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

FOURTH SECTION

DECISION

Application no. 4982/05
Elena HAUTĂ and Others
against Romania

The European Court of Human Rights (Fourth Section), sitting on 1 March 2016 as a Chamber composed of:

András Sajó, *President,*
Vincent A. De Gaetano,
Boštjan M. Zupančič,
Nona Tsotsoria,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Iulia Antoanella Motoc, *judges,*

and Fatoş Aracı, *Deputy Section Regisrar,*

Having regard to the above application lodged on 2 February 2005,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Ms Elena Haută, Ms Veronica Dima and Ms Aurelia Florea, are all Romanian nationals, born in 1930, 1924 and 1935 respectively and live in Huşi, Şişcani and Vuţcani, respectively.

The applicants were initially represented before the Court by Mr J. Crudu, a lawyer practising in Vaslui. The first and the third applicants are currently represented by Ms Diana-Elena Dragomir, a lawyer practising in Bucharest.

2. The Romanian Government ("the Government") are represented by their Agent, Ms C. Brumar, of the Ministry of Foreign Affairs.

A. The circumstances of the case

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

4. On 11 March 1999 the applicants' mother, Z.D., lodged with the administrative authorities a request under Law no. 9/1998, seeking to be compensated for a plot of land, a house and a yard she and her husband G.D., now deceased, had owned together before 1940 in Bazarghean, Durostor District. In her appended statement, given before a public notary on 19 July 1999, Z.D. confirmed that she had never received any compensation for the respective property.

5. On 27 January 2000 the Vaslui County Commission for Implementing Law 9/1998 allowed the request and granted the claimant 529 million lei (ROL) (approximately 29,000 euros (EUR) at the time) in compensation.

6. On 7 June 2002 this decision was overturned by the Central Commission, the national authority in charge of the implementation of Law no. 9/1998, which held that the calculation of the total amount needed to be done again, given that the disputed plot of land was actually located on the outskirts and not in the central area, while the disputed house had been built with adobe and not with bricks. The decision stipulated that:

> "In view of the advanced age of the person entitled [to compensation] the decision must urgently be redrafted and the three children of the deceased father, G.D., should be included therein."

7. Z.D. contested this decision, claiming that the calculation made by the County Commission was correct; however, in the judgment of 13 January 2003, the Vaslui Court of First Instance upheld the decision given by the Central Commission.

Z.D. appealed. Her appeal was dismissed as out of time by the Iaşi Court of Appeal on 31 March 2003. A further appeal lodged with the same court was dismissed as inadmissible on 20 October 2003.

8. On the same day Z.D. died.

9. The applicants, Z.D.'s heirs, have lodged several requests with various state authorities (including the President, the Ombudsman, and the Prefect of Vaslui), asking for a decision to be taken in their case.

10. An expert report issued on 19 October 2005 at the request of the Vaslui County Commission proposed that an amount of 23,891.62 RON be given for the impugned land. The report mentioned that according to a certificate issued by the Huşi Mayor Office, Z.D. had never requested or received compensation in accordance with the Romanian legislation on land restitution. A similar expert report issued on 15 October 2005 evaluated the impugned house and appurtenant land to 145,533.01 RON.

11. Consequently, on 1 November 2005 the Vaslui County Commission issued another decision on Z.D.'s name, granting her compensation in the

amount of 169,424 Romanian lei (RON) (approximately EUR 47,000 at the time).

12. On 14 July 2006 the National Authority for Property Restitution (hereinafter "the National Authority"), the authority which had replaced and taken over the responsibilities of the Central Commission, replied to one of the applicants' letters. The National Authority informed them that their file was pending before it, and that generally every file was assessed on the basis of on documents such as civil status certificates, other certificates attesting whether any compensation had already been granted, expert reports, and so on.

13. On 15 November 2006 the Prime Minister's Head of Chancellery issued an order which invalidated the decision of 1 November 2004, given that the claimant needed to submit further documents concerning the civil status of G.D.'s heirs and attesting to whether any other compensation had been received by any of the heirs, in accordance with the Romanian legislation on land restitution. The Chancellery sent the file back to the Prefect of Vaslui County for further examination, while holding that:

> "compensation should be granted to the claimant for 10 ha of land, house and yard of 4000 sq. m.; for the rest of the yard [the claimant] should be granted equivalent agricultural land".

