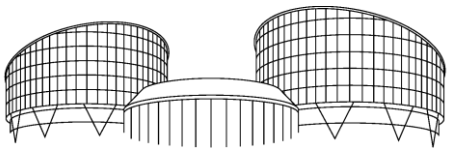

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF JENIȚA MOCANU v. ROMANIA

(Application no. 11770/08)

JUDGMENT

STRASBOURG

17 December 2013

FINAL

17/03/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Jenița Mocanu v. Romania,

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Corneliu Bîrsan,
Ján Šikuta,
Nona Tsotsoria,
Johannes Silvis,
Valeriu Griţco, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 26 November 2013,

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

PROCEDURE

1. The case originated in an application (no. 11770/08) 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, Ms Jenița Mocanu ("the applicant"), on 18 February 2008.

2. The applicant was represented by Mr I. Czeller, a lawyer practicing in Iaşi. The Romanian Government ("the Government") were represented by their Co-Agent, Ms I. Cambrea, from the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the composition of the bench which delivered the judgment of the Iaşi County Court had not been in accordance with the law and had therefore breached her rights guaranteed by Article 6 § 1 of the Convention.

4. On 6 October 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1929 and lives in Sfântu-Gheorghe.

6. On an unspecified date in 2005 the applicant, with the assistance of a lawyer, brought proceedings against a third party seeking the annulment of a will and the acknowledgement of her inheritance rights. She estimated the

value of the deceased's estate to be 31,800 lei (RON) (approximately 9,244 euros (EUR)).

7. By a judgment of 21 December 2005 the Iaşi District Court, acting as a court of first-instance, allowed the applicant's action on the merits and acknowledged her inheritance rights. The operative part of the judgment expressly stated that it was subject to appeal within fifteen days of notification. The third party appealed.

8. By a judgment of 4 April 2007 the Iaşi County Court, sitting as a bench of two judges, allowed the third party's appeal on the merits, quashed the judgment of 21 December 2005 and dismissed the applicant's action. The operative part of the judgment expressly stated that it was subject to an appeal on points of law (*recurs*) within fifteen days of notification. The applicant lodged an appeal on points of law.

9. At the hearing of 10 October 2007 the Iaşi Court of Appeal, of its own motion, raised a preliminary objection concerning the admissibility of the applicant's appeal on points of law. It allowed the parties to submit observations on whether the ordinary appeal brought by the third party before the Iaşi County Court should have been reclassified by that court as an appeal on points of law, considering the value of the disputed estate and the applicable rules of civil procedure.

10. On 24 October 2007 the applicant submitted written observations before the Iaşi Court of Appeal concerning the preliminary objection it had raised. She contested it by arguing, *inter alia*, that an action seeking the annulment of an instrument could not be valued and considered to have a pecuniary component. In addition, Law no. 304/2004 expressly stated that an appeal on points of law had to be examined by a court sitting as a bench of three judges. Consequently, by allowing the preliminary objection, the Court of Appeal would be ignoring a mandatory legal provision concerning the composition of the bench.

11. By a final judgment of 14 November 2007 the Iaşi Court of Appeal dismissed the applicant's appeal on points of law as inadmissible without touching on the merits of the case. It held that, under Article 281^1 of the Romanian Code of Civil Procedure, judgments delivered by first-instance courts in respect of disputes where the subject-matter of the litigation had been valued at less than one billion Romanian lei (approximately EUR 27,000) were not subject to an ordinary appeal. The applicant had estimated the value of the disputed estate to be EUR 9,244. A dispute between parties which concerned the annulment of a legal instrument relating to a particular estate had a pecuniary content and could be valued. The value of the assets specified in the legal instrument had to be taken into consideration for the purposes of establishing which court had jurisdiction. The value indicated by the applicant was the only criteria for establishing the value of the estate concerned. Consequently, the only relevant criteria in determining the competent court was the value of the assets specified in the

instrument the applicant sought to annul. Therefore, the proceedings brought by the applicant were regulated by Article 281[1] and consequently the judgment delivered by the District Court could only be challenged by way of an appeal on points of law. The lawfulness and thoroughness of that judgment had been examined by the County Court. Under Article 281[1] the Court of Appeal no longer had subject-matter jurisdiction to review the aforementioned judgments. The fact that the County Court had erroneously decided and classified the applicant's challenge of the District Court judgment as an ordinary appeal rather than an appeal on points of law did not have any legal significance. The type of appeal that could be lodged against judgments was prescribed by law and not by the courts. The fact that the County Court had wrongfully classified the applicant's challenge could not result in a breach of the mandatory provisions of Article 281[1], which provided for two levels of jurisdiction by creating a third. Consequently, the court had no subject-matter jurisdiction and could not examine the applicant's reasons for the appeal on points of law.

