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

FOURTH SECTION

DECISION

Application no. 43838/10
Elena Laura RĂU and Eliza GÂLEA
against Romania

The European Court of Human Rights (Fourth Section), sitting on 3 October 2017 as a Chamber composed of:

Ganna Yudkivska, *President,*
Vincent A. De Gaetano,
Paulo Pinto de Albuquerque,
Egidijus Kūris,
Iulia Motoc,
Georges Ravarani,
Marko Bošnjak, *judges,*

and Marialena Tsirli, *Section Registrar,*

Having regard to the above application lodged on 8 July 2010,

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 Laura Rău ("the first applicant") and Ms Eliza Gâlea ("the second applicant"), are Romanian nationals who were born in 1943 and 1928 respectively and live in Iaşi. The first applicant was represented before the Court by Ms C. Drăgan, a lawyer practising in Iaşi. The second applicant was represented by Ms D. Beşliu, a non-lawyer. On 19 January 2016 the President of the Section had decided to give Ms Beşliu leave to act as representative of the second applicant pursuant to Rule 36 § 4 (a) of the Rules of Court.

2. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar of the Romanian 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 31 March 2008 the applicants, who were both retired, instituted proceedings against the Iaşi Mayor's Office seeking the annulment of a document signed by the second applicant during the communist regime, donating a house and its appurtenant plot of land located in the centre of Iaşi to the Romanian State.

5. By a judgment of 5 February 2009 the Iaşi District Court allowed the applicants' action. It held that the city of Iaşi, represented by its mayor, had *locus standi* because it was the current owner of the property. Also, given that the applicants had been forced to donate the property, the donation agreement was null and void and therefore the proceedings initiated by them were not time-barred. The Iaşi Mayor's Office appealed against the judgment.

6. By a judgment of 4 November 2009 the Iaşi County Court allowed the Iaşi Mayor's Office's appeal and quashed in part the first-instance court's judgment. It held that the city of Iaşi, represented by its mayor, did not have *locus standi* because it had not been a party to the donation agreement signed by the second applicant. The donation had been made to the Romanian State. In accordance with the relevant domestic legislation, the State was legally represented by the Ministry of Economy and Finance. Moreover, the applicants had not proved their allegation that the city of Iaşi was the current owner of the donated property. The court upheld the remainder of the first-instance court's judgment. The applicants lodged an appeal on points of law against the judgment.

7. On 5 February 2010 the Iaşi Court of Appeal noted that following its express request, the applicants had stated that the value of the donated immovable property was 1,500,000 Romanian lei (RON) (approximately 361,400 euros (EUR)). Relying on the relevant domestic legislation on stamp duty, the court established that the applicants had to pay RON 9,552 (approximately EUR 2,300) in stamp duty in order to have their appeal on points of law examined.

8. On 11 February 2010 the applicants, referring to Article 18 § 2 of Law no. 146/1997, challenged the way in which the appellate court had calculated the stamp duty. They asked the court to re-examine the amount of stamp duty due and to order the payment of a sum which represented half of the stamp duty they had paid in order to have the case examined by the first-instance court. They argued that the second-instance court had not calculated the amount of stamp duty due on the basis of the property's value, even though they had declared the same value for the property before that court as well. Moreover, the first-instance court had established that the stamp duty due in order to have their case examined had been that required

for cases with a non-pecuniary object, and that therefore they were required to pay only half of the amount paid to the first-instance court in order to have their case examined by the last-instance court. Furthermore, they had initiated proceedings merely seeking the annulment of a donation agreement in respect of an immovable property; the proceedings would not have resulted in an immediate return of the property to its rightful owners or in an immediate increase in the value of their estate. They also argued that the declared value of the immovable property which had formed the basis for the calculation of the stamp duty was small compared with the actual market value of the property. Given that they were both retired persons, it was impossible for them to pay such a high amount in stamp duty. Consequently, by calculating the stamp duty based on the value of the property, the court had denied them access to justice and prevented them from recovering their home.

