CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF GHEORGHE v. ROMANIA

(Application no. 19215/04)

JUDGMENT

STRASBOURG

15 March 2007

FINAL

15/06/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Gheorghe v. Romania,

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

John Hedigan, *President,*
Corneliu Bîrsan,
Elisabet Fura-Sandström,
Alvina Gyulumyan,
Egbert Myjer,
David Thór Björgvinsson,
Ineta Ziemele, *judges,*

and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 20 February 2007,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 19215/04) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Ion Gheorghe ("the applicant"), on 23 April 2004.

2. The applicant was represented by Mr A. Brudariu and Mrs G. Mocanu, lawyers practising in Bucharest. The Romanian Government ("the Government") were represented by their Agent, Mrs B. Rămăşcanu, of the Ministry of Foreign Affairs.

3. The applicant complained of an infringement of his right to a fair hearing before the domestic courts and of the length of the proceedings.

4. By a decision of 22 September 2005, the Chamber declared the application partly admissible.

5. The applicant and the Government each filed further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1971 and lives in Ploieşti.

7. The applicant suffers from haemophilia A which was diagnosed at birth. Haemophilia A is a congenital hereditary disorder characterised by

delayed clotting of the blood and severe bleeding following even minor injuries. It requires treatment with the specific coagulant, factor VIII.

8. The applicant was working as an official in a local hospital.

9. Starting in 1992, the Medical Expert Reports and Occupational Rehabilitation Board ("the Board") attached to the Ministry of Employment and Social Welfare examined the applicant once a year and issued him each time with a temporary certificate stating that he suffered from a second-degree disability.

10. This certificate served as the basis for obtaining from the County Disabled Persons' Bureau ("the Bureau") the entitlements provided for by Law no. 53/1992 on special protection for disabled persons – which included free medical assistance, transport and telephone rental – together with tax relief under Law no. 35/1993 in the form of exemption of the disabled person's salary from income tax.

11. On 26 October 1998 the Board confirmed the applicant's second-degree disability by means of a certificate bearing the handwritten endorsement "valid for Law no. 35/1993". According to the information supplied by the applicant, endorsements of this kind were commonly added by the Board, since the same certificate was used to obtain the entitlements under Law no. 53/1992 and tax relief under Law no. 35/1993.

12. In a letter of 15 December 1998 the Bureau informed the applicant that its accounting department had decided to suspend his entitlements under Law no. 53/1992, on the ground that the certificate issued on 26 October 1998 referred only to Law no. 35/1993 and could therefore be used only to obtain the entitlements provided for by that law.

13. By letter of 3 February 1999 the Employment Ministry informed the applicant that "in the absence of any provision to the contrary, there [was] no legal impediment preventing persons who [held] a certificate attesting to a degree of disability requiring special protection from enjoying all the entitlements and concessions for which they [were] eligible by law".

14. On 29 October 1999 the Board confirmed the applicant's second-degree disability. The certificate it issued on that occasion was again marked "valid for Law no. 35/1993".

15. Following a sharp deterioration in his condition owing to his lack of treatment the applicant, in a memorial lodged with the State Secretariat for Disabled Persons on 3 April 2000, challenged the suspension of his entitlements under Law no. 53/1992.

16. In a reply dated 6 April 2000 the State Secretariat informed the applicant that no statutory provision barred the aggregation of entitlements under Laws nos. 35/1993 and 53/1992, and that persons suffering from a second-degree disability should be able to benefit from the entitlements available under both laws.

17. In an administrative action brought before the Ploieşti Court of Appeal on 30 November 2000 against the Bureau and the State Secretariat

for Disabled Persons, the applicant requested recognition of his status as a disabled person requiring the special protection provided for by Law no. 53/1992 and claimed compensation for the pecuniary and non-pecuniary damage caused by the suspension of his entitlements between October 1998 and September 2000 which, he alleged, had resulted in a serious and rapid deterioration of his condition. He requested that the State Secretariat be ordered to pay him the sum of 1,184,502,000 Romanian lei (ROL), representing the cost of the treatment he would have received free of charge had the Bureau not suspended his entitlements under Law no. 53/1992, and a sum of ROL 11,920,200 corresponding to the value of the transport and telephone rental which he was no longer entitled to receive free of charge.

18. Following a hearing held on 15 January 2001, the applicant's lawyer requested that delivery of the judgment be adjourned to enable him to file written pleadings.