II. RELEVANT DOMESTIC LAW

12. The relevant parts of the former Romanian Code of Civil Procedure, as in force at the material time, read as follows:

Article 84

"The request for ... exercising a type of appeal is valid even if it bears a misleading name."

Article 281[1] § 1

"No [ordinary] appeal shall lie against judgments rendered by the courts of first instance in ... civil cases where the subject-matter of the litigation amounts to less than RON 100,000."

Article 299 § 1

"Judgments not subject to [an ordinary] appeal ... are subject to an appeal on points of law."

Article 304[1]

"The court may examine all the aspects of the case where the judgment was subject to an appeal on points of law and not to [an ordinary] appeal."

Article 312 § 3 taken together with Article 304 point 1

"The court adjudicating on an appeal on points of law shall quash the judgments of the lower courts where such judgments were delivered by courts not sitting in the judicial formation prescribed by law."

13. The relevant part of the Administration of Justice Act (Law no. 304/2004), as in force at the material time, reads as follows:

Section 54(2)

"Appeals shall be examined by benches of two judges, and appeals on points of law by benches of three judges."

THE LAW

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

14. The applicant complained that the composition of the bench delivering the judgment of the Iași County Court had not been in accordance with the law. She relied on Article 6 § 1 of the Convention. The relevant part reads as follows:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

A. Admissibility

1. No significant disadvantage

(a) The parties' submissions

15. The Government submitted that given the particular circumstances of the case and the procedural guarantees provided by the domestic legislation with regard to various types of appeal, the applicant had not suffered a significant disadvantage. The applicant had had access to two levels of jurisdiction as regulated by the applicable rules of civil procedure. The fact that the second-instance court sat as an ordinary court of appeal had resulted in a more detailed judicial review of the applicant's case and on more flexible terms for the submission of evidence than in alternative circumstances. In addition, the fact that the appeal on points of law had been examined by a bench of two and not three judges had not had a decisive impact on the fairness of the proceedings, and the substance of the applicant's rights guaranteed by Article 6 of the Convention had not been breached.

16. The Government argued that the Court could apply in the instant case the same reasoning as in the cases of *Korolev v. Russia* ((dec.) no. 25551/05, 1 July 2010) and *Holub v. Czech Republic* ((dec.) no. 24880/05, 14 December 2010) and examine the disadvantage the applicant had suffered following the alleged breach of her procedural rights guaranteed by Article 6 of the Convention. The applicant had never claimed

that she had suffered any financial loss as a result of the way the second-instance court had been composed, and no causal link could be identified between the two elements.

17. They also contended that respect for human rights did not require an examination of the application on the merits and that the applicant's case had been duly considered by the domestic courts.

18. The applicant contended that she had suffered a significant disadvantage, given that her sole source of income was a pension of 300 lei (RON) (approximately EUR 90).

(b) The Court's assessment

19. The Court notes that the main element of the criterion set by Article 35 § 3 (b) of the Convention is whether the applicant has suffered any significant disadvantage (see *Adrian Mihai Ionescu v. Romania* (dec.), no. 36659/04, 1 June 2010, and *Korolev v. Russia* (dec.), no. 25551/05, 1 July 2010).

20. Inspired by the general principle of *de minimis non curat praetor*, this admissibility criterion hinges on the idea that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court. The assessment of this minimum level is, in the nature of things, relative, and depends on all the circumstances of the case. The severity of a violation should be assessed taking into account both the applicant's subjective perceptions and what is objectively at stake in a particular case (see *Korolev*, cited above). In other words, the absence of any significant disadvantage can be based on criteria such as the financial impact of the matter in dispute or the importance of the case for the applicant (see *Adrian Mihai Ionescu*, cited above). In order to determine the seriousness of the consequences of the applicant's allegations, the matters at stake in the case before the domestic courts could not be decisive except in those circumstances where the value was small or insignificant (see *Giusti v. Italy*, no. 13175/03, § 35, 18 October 2011).

21. In the present case, the Court notes that the applicant had been involved in civil proceedings brought by her against a third party seeking the annulment of a will and the acknowledgement of her inheritance rights. She valued the estate in question to be worth EUR 9,224.

22. The Court also notes that according to the applicant's submissions, which were not contested by the Government, she was a pensioner and received a pension of EUR 90.

23. In this context, the Court does not consider that the financial impact of the matter on the applicant could be considered small or insignificant.