9. On 17 February 2010 the Iaşi Court of Appeal, sitting in chambers and composed of a different bench of judges from that which had examined the merits of the applicants' case, dismissed the applicants' challenge by a final interlocutory judgment. It held that given the object of the proceedings initiated by the applicants, Government Ordinance no. 212/2008 was applicable in their case. Consequently, the amount of stamp duty due had to be calculated based on the value of the immovable property, since the object of the applicants' action was the annulment of a donation agreement in respect of an immovable property. Given the value of the property stated by the applicants, the amount of stamp duty payable by them had been calculated correctly.

10. By a final judgment of 19 February 2010 the Iaşi Court of Appeal dismissed the applicant's appeal on points of law and upheld the judgment of 4 November 2009. Having noted the applicants' statement that they were unable to pay the required stamp duty, it held that they had failed to fulfil their lawful duty to pay the aforementioned fee and that their appeal on points of law could therefore not be examined.

11. According to the evidence submitted by the applicants to the Court in September 2015, the first applicant had a taxable annual income of RON 25,804 (approximately EUR 5,760) and the second applicant had a taxable annual income of RON 13,932 (approximately EUR 3,110). The first and the second applicants' net annual income for the same period was RON 22,992 (approximately EUR 5,143) and RON 12,072 (approximately EUR 2,700), respectively.

B. Relevant domestic law and practice

12. The relevant provisions of the former Romanian Code of Civil Procedure, in force at the time when the applicants initiated the proceedings

seeking the annulment of the donation agreement before the first-instance court, read as follows:

Article 75

"1. Legal aid includes:

- the granting of an exemption, a reduction, an instalment plan or a postponement for the payment of stamp duty ...;

...

2. Legal aid may be granted at any time during the trial, in full or in part."

Article 76

"1. In the circumstances provided for under Article 75 § 1(1), an application for legal aid shall be made to the court in writing ... in accordance with the law".

Article 77

"1. The application [for legal aid] shall include ... written proof of the applicant's income ...

2. The court shall examine the application and may request clarifications and evidence from the parties or written information from the competent authorities ...

3. The court shall examine the application in chambers without summoning the parties, and deliver an interlocutory judgment."

Article 79

"1. The interlocutory judgment mentioned in Article 77 § 3 ... is not amenable to any form of appeal."

13. The relevant provisions of Law no. 146/1997 on stamp duty, in force at the time when the applicants initiated the proceedings seeking the annulment of the donation agreement before the first-instance court, read as follows:

Article 1

"Actions and claims ... lodged before the courts ... shall be subject to stamp duty ... the calculation of which, except for in circumstances provided for by law, may differ, depending on whether the object of the application can be valued financially."

Article 2

"1. Actions and claims ... lodged before the courts [in respect of matters] which can be valued financially are subject to the following stamp duty:

...

(g) if the object of the action or claim is valued at more than RON 193,948, the stamp duty is RON 5,126 plus 1% of the amount which is over 193,948;

...

3. Stamp duty is calculated on the basis of the value of the object of the action or claim, as stated in the application ...”

Article 3

“1. Actions or claims ... lodged before the courts [in respect of matters] which cannot be valued financially are subject to the following stamp duty:

...

(a)[1] RON 12 for an application seeking the annulment ... of an official document;

...”

Article 11

“1. Appeals or appeals on points of law lodged against court judgments are subject to stamp duty of 50% of:

- the stamp duty payable for ... an application [in respect of matters] which cannot be valued financially and which was examined by a first-instance court;

- the stamp duty payable for the contested sum in the case of an application [in respect of matters] which can be valued financially;

...”

Article 13

“All other actions and claims ... [in respect of matters] which cannot be valued financially are subject to stamp duty of RON 8, except for those lawfully exempted from stamp duty.”

Article 18

“1. The amount of the stamp duty payable is set by the court ...

2. An applicant has three days from the date on which the court calculated the sum due or notified the applicant of the sum due to ask the same court to re-examine the way in which the stamp duty was calculated.

3. The request for re-examination is heard ... in chambers by a different bench of judges and without summoning the parties.