14. On 15 January 2007 the Prefect of Vaslui addressed a letter to Z.D., informing her that she needed to submit the documents referred to in the decision of 15 November 2006.

15. No other decision has yet been taken on the claims lodged by Z.D. under Law no. 9/1998.

B. Relevant domestic law

1. Law no. 9/1998

16. Law no. 9/1998 came into force on 14 March 1998 and was amended in 2004 and 2007; it established a compensatory mechanism for Romanian citizens whose immovable properties were confiscated without due compensation under the Treaty of Craiova, signed by Romania and Bulgaria on 7 September 1940 (see paragraph 35 below).

17. The mechanism referred essentially to pecuniary compensation or to the right to shares in State-run companies. The deadline for filing such claims was set in Article 4 § 1 at eighteen months from the entry into force of the law. This deadline was subsequently extended by Law no. 97/2005, for a period of twelve more months starting with the entry into force of the law on 21 April 2005 and then by Law no. 348/2006, for a period of eighteen more months, starting from the entry into force of the law on 28 July 2006.

18. The bodies in charge of implementing the said Law were the County Commissions established within each county (including Bucharest) under the authority of the Prefect, and the Central Commission for Implementing Law no. 9/1998.

19. Under Article 7 § 1, the County Commissions had responsibility for assessing and dealing with requests for compensation within a maximum of six months following the date of registration. The decisions of the County Commissions were communicated to the claimants and the Central Commission, and they could be challenged by the claimants before the Central Commission within fifteen days. The latter then had to ratify or reject such decisions within sixty days.

In their turn, the decisions adopted by the Central Commission could be challenged before the domestic courts.

20. From 18 October 2004, when Government Decision no. 1643/2004 came into force, the responsibilities of the Central Commission were taken over by the Department for the Application of Law no. 9/1998, functioning within the Prime Minister's Chancellery. The Department forwarded the ratification decisions adopted by the County Commissions for the approval of the Prime Minister's Head of Chancellery. The Department was further entitled to make a proposal for adjustment of the compensation at the time of the ratification decision, in accordance with Law no. 9/1998.

21. These responsibilities were taken over by the National Authority with effect from the entry into force of Government Decision no. 361/2005, namely on 29 April 2005; this act was modified by Government Decision no. 240/2006 on 27 February 2006.

22. The methodological rules issued for the implementation of Law no. 9/1998, as amended on 26 October 2007 by Government Decision no. 1277/2007, set out in Article 38 § 1 that payment of compensation was to be made by the National Authority as the institution in charge of dealing with all claims lodged under the restitution laws adopted in Romania.

2. Emergency Government Ordinance no. 10/2014

23. Adopted on 14 March 2014, EGO no. 10/2014 suspended for a period of six months the issue by the competent authorities of any decision on claims lodged under Law no. 9/1998 and Law no. 290/2003. The ordinance further suspended for the same period the voluntary payment of compensation already granted under Law no. 9/1998, Law no. 290/2003, and Law no. 393/2006.

3. Law no. 164/2014

24. Law no. 164/2014 concerning measures for the acceleration and finalisation of the process of resolving compensation claims lodged under

Law no. 9/1998 and Law no. 290/2003 entered into force on 18 December 2014.

25. Article 2 states that the only compensatory measure possible was pecuniary compensation.

26. Article 3 defines the applicability of the law to all claims lodged in due time with the County Commissions and in respect of which no decision has been issued, or in respect of which a decision granting compensation has been issued but no payment has been made, as well as to those claims lodged under Law no. 9/1998 or Law no. 290/2003 that are currently pending before the domestic courts.

27. The law authorises the transfer of all powers of the Central Commission to the National Authority, who shall thus ratify or otherwise any decision taken by the County Commissions on claims lodged under Law no. 9/1998 and Law no. 290/2003. The National Authority is entitled to request further information and documents, from public institutions as well as from claimants, when such documents are missing or are not corroborated.

28. Decisions taken by the National Authority are subject to appeal before the administrative courts.

29. Article 10 of the law sets out the deadlines by which all payments should be made, providing also for the manner in which the compensation should be adjusted for inflation, on the basis of the consumer price index, from the moment the decision was issued until the entry into force of the law.