24. Under these circumstances, and in spite of any other arguments raised by the Government, the Court considers that the applicant cannot be

deemed not to have suffered a significant disadvantage. It accordingly dismisses the Government's preliminary objection.

2. Non-exhaustion of domestic remedies

(a) The parties' submissions

25. The Government contended that the applicant had failed to argue before the second-instance court that the third party had lodged the incorrect type of appeal against the judgment of the first-instance court, even though she had been entitled to do so under the relevant law.

26. The applicant submitted that the proceedings she had brought against the third party did not have a pecuniary component, a view also shared by the first and the second-instance courts. In addition, under domestic law and practice the domestic courts were solely responsible for determining the type of appeal the parties could exercise. Consequently, even if she had asked the second-instance court to reclassify the appeal lodged by the third party as an appeal on points of law, that decision had ultimately lain with the court.

(b) The Court's assessment

27. The Court reiterates that the object of the rule of exhaustion of domestic remedies is to allow the national authorities (primarily the judicial authorities) to address allegations made of a violation of a Convention right and, where appropriate, to afford redress before those allegations are submitted to the Court (see *Azinas v. Cyprus* [GC], no. 56679/00, § 38, 28 April 2004, and *Kudla v. Poland* [GC] no. 30210/96, § 152, ECHR 2000-XI).

28. Under Article 35 of the Convention, normal recourse should be had by an applicant to remedies that are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see, *inter alia*, *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198, and *Dalia v. France*, no. 26102/95, § 38, ECHR 1998-I). Moreover, an applicant who has availed himself of a remedy that is apparently effective and sufficient cannot be required also to have tried others that were available but probably no more likely to be successful (see, *mutatis mutandis*, *A. v. France*, 23 November 1993, § 32, Series A no. 277-B).

29. The Court notes, in so far as the Government's argument could be considered to amount to a preliminary objection of non-exhaustion of domestic remedies, the applicant's view expressed repeatedly before the domestic authorities and the Court was that the proceedings she had brought

against the third party could not be considered to have a pecuniary component. In addition, under the applicable rules of civil procedure, as reflected by Article 84 of the former Romanian Code of Civil Procedure, the domestic courts were ultimately responsible for classifying the exact type of appeal claimants could exercise. Consequently, the Court considers that the applicant could not be held responsible for not applying to the second-instance court to have the ordinary appeal lodged by the third party reclassified, particularly since the second-instance court itself did not consider of its own motion that reclassification was required. In this context, it appears that the second-instance court, like the applicant, considered that the proceedings in question did not require a reclassification of the appeal, and it is likely that any such application lodged by the applicant would have been dismissed.

30. Moreover, in so far as the applicant's application concerning the reclassification of the third party's ordinary appeal before the second-instance court could have potentially solved the issue of the correct composition of the bench, the Court notes that the applicant expressly raised that issue before the domestic courts prior to submitting it to the Court. She thereby provided the national authorities with the opportunity, which is in principle intended to be afforded to Contracting States by Article 35 § 1 of the Convention, of putting right the violations alleged against them (see *Lelas v. Croatia*, no. 55555/08, §§ 45 and 47-52, 20 May 2010).

31. It follows that the Government's objection as to the exhaustion of domestic remedies must also be rejected.

32. Lastly, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

33. The applicant contended that if the number of judges examining her case at second-instance was considered to be insignificant, it would make the provisions of the domestic legislation which regulated this issue optional and would leave the door wide open to arbitrariness. The proceedings she had brought against the third party had not had a pecuniary component. In addition, because the first-instance court had allowed her action, she had no reason to challenge its judgment before the second-instance court. Also, the fact that the appeal on points of law she had brought before the domestic courts had not been examined by a bench of three judges had been unlawful under the relevant domestic legislation.

34. The Government submitted that the Iaşi County Court was a "tribunal established by law" regulated by Law no. 304/2004 and by the former Romanian Code of Civil Procedure. Moreover, the County Court was higher up the court hierarchy than the District Court and was competent to examine both ordinary appeals and appeals on points of law. The fact that during the proceedings in question two courts had different opinions in respect of the merits of the case is a result of the interpretation of domestic law and did not mean that those courts were not "established by law".

35. The Government contended that the applicant had failed to show how the overall fairness of the proceedings had been affected by the inadmissibility of her appeal on points of law, given that she had had access to two levels of jurisdiction as required by law. The merits of her case had undoubtedly been examined twice, and the presence of a third judge would not have guaranteed her a favourable outcome.

