

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 30934/05
by Dorina-Margareta GAFTONIUC
against Romania

The European Court of Human Rights (Third Section), sitting on 22 February 2011 as a Chamber composed of:

Josep Casadevall, *President,*
Corneliu Bîrsan,
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria,
Mihai Poalelungi, *judges,*

and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 28 April 2005,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms. Dorina-Margareta Gaftoniuc, is a Romanian national who was born in 1968 and lives in Târgu Ocna. The Romanian Government ("the Government") are represented by their Agent, Mr. Răzvan-Horaţiu Radu from 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 2003 the applicant initiated administrative proceedings against the Bacău County School Inspectorate (*Inspectoratul Şcolar Judeţean Bacău*) requesting her appointment on the position of English and French teacher, the annulment of the appointment decision of a third person for the aforementioned position and damages.

4. On 23 October 2003, the Bacău County Court partially allowed the applicant's claim, ruling that she was to be appointed on the teaching position and that the defendant was to pay her damages of 100,000 Romanian old lei (ROL - the equivalent of around 3 euros (EUR)) per day, until the actual appointment.

5. By a judgement of 8 November 2004, the Bacău Court of Appeal allowed the appeals on points of law of both parties and submitted the case for re-adjudication to the Bacău County Court.

6. Upon rehearing of the case, by a judgement of 27 April 2005, the Bacău County Court partially allowed the applicant's claim, ruling that she was to be appointed on the teaching position and that she was to receive court fees of ROL 1,900,000 (the equivalent of around EUR 52). The Bacău County Court dismissed the applicant's claim for damages.

7. On 22 December 2005, the Bacău Court of Appeal upheld the Bacău County Court's judgement as regards the applicant's appointment and fixed the amount of the court fees at 569.8 Romanian new lei (RON - the equivalent of around EUR 154).

8. On 23 June 2006, upon the request of the applicant a bailiff summoned the defendant to comply with the above judgement. At an unspecified date, the bailiff informed the Bacău Treasury of the existent garnishment proceedings.

9. On 3 July 2006, the applicant was appointed as a teacher and on 22 November 2006 she signed the employment agreement.

10. On 8 November 2007, the Bacău County School Inspectorate paid the applicant an amount of RON 640.25 (EUR 177), representing court fees and enforcement expenses.

B. Relevant domestic law

11. The relevant domestic law is described in *Roman and Hogea v. Romania* ((dec.), no. 62959/00, 31 August 2004) and *Sacaleanu v. Romania* (no. 73970/01, 6 September 2005).

COMPLAINTS

12. The applicant complained under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention about the non-enforcement of the final judgement in her favour.

13. She also complained under Article 6 § 1 of the Convention about the length and outcome of the proceedings, in particular of the domestic courts refusal to grant her damages.

14. Furthermore, relying on Article 4 of the Convention, she complained that she had to work on a different position than the one was legally entitled to.

15. She complained under Article 13 about the domestic courts having wrongly established the amount of the stamp duty.

16. Finally, in a separate memorandum submitted to the Court on 7 June 2006, the applicant raised complaints under Article 8 of the Convention about her private life being affected by a serious illness which she had contracted. Also, she complained under Article 14 of the Convention about the failure of the domestic authorities to take into consideration the particular circumstances of her situation when reaching their decisions.

THE LAW

17. The applicant complained under Article 6 § 1of the Convention and Article 1 of Protocol No. 1 about the untimely enforcement of the judgment of 22 December 2005. These provisions, 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."

18. The Court observes that the operative part of the 22 December 2005 judgement was two-fold. On the one hand the Bacău County

School Inspectorate was to appoint the applicant on a teaching position and on the other hand the same institution was to pay her court fees.

19. The Court further observes that the Bacău County School Inspectorate complied with its obligations in two different steps (see paragraphs 9 and 10 above).

20. Therefore, in the light of the above, the Court finds it appropriate to examine the applicant's complaints relating to non-enforcement of the 22 December 2005 judgement separately, taking into account the different obligations imposed in the operative part of the respective judgement.

A. Alleged violation of Articles 6 § 1 and 1 of Protocol No. 1 to the Convention on account of the delayed appointment of the applicant

21. The Government argued that the part of the judgment rendered on 22 December 2005 relating to the applicant's appointment as a teacher had been enforced within a reasonable period of time and therefore, in their view, the length of the enforcement proceedings had not been excessive, and there had been no violation of the applicant's rights under Articles 6 § 1 and 1 of Protocol No. 1 to the Convention.

22. The applicant disagreed with the Government and maintained her complaint.

23. The Court reiterates that effective access to court includes the right to have a court decision enforced without undue delay (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 66, ECHR 1999-V). An unreasonably long delay in the enforcement of a binding judgment may breach the Convention (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III). The reasonableness of such delay is to be determined having regard in particular to the complexity of the enforcement proceedings, the applicant's own behaviour and that of the competent authorities, and the amount and nature of the court award (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).