4. If the request for re-examination is allowed, the stamp duty is returned in full or in part, as the case may be.”

Article 20

“...

2. If ... during the trial there are elements which determine a higher stamp duty, the court shall ask the applicant to pay the relevant amount ...

...

5. A court called upon to examine an appeal or an appeal on points of law ... shall order the applicant to pay the relevant stamp duty if it notes that the lawful amount of the fee was not paid during the previous stages of the proceedings.”

Article 21

"1. A court may grant an exemption, a reduction, an instalment plan or a postponement for the payment of stamp duty in accordance with the conditions set out in Articles 74-81 of the Romanian Code of Civil Procedure ..."

14. Government Ordinance no. 51/2008 on legal aid in civil matters, which entered into force on 25 April 2008, repealed Article 21 § 1 of Law no. 146/1997 and Articles 74-81 of the former Romanian Code of Civil Procedure. Subsequently, Government Ordinance no. 212/2008, which entered into force on 12 December 2008, reinstated and amended Article 21 § 1 of Law no. 146/1997 in so far as natural persons could be granted exemptions, reductions and postponements of the payment of stamp duty in accordance with the conditions set out in Government Ordinance no. 51/2008. The relevant provisions of the latter ordinance, at the time when the applicants challenged the way the stamp duty had been calculated, read as follows:

Article 6

"1. Public legal aid may be granted in the following ways:

...

d) exemptions, reductions, instalment plans or postponements in respect of court taxes prescribed by law, including those payable during the enforcement phase of the proceedings."

Article 7

"Public legal aid may be granted, separately or cumulatively, in any of the forms provided for in Article 6, but their annual amount shall not exceed the equivalent before tax of 12 minimum-wage monthly salaries ..."

Article 8

"1. Any person whose average net monthly income for each family member in the last two months prior to his/her application was less than RON 500 may be granted public legal aid in any of the forms provided for in Article 6. In such circumstances, the sums that represent public legal aid shall be paid in full by the State.

2. If the average net monthly income for each family member in the last two months prior to an application was less than RON 800, the State shall pay 50% of the sums that represent public legal aid.

3. If the estimated or known costs of the proceedings are of a nature that could limit an applicant's access to justice, public legal aid may be granted also in other circumstances, proportionate to the needs of the applicant."

Article 9

"Any occasional income, such as wages, rents, retainers ... and other similar income, shall be taken into account in establishing a person's income ..."

Article 11

"1. An application for legal aid shall be lodged with the court which is competent to examine the merits of the main proceedings ..."

Article 12

"1. Legal aid may be granted anytime during the trial ... and shall be maintained for the duration of the procedural stage for which it was requested.

2. The application for legal aid is exempted from court fees."

Article 14

"1. The application for legal aid shall be made in writing and shall include information ... on the financial situation of the applicant and his family. Proof of the applicant's and his family's income, as well as of their financial obligations, shall be attached to the application ...

...

3. The court may ask for any clarifications or proof from the parties and for written information from the competent authorities."

Article 15

"1. The court shall examine the application for legal aid in chambers, without summoning the parties, and deliver a reasoned interlocutory judgment.

2. The interested party has five days from the notification of the interlocutory judgment to apply for a review of the court's decision if the application for legal aid was dismissed.

3. A different bench of judges shall review the decision in chambers and shall deliver a final interlocutory judgment."

Article 34

"1. If the court fees payable are double the net monthly income of the applicant's family for the month prior to his or her application for legal aid and if the court does not consider appropriate a more favorable form of legal aid, an instalment plan shall be set up in such a way that the monthly rate due shall not be higher than half of the net monthly income of the applicant's family.

2. The instalment plan may be extended for a maximum of 48 months."

15. On 9 June 2008 the High Court of Cassation and Justice ("the Court of Cassation") delivered a judgment on an appeal in the interests of the law in order to clarify divergent domestic practice concerning, *inter alia*, the pecuniary or non-pecuniary nature of actions seeking, for example, the annulment of official documents such as donation agreements. It held that this type of action was pecuniary in nature. The judgment of the Court of Cassation was published in Official Gazette no. 830 of 10 December 2008.

