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

FOURTH SECTION

DECISION

Application no. 21837/06
Rozalia STAN and others
against Romania
(see list appended)

The European Court of Human Rights (Fourth Section), sitting on 31 May 2016 as a Committee composed of:

Krzysztof Wojtyczek, *President,*
Iulia Motoc,
Gabriele Kucsko-Stadlmayer, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 18 May 2006,

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. A list of the applicants is set out in the appendix.

2. The Romanian Government ("the Government") were represented by their co-Agent, Mrs C. Ciută, from the Ministry of Foreign Affairs.

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

4. The applicants worked at a local branch ("the branch") of Romtelecom, a national communications company. At the end of 2002 they were dismissed from their jobs. According to the regulations set out in the relevant collective labour agreement, in the event of dismissal they were entitled to compensatory damages, which they did receive.

5. In 2004 the applicants brought two separate sets of proceedings against the branch, seeking to recover amounts it had retained from the compensatory damages paid following their dismissal. Those amounts

represented health insurance ("CASS"), social security ("CAS") and taxes. The first three applicants brought one set of proceedings, and the fourth and fifth applicants brought the other.

6. Three reports by financial experts were produced during the course of both sets of proceedings. One of the reports concluded that the branch had illegally retained health insurance and taxes, because payments of compensatory damages were not subject to deductions in the same way that salary payments were. However, the other two expert reports found that the branch had not retained any amounts from the compensatory damages, and that the CASS, CAS and other taxes had been paid by the branch from its own funds.

7. On 10 June 2005 the Maramureş County Court, by two judgments, dismissed the actions on the grounds that the branch had not retained the alleged amounts. The court found, based on the expert reports, that the applicants had received the amounts to which they were entitled under the collective labour agreement, and that the branch had paid taxes and social contributions from its own funds.

8. The applicants appealed, asserting that the court had not taken into account the expert report which supported their case.

9. On 18 October and 15 November 2005 the Cluj Court of Appeal dismissed their appeals, endorsing the reasoning of the court of first instance. In its decision of 15 November 2005 concerning three of the applicants the appeal court noted, among other things, that similar claims lodged by the same applicants had been dismissed by final decisions in 2003. Those decisions were final and had the power of *res judicata.* In its decision of 18 October 2005 the appeal court noted that the expert opinion on which the other two applicants had based their appeal on points of law was an isolated opinion, and that the opinions expressed by the other two experts were based on a letter submitted by the National Institute of Statistics.

COMPLAINTS

10. The applicants complained under Article 6 § 1 of the Convention that the proceedings had been unfair and that the courts had not taken into account the judgments made in similar cases by other courts of the same judicial level.

11. They also submitted, under Article 1 of Protocol No. 1 to the Convention, that they had been deprived of part of their compensatory damages.

THE LAW

A. Preliminary objection of the Government

12. The Government contended that the applicants had submitted their applications outside the six-month time-limit.

13. The Court notes that the applicants did not provide any information concerning the date on which they had been notified of the final decisions. In any event, the Court considers that it is not necessary to examine the Government's objection, as the present application is inadmissible for the reasons developed hereunder.

B. Complaint under Article 6 § 1 of the Convention

14. The applicants complained that the domestic court decisions in their cases were in breach of Article 6 § 1 of the Convention which, in so far as relevant, reads:

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

1. The parties' submissions

15. The Government contended that the legal issue raised in the present case did not relate to any conflicting case-law *per se*. They further pointed out that the applicants had submitted only three domestic decisions which had reached a different conclusion than that in their cases, and that those decisions had been delivered by another court of appeal. Moreover, those decisions had referred to situations completely different from those of the applicants in the present case. The Government also contended that the Cluj Court of Appeal had adopted a unitary approach in relation to claims similar to those submitted by the applicants.

16. The applicants mainly contended that opposing final decisions had been reached in cases similar to theirs.

2. The Court's assessment

17. In order to assess the conditions in which conflicting decisions of domestic last-instance courts are in breach of the fair trial requirement enshrined in Article 6 § 1 of the Convention, the Court must first of all examine whether "profound and long-standing differences" exist in the case-law of the domestic courts (see, for instance, *Albu and Others v. Romania*, nos. 34796/09 and 63 other applications, § 34, 10 May 2012).

18. Turning to the present case, the Court notes that the applicants submitted only three copies of decisions delivered by another court of appeal in claims similar to their own which had reached a different

conclusion. In such circumstances, it cannot be said that there were "profound and long-standing differences" in the relevant case-law (see *Albu and Others v. Romania*, cited above, § 34).

19. Furthermore, the Court notes that the applicants had the benefit of adversarial proceedings in which they were able to adduce evidence and freely formulate their defence, their arguments being properly examined by the courts. At the same time, the courts' conclusions and their interpretation of the relevant law cannot be regarded as manifestly arbitrary or unreasonable. They were based on the conclusions of expert reports ordered by the domestic courts.

20. In these circumstances, the Court considers that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. Complaint under Article 1 of Protocol No. 1 to the Convention

21. Under Article 1 of Protocol No. 1 the applicants complained that, as a result of its incorrect interpretation of the law, the court of appeal had deprived them of part of their compensatory damages. The Article reads:

> "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."

1. The parties' submissions

22. The Government submitted that the application was incompatible *ratione materiae* with the provisions of the Convention.

23. The applicants claimed that they had had a possession within the meaning of Article 1 of Protocol No. 1.

2. The Court's assessment

24. The Court notes at the outset that in certain circumstances, a "legitimate expectation" of obtaining an "asset" may enjoy the protection of Article 1 of Protocol No. 1. However, no legitimate expectation can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant's submissions are subsequently rejected by the national courts (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 50, ECHR 2004-IX).

25. In the present case, the domestic courts ruled in favour of the branch in the civil proceedings concerning the applicants' right to obtain the reimbursement of the taxes and social contributions allegedly deducted from their compensatory damages following their dismissal. Having regard to the information before it, and considering that it has only limited power to deal

with alleged errors of fact or law made by the national courts, where the interpretation and application of domestic law is primarily the responsibility of those courts (see *Kopecky*, cited above, § 56), the Court finds no appearance of arbitrariness in the way in which the domestic courts decided those proceedings.

26. In these circumstances, the Court finds that the applicants did not have a possession within the meaning of Article 1 of Protocol No. 1.

27. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

Declares inadmissible the application.

Done in English and notified in writing on 23 June 2016.

Fatoş Aracı
Deputy Registrar

Krzysztof Wojtyczek
President

APPENDIX

1. Rozalia STAN is a Romanian national who was born in 1953 and lives in BAIA MARE.
2. Sabina Florica BREBAN is a Romanian national who was born in 1960 and lives in BAIA SPRIE.
3. Maria HAIDUC is a Romanian national who was born in 1952 and lives in CICIRLĂU.
4. Rozalia MESAROȘ is a Romanian national who was born in 1954 and lives in BAIA MARE.
5. Ecaterina PETRUȘAN is a Romanian national who was born in 1952 and lives in BAIA SPRIE.