. On the contrary, the courts had shown due diligence in handling the case, especially during the one year and nine month stay of proceedings before the County Court of Bacău, the latter undertaking regular verifications on the development and conclusion of separate civil proceedings linked to those under its scrutiny (court information papers from March, April and October 2006). In spite of this delay on their part, the Government concluded the "reasonable time" requirement had nevertheless been complied with in the applicant's case.

33. The applicant, on her part, argued that the inefficient manner in which the authorities had handled the case had been the main reason why the proceedings lasted so long and were still unsettled by final court decision. She further contended the Government's argument in respect of her failure to pay the expert fees and thus contributing to extension of the proceedings, claiming to have paid her part of the respective fee. She went on to claim that, in spite of her compliance, a relevant expert report still had not been submitted to the first-instance court to this day. Furthermore, owing to the courts' failure to display due procedural diligence, doubts still lingered on the current land holders and on the debtors of the compensation to which she had been entitled. Therefore, the courts were responsible for the length of the pending civil trial.

34. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Pélissier*

and Sassi v. France [GC], no. 25444/94, § 67, ECHR 1999-II, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

35. 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 (see *Pélissier and Sassi* and *Frydlender*, cited above, *Abramiuc v. Romania*, no. 37411/02, § 103-109, 24 February 2009).

36. Turning to the facts of the present case and with regard to the complexity of the case, the Court first takes note of the fact that the litigation concerned a claim for restitution in kind of a share of property, pursuant to restitution laws, that is, Law no. 10/2001. The case was given a preliminary consideration at administrative level, which led to its rejection. Further contested in court, it did not raise particularly complex aspects.

37. The Court observes that the proceedings were stayed two times; firstly, as separate civil proceedings linked to the merits of the applicant's action had yet to be finalised, the legal process was halted on 8 June 2005 and resumed upon the applicant's request on 20 February 2007 (see paragraphs 14-16 above), and secondly, as the applicant refused to pay the entire expert fee for an expert study she had requested, proceedings were halted on 4 November 2009 for a total period of eleven months.

38. The Court further notes that some delays were caused by the applicant's failure to file her civil contestation to the court of competent jurisdiction, by the service of process and by the remittal of the case to the lower court owing to procedural incidents attributable to the lower court. Requests from the applicant to have hearings adjourned in order to study case documents or for the absence of her lawyer were scarce in number and did not exceed what is normally acceptable in the exercise of defence rights before a domestic court.

39. The Court reiterates that even in legal systems applying the principle that the procedural initiative lies with the parties, the latter's attitude does not dispense the courts from ensuring the expeditious trial required by Article 6 § 1 (see *Sürmeli v. Germany* [GC], no. 75529/01, § 129, ECHR 2006-VII).

40. What the Court finds to be of utmost importance in the significant delays in the present case is the courts' inability to obtain a land expert study and its report deemed of crucial importance to the examination of the merits at domestic level. The Court observes that the expert study was commissioned upon re-examination by the first-instance court on 21 January 2009 and since then more than twenty hearings have been held without a conclusive expert report having been submitted to it. Although it is true that the applicant herself prolonged the trial by eleven months by refusing to pay the entire expert study fee, the Court can find no sufficient justification for a lapse of time presently reaching two years and ten months for an important piece of evidence to be submitted to the domestic court. Hearings were thus deferred for several reasons, such as the appointment of

several experts and their repeated failure to deliver the report, for which responsibility lies with the authorities and not with the applicant.

41. In view of the above, the Court finds no evidence to demonstrate that at any stage of the proceedings the applicant showed dilatory conduct or otherwise upset the proper conduct of the trial. The Court considers that the applicant's conduct did not contribute substantially to the length of the proceedings and that the judicial authorities were responsible for most of the delays. The Government did not put forward any fact or argument capable of persuading it to reach a different conclusion.

42. Moreover, the Court has already found that, although it is not in a position to analyse the juridical quality of the case-law of the domestic courts, the remittal of cases for re-examination discloses a serious deficiency in the judicial system, since it is usually ordered as a result of errors committed by lower courts. This deficiency is imputable to the authorities and not to the applicants (see *Matica v. Romania*, no. 19567/02, § 24, 2 November 2006).

43. Having examined all the material submitted to it and in the light of its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

44. Relying on Article 6 § 1 of the Convention, the applicant further complained about the outcome and the lack of fairness of the proceedings which ended by the final judgments of 30 January 2001 and 11 November 2005, alleging that the domestic courts had failed to conduct a proper examination of the evidence submitted before them. Under the same Article, the applicant complained that the proceedings which were finalised on 30 January 2001 (initiated on 20 May 1998 and thus amounting to a total of two years, eight months and ten days before three degrees of jurisdiction) had exceeded the reasonable time requirements. Lastly, the applicant relied on Article 1 of Protocol No. 1 to the Convention to claim an infringement on her property rights over the real estate, which have yet to be determined, as the civil proceedings in question are still pending before the domestic courts.

45. Having considered the applicant's submissions in light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. In particular, in respect of the complaint under Article 1 of Protocol No. 1, the Court notes that proceedings are still

pending before the domestic courts, and thus declares it inadmissible for non-exhaustion of domestic remedies.

46. It follows that this part of the application must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant claimed 581,958 euros (EUR) under the head of pecuniary damage, that was to cover the current market value of her share of property and the loss of benefit. She also asked to be awarded a monthly sum of EUR 1,794 for future benefit from the property until restitution in kind. As for non-pecuniary damage, she claimed an award of EUR 30,000 for the distress resulting from the violation of her Convention rights.

49. The Government contested these claims.

50. The Court does not discern any causal link between the violation found in respect of the length of civil proceedings and the pecuniary damage alleged; it therefore rejects this claim.

51. The Court considers that the applicant must have certainly sustained non-pecuniary damage – such as distress and frustration resulting from the protracted length of the proceedings still pending before the domestic courts – which is not sufficiently compensated by the finding of a violation of the Convention. Ruling on an equitable basis, it awards her EUR 3,000 under that head.

B. Costs and expenses

52. The applicant also claimed EUR 2,478.26 for the costs and expenses incurred before the domestic courts as well as for those incurred before the Court, such as expert study fees, attorney's fees, transport and hotel accommodation occasioned by the presence at court hearings, and correspondence and translation of application and documents submitted to the Court. She documented only half of her expenses by submitting train tickets, hotel invoices and legal representation agreements that amount to a total of EUR 1,253.45.

53. The Government contested these claims.

54. According to the Court's established case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually incurred, were necessarily incurred and were also reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

55. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 1,000 covering costs and expenses in the domestic proceedings as well as for the proceedings before the Court.

C. Default interest

56. The Court considers it appropriate that the default interest rate 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 concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within 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 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of 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;

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

Done in English, and notified in writing on 5 February 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Alvina Gyulumyan
Deputy Registrar	President