19. The Court of Appeal delivered its judgment on 22 January 2001. It observed that the Board had issued the applicant with annual certificates stating that he had a second-degree disability. The court therefore considered that the applicant had been recognised as having the status he requested during the period in question; accordingly, it rejected the first request as unfounded.

20. As to damages, the court held that it did not have jurisdiction to consider the issue and returned the case file to the Prahova County Civil Court.

21. From 5 to 10 February 2001 the applicant received in-patient treatment for haemorrhaging in Colţea Haematology Clinic in Bucharest.

22. During the proceedings before the County Court, on 12 March, 4 May and 1 June 2001, the applicant's lawyer requested an adjournment to enable him to add evidence to the case file and file written pleadings.

23. In a judgment of 5 June 2001 the County Court in its turn declined jurisdiction in favour of the Court of Appeal. The Supreme Court of Justice, called upon to resolve the conflict of jurisdiction, delivered a judgment on 21 November 2001 in which it held that the Ploieşti Court of Appeal had jurisdiction. The case was re-entered in that court's list.

24. The Court of Appeal heard evidence from two witnesses called by the applicant and ordered a medical expert report on the applicant's health.

25. The expert report was prepared by the forensic medical service of the city of Ploieşti. It noted numerous episodes of internal bleeding which had led to very severe bone deformation, immobilised joints and impaired mobility. In conclusion, the report stated that “the discontinuation of treatment [had] resulted in a sudden worsening of the disease, promoting the onset of very serious complications, namely internal and external bleeding, intracranial bleeding with haematomas, paralysis, phlebitis and asphyxia”.

26. During the proceedings before the Court of Appeal, on 12 March 2002, the applicant requested an adjournment to enable him to hire a new lawyer. On 7 June 2002 his lawyer requested a further adjournment so that he could file written pleadings.

27. In a judgment of 14 June 2002 the Court of Appeal, basing its findings on the certificates issued by the Board in 1998 and 1999, found that, for the period in question, the applicant had been recognised as having a second-degree disability. It dismissed the applicant's claim for damages on the ground that he "[had] not dispute[d] using a statutory remedy [section 27 of Government Ordinance no. 102/1999 of 29 June 1999, replacing Law no. 53/1992] his assignment to one of the categories of disability" and pointed out that he could "dispute and request revision of his classification in a given category if it no longer corresponded to the reality". The court added that the applicant could only bring an action before the courts seeking to assert his rights if the competent authorities, after deciding to assign him to a different disability category, subsequently refused to award him the entitlements provided for by law. The court concluded that, in so far as the applicant "[had] not furnish[ed] proof that he now belonged to the category of persons with a more severe disability, which might have qualified him for a wider range of entitlements", his complaint was unfounded. It dismissed the action accordingly.

28. The applicant appealed to the Supreme Court of Justice on the ground that the Court of Appeal had misconstrued the subject of his action, that it had omitted to rule on his complaint concerning the suspension of his entitlements under Law no. 53/1992 and that the second-degree disability he had been recognised as suffering from made him eligible for the aggregate of entitlements under the two laws.

29. At a hearing held on 25 February 2003 the applicant requested that examination of his appeal be adjourned on account of his state of health, which allegedly prevented him from attending the hearing. The hearing was scheduled for 27 May 2003 and then for 21 October 2003. It took place on the latter date.

30. From 6 to 15 May 2003 the applicant received in-patient treatment in the emergency ward of Ploieşti County Hospital.

31. In an order dated 7 May 2003 the County Pensions Office decided that the applicant should be granted a retirement pension on grounds of invalidity.

32. On 22 May 2003 the Board found that the applicant's condition had worsened and that he now suffered from a first-degree disability.

33. In a judgment of 4 November 2003 the Supreme Court of Justice dismissed the applicant's appeal and upheld the Court of Appeal's judgment of 14 June 2002. It considered that "since the appellant [had] not dispute[d] [the certificate attesting to his disability] before the Higher Medical Expert Reports Board, in accordance with the statutory provisions, the Court of

Appeal [had] correctly held that he could not claim the entitlements provided for by Ordinance no. 102/99".

34. Following further episodes of bleeding the applicant was again admitted to the emergency ward of Ploieşti County Hospital, where he remained from 25 to 30 March and from 10 to 18 December 2004. Between 29 May and 1 June 2005 he again received in-patient treatment in the Colţea Haematology Clinic in Bucharest.