24. On the facts, the Court observes that the judgment of 22 December 2005, in so far as it related to the appointment of the applicant as teacher was enforced on 3 July 2006 when the applicant was offered the aforementioned position. The enforcement period was thus of six months. The Court is mindful that the authorities needed a certain lapse of time for enforcing decisions relating to employment contracts and does not find a period of six months unreasonable in view of these circumstances.

25. Having regard to the content of the judgment of 22 December 2005 and the fact that the provisions relating to the applicant's appointment as a teacher were enforced within a relatively short period of time, the Court finds that such a delay does not appear excessive (see *Presnyakov v. Russia* (dec.), no. 41145/02, 10 November 2005, *Inozemtsev v Russia* (dec.),

no. 874/03, 31 August 2006, and *Fedorov and others* (dec.), no. 33382/04, 17 January 2008) and is compatible with the Convention requirements.

26. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Alleged violation of Article 6 § 1 and 1 of Protocol No. 1 to the Convention on account of the delayed payment of the court fees

27. The Court must first determine whether this complaint is admissible under Article 35 of the Convention, as amended by Protocol No. 14 which entered into force on 1 June 2010.

28. The Protocol added a new admissibility requirement to Article 35 which, in so far as relevant, provides as follows:

> "3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
>
> (...)
>
> (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 accordance with Article 20 of the Protocol, the new provision shall apply from the date of its entry into force to all applications pending before the Court, except those declared admissible. In view of the circumstances of the present case the Court finds it appropriate to examine at the outset whether the applicant's complaints comply with this new admissibility requirement.

1. Whether the applicant has suffered a significant disadvantage

30. The Court notes that the main element of the criterion introduced by Protocol No. 14 is whether the applicant has suffered a significant disadvantage.

31. The Court has previously held that this criterion applies where, notwithstanding a potential violation of a right from a purely legal point of view, the level of severity attained does not warrant consideration by an international court (see: *Adrian Mihai Ionescu v. Romania* (dec), no. 36659/04, 1 June 2010 and *Korolev v. Russia* (dec.), no. 25551/05, 1 July 2010). Further, the level of severity shall be assessed in the light of the financial impact of the matter in dispute and the importance of the case for the applicant.

32. On the facts of the case, the Court notes that the court fees of 569.8 Romanian new lei (RON) awarded to the applicant by the final judgement of 22 December 2005, including the enforcement expenses

incurred, were paid on 8 November 2007, thus with a delay of one year and ten months. The aforementioned amount was not indexed with the inflation margin corresponding to the period of delayed enforcement. Thus, the applicant should have received an additional amount of around RON 84 (representing the equivalent of around 25 euros (EUR)).

33. In the circumstances of the present case, the Court is struck at the outset by the small size of the pecuniary loss suffered by the applicant on account of the delayed enforcement. The Court is conscious that the impact of a pecuniary loss must not be measured in abstract terms; even modest pecuniary damage may be significant in the light of the person's specific condition and the economic situation of the country or region in which he or she lives. However, even taking into consideration the applicant's personal situation, i.e. teacher within a public school and single mother, the Court finds that in the light of the minor nature of the award roughly equal to EUR 25 the applicant did not suffer a significant disadvantage within the meaning of Article 35 § 3 (b).

2. Whether respect for human rights as defined in the Convention and its Protocols requires an examination of the application on the merits

34. The Court recalls that under this safeguard clause, it is compelled to continue examining an application if it raises questions of a general character affecting the observance of the Convention (see *Tyrer v. the United Kingdom*, no. 5856/72, Commission's report of 14 December 1976, Series B 24, p. 2, § 2).

35. The Court further observes that the problem of non-enforcement in Romania has been addressed on numerous occasions in its judgments (see among many other authorities *Durdan v. Romania*, no. 6098/03, 26 April 2007, *Şurtea v. Romania*, no. 24464/03, 25 November 2008). The examination on this application on the merits would not bring any new element in this regard.

36. The Court therefore concludes that respect for human rights as defined in the Convention and its Protocols does not require an examination of the application on the merits.

3. Whether the case was duly considered by a domestic tribunal

37. This second safeguard clause was designed to ensure that every case receives a judicial examination either at national level or at European level in order to avoid a denial of justice (see *Korolev v. Russia* (dec), cited above).

38. The Court does not find the facts of the present case to disclose a denial of justice at domestic level. The applicant's initial grievances were considered at two levels of jurisdiction and her claims were granted.

Further, Romanian legislation has in place a mechanism for enforcement of judgements through bailiffs which the applicant successfully used.

39. The Court concludes that the applicant's case was duly considered by a domestic tribunal within the meaning of Article 35 § 3 (b).

4. Conclusion

40. 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.

C. Other alleged violations of the Convention

41. Referring to Articles 4, 6 § 1, 8, 13 and 14, the applicant complained of further aspects related to the proceedings for her appointment as teacher.

42. Having regard to all the materials in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no appearance of a violation of the rights and freedoms set out in these provisions in that respect. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Marialena Tsirli
Deputy Registrar

Josep Casadevall
President