16. Government Ordinance no. 212/2008 entered into force on 12 December 2008 and amended Law no. 146/1997, including paragraph 1

of Article 2. The new paragraph 1 applies to actions and claims seeking the annulment of official documents concerning pecuniary matters.

17. Law no. 276/2009, which entered into force on 16 July 2009, confirmed the provisions of Government Ordinance no. 212/2008 with certain amendments. However, the amendment made by Government Ordinance no. 212/2008 to Article 2 of Law no. 146/1997 was maintained.

18. Article 329 § 3 of the former Romanian Civil Procedure Code in force at the time when the applicants initiated the proceedings seeking the annulment of the donation agreement provided that judgments delivered in the interests of the law had no impact on judgments which had already been delivered or on the situation of the parties involved in those proceedings. However, any solution adopted by the Court of Cassation was binding on the domestic courts.

COMPLAINT

19. The applicants alleged that their right of access to a court, guaranteed under Article 6 § 1 of the Convention, had been breached because the last-instance court, without considering their personal circumstances, had refused to reduce the excessively high stamp duty imposed on them and had dismissed their appeal on points of law.

THE LAW

20. The applicants complained that the last-instance court had breached their right of access to a court, as provided for in Article 6 of the Convention, which in so far as relevant reads as follows:

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

A. The parties' submissions

1. The Government

21. The Government raised a preliminary objection of non-exhaustion of domestic remedies. They argued that even though the applicants had been assisted by legal representatives of their own choosing, they had not initiated proceedings on the basis of Government Ordinance no. 51/2008 on legal aid. The Committee of Ministers had confirmed the adequate nature of the said remedy by Resolution CM/RES DH (2011) 24, which closed the

examination of the enforcement of the Court's judgment in the case of *Iorga v. Romania* (no. 4227/02, 25 January 2007).

22. The Government contested the applicants' submissions that the provisions of Government Ordinance no. 51/2008 were not applicable in their case. They argued that the applicants could have initiated the proceedings on the basis of Government Ordinance no. 51/2008 even after their challenge with regard to the way in which the stamp duty had been calculated had been dismissed.

23. The Government argued that the Court had already examined issues similar to the one raised by the instant case in, *inter alia*, *Weissman and Others v. Romania*, (no. 63945/00, 24 May 2006) and *Postolache v. Romania (No. 2)* (no. 48269/08, 6 July 2010). However, the instant case did not concern a denial by the last-instance court of an action seeking a reduction of or an exemption from stamp duty. In the present case the applicants had asked only for a re-examination of the way in which the stamp duty had been calculated by referring to Article 18 § 2 of Law no. 146/1997 and by claiming that the case had a non-pecuniary object. Consequently, they had in fact only contested the Court of Appeal's classification of the proceedings initiated by them for the annulment of a donation agreement as "pecuniary".

24. The Government submitted that the applicants had not suffered any significant disadvantage following the annulment of their appeal on points of law by the last-instance court. Given the outcome of the proceedings before the second-instance court, the applicants could still have initiated a new set of proceedings against the Romanian State seeking the annulment of the donation agreement in respect of their immovable property. During the new set of proceedings they could have applied for legal aid.

25. The Government contended that the collection of court taxes pursued a legitimate aim, in particular the proper administration of justice and the prevention of abusive applications to the domestic courts. Also, the last-instance court had calculated the amount of stamp duty due by observing the requirements of the relevant domestic legislation and by relying on the value of the property advanced by the applicants. Consequently, the amount due could not have been considered excessive. In addition, given that the applicants had never disclosed their financial situation before the domestic courts, the stamp duty calculated by the last-instance court had been proportionate and had not breached the applicants' right of access to a court.

2. The applicants

26. The applicants submitted that under Government Ordinance no. 51/2008, legal aid could be granted only under certain restrictive conditions which concerned the income of the person applying for aid. Given their monthly income and the uncertain cost of proceedings, the

domestic courts would not have exempted them from paying stamp duty; nor would they have reduced it. Even assuming that the domestic courts would have granted them the 50% reduction provided for by law, they would still have had to pay approximately EUR 1,050.

