

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

THIRD SECTION

DECISION

Application no. 39921/03
Victor MITRICĂ and others
against Romania

The European Court of Human Rights (Third Section), sitting on 26 March 2013 as a Committee composed of:

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

Having regard to the above application lodged on 14 August 2003,

Having regard to the declaration submitted by the respondent Government on 28 November 2012 requesting the Court to strike the application out of the list of cases and the applicants' reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicants, Mr Victor Mitrică and Mr Nicolae Mitrică, are Romanian nationals who were born in 1962 and 1924 respectively. The second applicant died in 2005 and the application was pursued by his heirs, namely the first applicant and his wife, Ms Oprina Mitrică. They both live in Craiova, Dolj County.

The Romanian Government ("the Government") were represented by their Agents, Ms Catrinel Brumar and Irina Cambrea, from the Ministry of Foreign Affairs.

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

On 30 June 2000 a collectively-owned private company ("the company") in which both applicants held shares entered into winding-up proceedings.

The applicants were enlisted as creditors in respect of lost wages (the first applicant) and unpaid rent (the late second applicant), claims which were to be enforced upon the redistribution of the liquidated company's assets and property.

The court in charge of the liquidation proceedings (the Dolj County Court) examined several allegations of misconduct conducted by the persons in control of the company, such as wrongful and fraudulent trading, which had caused prejudice to the general body of creditors. On these occasions (decisions of 2 October 2001 and 13 November 2002) it annulled several underpriced sales which had made it unable to repay its debts to the creditors. However, none of the assets was reintegrated to the company's patrimony.

The proceedings are still pending at first instance before the same court. Thus, the period to be taken into consideration amounts so far to twelve years and more than seven months at one level of jurisdiction.

COMPLAINTS

The applicants complained under Article 6 § 1 of the Convention that the length of the proceedings had been excessive and failed to meet the "reasonable time" requirement.

Relying on the same Article, they raised further complaints on the outcome and the lack of fairness of the interim decisions rendered throughout the winding-up proceedings, alleging that the domestic courts had failed to carry out their duties of supervision and control as required by such proceedings.

Lastly, they complained that the manner in which the domestic courts had dealt with their claims had significantly reduced their chances of ever recovering the monetary damages, fact which amounted, in their view, to an infringement of the guarantees laid down in Article 1 of Protocol No. 1.

THE LAW

A. Complaint under Article 6 § 1 concerning the length of civil proceedings

The applicants complained about the length of the proceedings. They relied on Article 6 § 1 of the Convention. This provision provides 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 Government's unilateral declaration

After the failure of attempts to reach a friendly settlement, by a letter of 28 November 2012 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "The Government declare, by way of this unilateral declaration, their acknowledgement of the existence of a violation of Article 6 § 1 of the Convention regarding the excessive delay in the domestic proceedings.
>
> The Government are prepared to pay to the applicants as just satisfaction the sum of EUR 5,760, jointly, amount which they consider reasonable in the light of the Court's case-law. This sum is to cover all damage as well as the costs and expenses and will be free of any taxes that may be applicable. This sum will be payable in Romanian lei to the personal account indicated by the applicants within three months from the date of the notification of the decision pursuant to Article 37 § 1 of the Convention. In the event of failure to pay this sum within the said period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
>
> The Government respectfully invite the Court rule that the examination of the present application is no longer justified and to strike the application out of its list of cases, pursuant to Article 37 § 1 (c) of the Convention."

2. The applicants' position

By a letter of 4 January 2013, the applicants indicated that they were not satisfied with the terms of the unilateral declaration on the ground that the proposed amount was unacceptably low.

3. The Court's assessment

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1(c) on the basis of a unilateral declaration by a respondent Government even if the applicants wish the examination of the case to be continued.

To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI); *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03).

The Court has established in a number of cases, including those brought against Romania, its practice concerning complaints about the violation of one's right to a hearing within a reasonable time (see, for example, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-98, ECHR 2006-....; *Majewski v. Poland*, no. 52690/99, 11 October 2005; *Wende and Kukówka v. Poland*, no. 56026/00, 10 May 2007; *Abramiuc v. Romania*, no. 37411/02, § 103-109, 24 February 2009; and *Matica v. Romania*, no. 19567/02, § 24, 2 November 2006).

Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1(c)).

Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of this part of the application (Article 37 § 1 *in fine*).

Accordingly, this part of the application should be struck out of the list.

Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

B. Other complaints

Referring to other Articles of the Convention and its protocols, the applicants complained of further aspects related to the above proceedings.

Having regard to all the materials in its possession and in so far as these complaints fall within its competence, and noting in particular that the impugned proceedings are still pending before the domestic courts, 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 pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration under Article 6 § 1 of the Convention regarding the length of the proceedings and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in so far as it relates to the above complaint in accordance with Article 37 § 1 (c) of the Convention.

Declares the remainder of the application inadmissible.

Marialena Tsirli
Deputy Registrar

Alvina Gyulumyan
President