II. RELEVANT DOMESTIC LAW

35. The Administrative Disputes Act (Law no. 29/1990) provides, in its relevant parts:

Section 1

"Individuals or legal entities who consider that their rights have been infringed by an administrative act or by the unjustified refusal of an administrative authority to respond to a request concerning those rights may bring an action before the competent court seeking to have the act in question set aside, to have the alleged right recognised and to be awarded compensation for any damage sustained."

Section 6

"The court shall give an urgent ruling on the action..."

36. The relevant extracts from Law no. 53/1992 on special protection for disabled persons read as follows:

Section 1

"Classification in one of the categories of disabled persons requiring special protection shall be based on a certificate issued by one of the medical expert reports and occupational rehabilitation boards attached to the county hospitals..."

Section 5

"Disabled persons shall have the right to:

(a) medical assistance and medication free of charge ... in the case of persons whose monthly income is below the gross minimum wage guaranteed by the State...

...

(e) free use of urban ... and inter-urban public transport...

...

(f) exemption from payment of the costs of telephone installation, transfer and rental..."

37. The relevant provisions of Government Emergency Ordinance no. 102/1999 of 29 June 1999 on special protection and access to employment for disabled persons, which replaced Law no. 53/1992, read as follows:

Section 2

"Classification in one of the categories of disabled persons requiring special protection ... shall be based on a certificate issued by the [county] boards on medical expert reports and disability issues."

Section 19

"... adults suffering from a disability shall qualify for the following entitlements:

...

(f) exemption from payment of the costs of telephone installation, transfer and rental...

(g) free use of urban public transport...

(h) free use of inter-urban public transport...

...

(j) medical assistance in accordance with the provisions of the Social Health Insurance Act and the regulations of the Ministry of Health and the State Secretariat for Disabled Persons."

Section 25

"The boards on medical expert reports and disability issues shall be attached [from 1 January 2000] to the county disabled persons' bureaux."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

38. The applicant alleged that there had been a violation of Article 6 § 1 of the Convention on two counts. Firstly, he complained that the administrative proceedings culminating in the Supreme Court of Justice judgment of 4 November 2003 had been unfair. Secondly, he complained of the length of those proceedings. Article 6 § 1, in its relevant part, provides:

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

A. The fairness of the proceedings

1. The parties' submissions

39. The applicant complained that his right to a fair hearing had been breached, as the domestic courts had arbitrarily dismissed his claim for damages because they had misconstrued the subject of his action.

40. He submitted that the courts had dismissed his claim on the ground that he had not disputed the certificate attesting to his disability and had not requested reclassification in the more severe disability category, in order to qualify for a wider range of entitlements. However, his action had been aimed at obtaining an order requiring the authorities to pay damages for the suspension of the entitlements provided for by Law no. 53/1992 in respect of the disability recognised by the certificate of 26 October 1998, including the right to free medical assistance. He added that he had at no time sought to obtain a wider range of entitlements than that for which his degree of disability made him eligible, and had had no interest in challenging the above-mentioned certificate and requesting reclassification, since the certificate corresponded to the reality of his disability at the time.

41. The Government considered that the proceedings had complied fully with the requirements of a fair hearing. They contended that the domestic courts, in dismissing the applicant's claim for damages on the ground that he had not disputed his classification in the second-degree disability category, had replied to his complaint as set out in his initial application.

2. The Court's assessment

42. The Court reiterates at the outset that it is not its function to deal with errors of fact or law allegedly committed by a national court: it is in the first place for the national authorities, and notably the courts, to interpret domestic law (see *Tejedor García v. Spain*, 16 December 1997, § 31, *Reports of Judgments and Decisions* 1997-VIII, and *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

43. Nevertheless, the purpose of the Convention being to guarantee not rights that are theoretical or illusory but rights that are practical and effective, the right to a fair hearing can only be seen to be effective if the requests of the parties are actually "heard", that is, duly considered by the court. In that regard the Court reiterates that the extent to which a court's duty to give reasons applies may vary according to the nature of the decision. That is why the question whether a court has failed to fulfil the

obligation to state reasons, deriving from Article 6 of the Convention, can only be determined in the light of the circumstances of the case.