30. Article 12 sets out a 120-day deadline within which the claimants are to supplement their files with further documents, following a written request in that respect sent by the authority. This deadline may be extended once, for sixty more days, at the request of the claimant, if evidence shows that he/she has taken the necessary steps to obtain the necessary information.

31. Article 13 provides that the County Commissions are bound to issue a decision on the applicants' claims within:

> "a) nine months, if there are less than 500 files pending before them;
>
> b) eighteen months, if the files pending before them are in the range of 501-1000;
>
> c) thirty-six months if they have more than 1000 files pending before them."

This deadline started running on 1 January 2015.

32. Article 14 stipulates that decisions issued by the County Commissions before the entry into force of the present law and already registered with the National Agency should be ratified or otherwise within eighteen months of the entry into force of the law. Decisions issued after the entry into force of the law should be ratified or otherwise by the National Authority within eighteen months of their registration with that authority.

The registration number and the number of files pending with the National Authority shall be published on its web page.

33. Article 15 gives claimants the opportunity to apply to the courts in the event that the above-mentioned deadlines are not complied with.

34. Article 17 of the law sets out several measures meant to increase the efficiency of the compensation procedures, providing, *inter alia*, for a temporary increase of the number of posts available at the National Authority.

C. Relevant International Law

35. The Treaty of Craiova was signed on 7 September 1940 by Romania and Bulgaria. Under the terms of this treaty, the signatory parties agreed on the border line that was to be established between the two countries, with particular reference to the territory between the Black Sea and the Danube River (the *Cadrilater*). Section III of the Treaty provided for a mandatory resettlement of Romanian citizens of Bulgarian ethnicity living in Tulcea and Constanţa Districts to Bulgaria, and the resettlement of ethnic Romanians living in Durostor and Caliacra Districts to Romania. Section V of Annex C of the Treaty stipulated that the Romanian State was in charge of compensating those Romanian citizens who, following the mandatory resettlement had to abandon their possessions in the rural areas which were transferred to Bulgaria.

COMPLAINTS

36. The applicants complained under Article 6 of the Convention that the proceedings concerning the claims lodged by their mother, Z.D., under Law no. 9/1998 had been unreasonably lengthy.

37. Invoking Article 6 of the Convention as well as Article 1 of Protocol No. 1 to the Convention, the applicants also complained that concerning the proceedings terminated by the decision of 20 October 2003 the domestic courts have wrongfully applied the relevant legislation and misinterpreted the adduced evidence.

THE LAW

A. The complaint raised under Article 6 § 1 of the Convention concerning the length of the proceedings

38. The applicants complained that the decision-making process concerning the claims lodged by their mother, Z.D., in 1999, still pending

before the administrative authorities, is unreasonably lengthy. Article 6 § 1 of the Convention reads in its relevant parts as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

1. The parties' submissions

39. The Government argued that in so far as the impugned proceedings are currently before the administrative authorities and not before a "tribunal" as required by Article 6 of the Convention, this article was inapplicable *ratione materiae* to the proceedings subsequent to the court's decision of 31 March 2003.

They contended that the only period to be taken into consideration was from the date of the lodging of the administrative request on 11 March 1999 and until 31 March 2003, when the final judgment was given by the Iaşi Court of Appeal. It is the Government's submission that the subsequent administrative procedure could not be regarded as part of the trial, not even as part of the enforcement stage, so long as there was nothing to be enforced; furthermore, the administrative authorities invested with jurisdiction on the matter could not be regarded as a "tribunal", within the meaning of Article 6; thus, the phase concerned fell outside the scope of the article invoked by the applicants.

In this connection, and also as regards the fact that the applicants' first submission relating to unreasonable length of proceedings appeared in their letter of 18 January 2006, the Government argued that this complaint was inadmissible as lodged outside the six-month time-limit prescribed by Article 35 § 1 of the Convention.

40. On the merits of the complaint, the Government submitted that the applicants could have lodged an application with the courts to have the domestic authorities obliged to issue a decision in their case. Such an action would have accelerated the proceedings, being thus an efficient remedy in respect of the length of the proceedings issue.