27. The applicants contended that they had suffered a significant disadvantage following the annulment of their appeal on points of law in so far as they had been unable to contest before the last-instance court the lower court's finding that the city of Iaşi lacked *locus standi* in the proceedings and to have the merits of their case examined by the aforementioned court. They acknowledged that they could initiate a new set of proceedings seeking the annulment of the donation agreement, but they considered that this argument should not be considered sufficient by the Court. The Government could not guarantee that they would be exempted by the domestic courts from paying the stamp duty and given their advanced age, it was unlikely that they would be able to lodge a new application to the Court if the remedies suggested by the Government failed.

28. The applicants submitted that their personal circumstances had been a secondary issue in the proceedings initiated by them seeking to challenge the way in which the Court of Appeal had determined the stamp duty. They argued that at the time when they had initiated the proceedings seeking the annulment of the donation agreement Law no. 146/1997 had required only the payment of a small fixed-rate fee before the first-instance court could examine their case. Following the entry into force of the amendments brought by Law no. 276/2009, the fixed-rate stamp duty payable for the proceedings initiated by them was abolished and a stamp duty calculated on the basis of the value of the object of the proceedings was introduced. Consequently, they considered that the unamended version of Law no. 146/1997 had been the law applicable in their case and that their view had been confirmed by the second-instance court. The said court had continued to examine the case by applying the rules set out in the former Law no. 146/1997, even though Law no. 276/2009 had already entered into force by the time it had delivered its judgment. They were wondering how it was possible that the second and third-instance courts could have reached opposite conclusions with regard to the same legal question.

B. The Court's assessment

29. The Government have raised several admissibility objections in respect of the applicants' complaint. The Court considers that it is not necessary to examine all of the said objections because the complaint is in any event inadmissible for the reasons given below.

30. The general principles concerning an applicant's right of access to court have been recently summarised in the case *Lupeni Greek Catholic Parish and Others v. Romania* ([GC], no. 76943/11, §§ 84-89, ECHR 2016

(extracts)). For the particular imposition of court fees, see also *Kreuz v. Poland* (no 28249/95, § 60, CEDH 2001-VI) and *Iorga* (cited above, §§ 35 and 39).

31. In the instant case, the last-instance court dismissed the applicants' appeal on points of law lodged against the judgment of 4 November 2009 on the grounds that the applicants had failed to pay the EUR 2,300 stamp duty required for the examination of their action.

32. The Court reiterates that no right to appeal in civil cases can be inferred from the Convention and that, given the nature of proceedings concerning appeals and the fact that the claimant has already had his case heard before a first-instance court, the State would in principle be allowed to put even strict limitations on access to a court of appeal. However, restrictions which are of a purely financial nature and which are completely unrelated to the merits of an appeal or its prospects of success, should be subject to particularly rigorous scrutiny from the point of view of the interests of justice (see *Podbielski and PPU Polpure v. Poland*, no. 39199/98, § 65, 26 June 2005). The Court considers that the same considerations apply to appeals on points of law.

33. There is no evidence available in the file in respect of the applicants' actual income for 2010. However, in the absence of any evidence to the contrary submitted by either of the parties, the Court is prepared to accept that the applicants' monthly income in 2010 was not higher than their joint net monthly income for 2015, namely EUR 653. That means that the stamp duty imposed on the applicants represented three and a half times their combined net monthly incomes and it does not appear from the available evidence that they could have paid it by relying exclusively on their own means.

34. The applicants initiated proceedings before the last-instance court seeking to challenge the way in which the stamp duty had been calculated (see paragraph 8 above). During these proceedings they contested the reclassification by the said court of the nature of the proceedings for the annulment of the donation agreement and referred to their personal financial circumstances. However, their challenge was dismissed (see paragraph 9 above). The Court must therefore determine whether the assessment carried out by the domestic courts has not restricted the applicants' right of access to court to a point which rendered that right theoretical and illusory (see *Antofie v. Romania*, no. 7969/06, §23, 25 March 2014).