Without requiring a detailed answer to every argument put forward by a complainant, this obligation nevertheless presupposes that the injured party can expect a specific and express reply to those submissions which are decisive for the outcome of the proceedings in question (see *Ruiz Torija v. Spain*, 9 December 1994, §§ 29-30, Series A no. 303-A, and *Hiro Balani v. Spain*, 9 December 1994, §§ 27-28, Series A no. 303-B).

44. In the instant case the Court observes that, in his initial application, the applicant expressly claimed damages in the amount of ROL 1,196,422,200 in respect of the refusal to award him the entitlements available under Law no. 53/1992 to persons in the second-degree disability category, to which he belonged. In that regard the Court notes that the fact that the applicant belonged to that category is not in dispute.

45. The Court of Appeal dismissed the applicant's claim on the ground that he had not used a statutory remedy to dispute the certificate of 26 October 1998 recognising his second-degree disability. The court also suggested that he apply to the administrative authorities for a revision of his classification, requesting assignment to a higher category of disability in order to qualify for a wider range of entitlements.

46. The Court further notes that, in dismissing the appeal in which the applicant submitted that the Court of Appeal had committed an error in interpreting the subject of his action since he had at no time sought a wider range of entitlements than that afforded to persons suffering from a second-degree disability, the Supreme Court of Justice had confined itself to reiterating the reasoning of the Court of Appeal, according to which the applicant could not benefit from the provisions of Ordinance no. 102/1999, which had replaced Law no. 53/1992, as he had not disputed the certificate of 26 October 1998.

47. In the Government's view, the domestic courts had not committed an error but had given a reply based on examination of the complaints raised by the applicant in his original application.

48. The Court is not persuaded by this argument. It notes that in the instant case neither the Court of Appeal nor the Supreme Court of Justice ruled on the merits of the applicant's claim for damages, dismissing it on the sole ground that the applicant had not disputed his classification in the second-degree disability category.

49. The Court also notes that the applicant, in both his initial application and his subsequent pleadings, repeatedly sought recognition of his right to the entitlements afforded under Law no. 53/1992 to persons with a second-degree disability. Moreover, his appeal to the Supreme Court of Justice was based in large part on his assertion that the dismissal of his claim had been the result of a mistake as to the subject-matter of his action.

However, the Supreme Court of Justice did not reply to this ground of appeal.

50. Given the decisive implications of this ground, the Court considers that the Supreme Court of Justice was required to give a specific and express reply. In the absence of such a reply, it is impossible to ascertain whether the domestic courts simply neglected to examine the content of the complaint concerning the award of damages, or whether the rejection of the complaint was the result of a manifest error of assessment regarding the subject of the action (see, *mutatis mutandis*, *Ruiz Torija*, § 30, and *Hiro Balani*, § 28, both cited above; *Dulaurans v. France*, no. 34553/97, § 38, 21 March 2000; and *Liakopoulou v. Greece*, no. 20627/04, § 23, 24 May 2006).

51. In the light of the foregoing, the Court concludes that the applicant's case did not receive a fair hearing.

Accordingly, there has been a violation of Article 6 § 1 of the Convention.

...

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

62. The applicant claimed an overall amount of 54,417 euros (EUR) in respect of pecuniary and non-pecuniary damage, and a monthly payment of EUR 300 to cover the costs and expenses linked to the daily assistance he required as a result of the worsening of his condition.

63. The Government contested these claims, which they considered excessive. Furthermore, they were of the opinion that there was no direct link between the violations alleged and the pecuniary and non-pecuniary damage the applicant claimed to have sustained.

64. The Court notes that an award of just satisfaction can only be based in the instant case on the fact that the applicant did not have the benefit of the guarantees of Article 6 before the domestic courts. The Court has found a violation of Article 6 in the instant case, firstly on account of the fact that the dismissal of the applicant's claim for damages was not duly reasoned, and secondly on account of the length of the proceedings. Whilst it cannot speculate as to the amount that would have been awarded had the domestic

courts allowed the applicant's claim for compensation, it does not find it unreasonable to regard the applicant as having suffered a loss of real opportunities which the finding of a violation of the Convention in the present judgment does not suffice to remedy (see, *mutatis mutandis*, *Yiarenios v. Greece*, no. 64413/01, § 27, 19 February 2004).

52. Ruling on an equitable basis as required by Article 41, the Court awards the applicant the sum of EUR 6,000 for non-pecuniary damage.

...

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the fairness of the proceedings;

...

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros) in respect of non-pecuniary damage...

...

Done in French, and notified in writing on 15 March 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

John Hedigan
President