Furthermore, the Government asserted that the applicants were requested on 20 November 2006 and on 19 January 2007 to complete their file by submitting further documents in support of their claim. The applicants failed to do so, therefore the period following these requests could not be imputable to the authorities (the Government cited *Tocoian v. Romania* (dec.), no. 15946/05, 8 December 2009).

41. The applicants claimed that their application was lodged in due time.

42. They further alleged that the documents pointed to by the Government were in fact submitted, both before the County Commission and before the National Authority, as they had already mentioned in their letter sent to the Court on 12 September 2006, to which they had appended copies of their birth certificates and of their mother's death certificate. They

further contended that in such circumstances, the failure of the authorities to issue a decision was intentional and in bad faith.

2. The Court's assessment

43. The Court reiterates that for Article 6 § 1 in its "civil" limb to be applicable, there must be a dispute ("*contestation*" in the French text) over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether that right is protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play.

44. In this regard, the character of the legislation which governs how the matter is to be determined (civil, commercial, administrative law, and so on) and that of the authority which is invested with jurisdiction in the matter (ordinary court, administrative body, and so forth) are not of decisive consequence (see *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, §§ 42-43, ECHR 2015).

45. Furthermore, the Court has recognised that in administrative proceedings the period to be taken into consideration may even start to run prior to the court proceedings, if preliminary administrative proceedings were a precondition of the former (see, among other authorities, *Nichifor v. Romania (no. 1)*, no. 62276/00, § 23, 13 July 2006).

46. In the instant case the Court notes that Z.D. has filed in 1999 a request to be awarded compensation pursuant to Law no. 9/1998; while the Vaslui County Commission granted the request on 27 January 2000, the Central Commission invalidated this decision on 7 June 2002, considering that the amount allowed should be re-evaluated. This latter decision was challenged before the courts in proceedings that ended on 31 March 2003 with the dismissal of Z.D.'s claims. A further attempt to reopen these proceedings was dismissed on 20 October 2003 (see paragraphs 5-7 above).

47. It is against this background that Z.D.'s claims are currently pending before the administrative authorities, who are, according to the Government's submissions, awaiting for the documents requested from the applicants on 15 November 2006 and 15 January 2007 (see paragraphs 13-14 above).

48. The Court notes in this context that in spite the applicants' allegations according to which the required documents had already been submitted to the competent authorities, the applicants have never contested the order mentioned above before the domestic courts, nor have they had recourse to these courts seeking to have the administrative authorities obliged to issue a decision in their case, based on the documents on file.

49. The Court therefore considers that in such circumstances, no "dispute" within the meaning of Article 6 § 1 arises in respect of the impugned proceedings, which have been pending before the administrative bodies after 31 March 2003 (see *Janssen v. Germany*, no. 23959/94, § 40, 20 December 2001 and *Šikić v. Croatia*, no. 9143/08, § 34, 15 July 2010).

50. In respect of the proceedings ended by the decision of 31 March 2003 (see paragraph 7 above), the Court notes that the applicants' length complaint was raised on 18 January 2006, therefore outside the six-month time-limit prescribed by Article 35 § 1 of the Convention.

51. It follows that the applicants' complaint relating to the length of the proceedings concerning their mother's claims lodged under Law no. 9/1998 is partly inadmissible as incompatible *ratione materiae* with the provisions of the Convention and partly inadmissible as lodged out of time.

B. The complaints raised under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention concerning the proceedings terminated by the decision of 20 October 2003

52. Finally, the applicants complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention about the outcome of the domestic proceedings ended with the judgment of 20 October 2003 of the Iaşi Court of Appeal, and about the courts' interpretation of the domestic law.

53. The Court firstly finds that the judgment of 20 October 2003 dismissed the applicants' appeal as inadmissible; it follows that Article 6 § 1 of the Convention is not applicable to this part of the proceedings, in so far as it does not guarantee the right to the reopening of the proceedings (see for instance *Nikitin v. Russia*, no. 50178/99, § 60, ECHR 2004-VIII).

54. In respect of the proceedings terminated by the judgment of 31 March 2003, and seeing that the application was lodged on 2 February 2005, the Court considers that the complaints are lodged outside the six-month time-limit prescribed by Article 35 § 1 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 24 March 2016.

Fatoş Aracı
Deputy Registrar

András Sajó
President