36. The Government further argued that the Court of Appeal had decided to give priority to examining the lawfulness of the type of appeal. If the court had dismissed the preliminary objection concerning the admissibility of the appeal on points of law, it would have unlawfully acknowledged the existence of a third level of jurisdiction. Consequently, it had coherently interpreted a legal provision without arbitrarily depriving the applicant of a procedural guarantee.

2. The Court's assessment

37. The Court reiterates that the phrase "established by law" in Article 6 § 1 also means "established in accordance with law" (see, for instance, *Rossi v. France*, no. 11879/85, Commission decision of 6 December 1989, Decisions and Reports 63). In addition, the phrase "established by law" covers not only the legal basis for the very existence of a "tribunal" but also compliance by the tribunal with the particular rules that govern it (see *Sokurenko and Strygun v. Ukraine*, nos. 29458/04 and 29465/04, § 24, 20 July 2006) and the composition of the bench in each case (see *Buscarini v. San Marino* (dec.), no. 31657/96, 4 May 2000, and *Posokhov v. Russia*, no. 63486/00, § 39, ECHR 2003-IV).

38. The Court further reiterates that, in principle, a violation by a tribunal of domestic legal provisions relating to the establishment and competence of judicial organs gives rise to a violation of Article 6 § 1 (see *DMD GROUP, a.s. v. Slovakia*, no. 19334/03, § 61, 5 October 2010, and *Šorgić v. Serbia*, no. 34973/06, § 63, 3 November 2011). The Court may therefore examine whether the domestic law has been complied with in this regard.

39. Turning to the present case, the Court notes at the outset that, like in the cases of *Dumitrescu v. Romania*, (dec.) no. 67939/10, 17 September 2013 and *Negreanu v. Romania*, (dec.) no. 30164/03, 14 May 2013, the Court of Appeal examined the circumstances of the

applicant's case in the light of the provisions of Article 281^1 (1) of the former Romanian Code of Civil Procedure. It provided extensive reasons, which do not appear arbitrary, why it considered that the applicant's action had a pecuniary component and why it was subject only to two levels of jurisdiction. Reiterating that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see, *mutatis mutandis*, *Edificaciones March Gallego S.A. v. Spain*, 19 February 1998, § 33, *Reports of Judgments and Decisions 1998-I*, and *Casado Coca v. Spain*, 24 February 1994, §43, Series A no. 285-A), the Court notes that the Court of Appeal applied and interpreted the provisions of the former Romanian Code of Civil Procedure when ruling on the admissibility of the applicant's appeal on points of law and it sees no reason, in the absence of any conclusive evidence from the parties to the contrary, to consider that interpretation devoid of merit.

40. Under these circumstances, the Court observes however that the judgment of the Court of Appeal amounted to a reclassification of the ordinary appeal lodged by the third party before the Iaşi County Court as an appeal on points of law.

41. In this context, the Court notes that Article 54(2) of Law no. 304/2004 provided that the domestic courts had to decide on appeals on points of law lodged against the judgment of a lower court in a bench composed of three judges. In the present case, however, unlike in the cases of *Dumitrescu* and *Negreanu* cited above, the Iaşi County Court dealt with the appeal on points of law lodged before it in a bench composed of two judges. The Court considers therefore that the bench of the Iaşi County Court which delivered its decision on the merits of the case as a second and last-instance court was not composed in accordance with the domestic law in force at the material time.

42. The foregoing considerations, notwithstanding the arguments put forward by the Government in respect of the general fairness of the proceedings the applicant was party to, are sufficient to enable the Court to conclude that the domestic courts' significant deviation from the domestic rules of civil procedure amounted to a breach of the Convention requirement for the applicant's claim to be determined by a "tribunal established by law".

43. Accordingly, there has been a violation of Article 6 § 1 of the Convention in this respect.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

44. The applicant complained under Article 6 § 1 of the Convention that the domestic courts had lacked impartiality in her case, and that the domestic courts had decided cases identical to hers at three levels of jurisdiction. She also complained under Article 14 that the domestic courts

had discriminated against her on account of her vulnerable social status. Lastly, she complained under Article 1 of Protocol No. 1 to the Convention that her right of property had been breached by the domestic courts in so far as she had been deprived of her inheritance rights.

45. The Court has examined these complaints as submitted by the applicant. However, having regard to all the material in its possession, and in so far as it falls within its jurisdiction, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that they must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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."

47. The applicant did not submit a claim for just satisfaction.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 6 § 1 of the Convention concerning the composition of the bench delivering the judgment of the Iaşi County Court admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 17 December 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President