35. The Court observes at the outset that on 31 March 2008 when the applicants initiated proceedings before the domestic courts the relevant domestic law clearly provided that in proceedings that are pecuniary in nature, the stamp duty was fixed proportionate to the amount claimed. Also, the relevant domestic law was clear on the consequences of non-payment of judicial stamp duties for the proceedings at issue. In addition, the aforementioned system of court fees pursued a legitimate aim because it

sought to limit abusive complaints and to raise funds which could be used towards the budget of the justice system.

36. It is true that pending the Court of Cassation's judgment of 8 June 2008 (see paragraph 15 above), the domestic courts seemed to have divergent views as to whether the proceedings initiated by the applicants had a pecuniary or non-pecuniary nature. However, the Court notes that the Court of Cassation settled the divergent domestic case-law concerning the nature of the action initiated by the applicants in June 2008 and that the Court of Cassation's judgment was binding on the domestic courts. Also, in December 2008 the domestic legislation concerning stamp duties was amended in order to comply with the Court of Cassation's approach.

37. In these circumstances, the Court considers that in February 2010 when the Court of Appeal calculated the stamp duty payable by them, the applicants, who were assisted by a legal representative of their choice throughout the proceedings, could and should have reasonably expected that the relevant domestic rules concerning the imposition of stamp duty in force at that time would be applied in their case.

38. The Court further notes that under the relevant domestic legislation the domestic courts were not required to consider an applicant's personal circumstances when examining the way in which the stamp duty was calculated (see paragraph 13 above); moreover, in their submissions before this Court the applicants themselves acknowledged that their personal circumstances had been only a secondary matter in the proceedings initiated by them on 11 February 2010. Consequently, the Court observes that the said proceedings were focused on the reclassification by the last-instance court of the nature of the proceedings for the annulment of the donation agreement. In this connection the Court notes, however, that the Court of Appeal's decision to reclassify the nature of the proceedings initiated by the applicants, even though it contradicted the practice of the lower courts, was lawful and it pursued the legitimate aim of observing the principle of lawfulness for calculating stamp duties at the national level and of ensuring a proper administration of justice. Furthermore, the Court of Appeal calculated the amount of stamp duty due by relying on the value of the property advanced by the applicants themselves and by complying with the relevant thresholds provided for by the domestic law.

39. Lastly, the Court is mindful of the possibility which was opened to the applicants to initiate legal-aid proceedings (contrast *Weissman and Others*, cited above, §§ 41-43, and *Iorga*, cited above, §§ 47-51). The Court notes that it has examined the legal-aid scheme provided for by the Romanian domestic legislation before Government Ordinance no. 51/2008 entered into force and found that it did not meet the requirements under Article 6 of the Convention (see, amongst many other authorities, *Rusen v. Romania*, no. 38151/05, §§ 36-39, 8 January 2009). The Court observes, however, that under the legal-aid scheme provided for by Government

Ordinance no. 51/2008, the domestic legal-aid proceedings were focused on the applicants' personal financial circumstances and the courts had a wide margin of discretion in granting one or all of the forms of legal aid provided for by domestic law, even in circumstances where, as in the applicants' case, the more restrictive conditions set by law were not met (see paragraph 14 above). Moreover, regardless of the decision of the court examining their application for legal aid, the applicants had the option of asking for a review of the said decision by a second court (contrast *Rusen*, cited above, §§ 36-39).

40. Though the applicants contested the effectiveness of the legal-aid scheme provided for in the domestic legal order following the entry into force of Government Ordinance no. 51/2008, the fact remains that they could have asked not only for a reduction in the court fees due, but also for postponement of payment, an exemption, an instalment plan for paying them, or a combination of those aids (see paragraph 14 above). The Court sees no ground to support the idea that legal-aid proceedings were bound to fail and could not have possibly remedied the situation complained of by the applicants.

41. In the light of the above, the Court considers that the applicants have not suffered a disproportionate restriction of their right of access to a court.

42. It follows that their application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 26 October 2017.

Marialena Tsirli
Registrar

Ganna Yudkivska
President