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

THIRD SECTION

CASE OF HOHENZOLLERN (FROM ROMANIA) v. ROMANIA

(Application No. 18811/02)

STOP

STRASBOURG

27 May 2010

DEFINITIVE

27/08/2010

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

In the case of de Hohenzollern (of Romania) v. Romania,

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

Josep Casadevall, *President,*
Elisabet Fura,
Corneliu Bîrsan,
Boštjan M. Zupančič,
Egbert Myjer,
Luis López Guerra,
Ann Power, *judges,*

and Stanley Naismith, *Deputy Section Registrar*,

After deliberation in chambers on 4 May 2010, delivers the following judgment, which was adopted on that date

PROCEDURE

1. The case originated in an application (no. 18811/02) against Romania lodged with the Court on 22 April 2002 under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two British and Romanian nationals, Mr Carol Mircea Grigore de Hohenzollern (of Romania) and Mr Paul Philip de Hohenzollern (of Romania) respectively. The applicants are represented by Tamara Solecki, a London lawyer.

2. The Romanian Government ("the Government") is represented by its Agent, Mr Răzvan-Horaţiu Radu, from the Ministry of Foreign Affairs.

3. Following the death of the first applicant, his wife, Mrs Antonia Colville Ropner Hohenzollern, and his son, the second applicant, expressed a wish to continue the proceedings on 16 February 2006. Mrs Antonia Colville Ropner Hohenzollern also died in 2007, leaving Mrs Emma Louise Ropner as her heir, who did not send the Court a request to continue the proceedings. For practical reasons, the present judgment will continue to refer to the second applicant, who is the only one to continue the proceedings before the Court, both on behalf of his father and in his own name, as "the applicants" (see, *mutatis mutandis*, *Dalban v. Romania* [GC], no. 28114/95, § 1, ECHR 1999-VI, and *Petrescu v. Romania*, no. 73969/01, § 2, 15 March 2007).

4. On 15 January 2009 the President of the Third Section decided to communicate the application to the Government. As permitted by Article 29 § 3 of the Convention, it was further decided that the admissibility and merits of the case would be examined together.

5. The United Kingdom Government, to whom a copy of the applications was communicated by the Court under Rule 44 § 1 (a), did not wish to submit their views on the case.

IN FACT

THE CIRCUMSTANCES OF THE CASE

6. The applicants, father and son, were born in 1920 and 1948 respectively and were resident or resident in London.

7. On 31 August 1918, Crown Prince Carol II of Romania was married in secret in Odessa to Ioana Maria Valentina Lambrino (also known in Romanian history textbooks as Zizi Lambrino), without the consent of either his parents or the government of the day. The marriage was annulled on 8 January 1919, by a judgment of the County Court of Ilfov. However, before remarrying Princess Elena of Greece in 1921, Prince Carol II had a child with Zizi Lambrino on 8 January 1920. This was the first applicant, Mr. Carol Mircea Grigore of Hohenzollern (of Romania).

8. By a judgment of 6 February 1955, the Lisbon District Court recognised the first applicant as the son of Carol II. In these proceedings, Princess Elena, the former King Mihai of Romania (half-brother of the first applicant) and Princess Anne of Bourbon-Parme were the defendants.

9. By a judgment of 6 March 1957, the Tribunal de Grande Instance of Paris declared the judgment of the Lisbon Court enforceable on French soil.

10. On 7 August 1991, the first applicant, represented by the second applicant, applied to the Bucharest County Court for enforcement of the Lisbon Court's judgment.

11. According to the applicants, this application was intended to produce personal effects, linked to the recognition of their membership of the Romanian royal family, and patrimonial effects, as they consider that they are entitled to the estate left by Carol II, in a context where the Romanian State has returned to the former king Mihai part of the former royal properties.

12. On 9 June 1992 the court decided that former King Mihai of Romania and Monique Urdărianu, Princess Elena's legatee, had standing in the proceedings.

13. On 15 July 1993, the Supreme Court of Justice, on the request of the applicants, referred the case to the Teleorman court.

14. By a judgment of 13 October 1995, the Teleorman Court upheld the action and recognised that the Lisbon Court's judgment had acquired the authority of res judicata on Romanian soil.

15. By a judgment of 1 April 1999, the Bucharest Court of Appeal dismissed the appeal lodged by the former King Mihai. It held that the fact that Princess Anne of Bourbon-Parma had not participated in the exequatur procedure was not a ground for annulling the contested judgment, since the operative part of the Lisbon Court's judgment did not expressly mention her.

16. The former king Mihai appealed.

17. Between December 2001 and February 2002, former King Mihai appeared in public on several occasions, together with the President of Romania.

18. On 4 December 2001, Princess Anne of Bourbon-Parme filed an application for ancillary intervention in the proceedings before the exequatur court in favour of the former King Mihai.

19. On 9 February 2002, the Romanian General Prosecutor intervened in the proceedings and asked the Supreme Court of Justice to quash the decisions of the Bucharest Court of Appeal and the Teleorman Court, on the grounds that Princess Anne of Bourbon-Parme had not been a party to the exequatur proceedings, whereas she was a defendant in the proceedings before the Lisbon Court.

20. By a judgment of 19 February 2002, the Supreme Court of Justice upheld the appeal of the former King Mihai and, on the application of Princess Anne of Bourbon-Parma, annulled the judgment of the Court of Appeal for failure to comply with the procedure for bringing charges against the Princess and referred the case to the county court of Teleorman for a new judgment on the merits.

21. On [1] July 2002, the County Court of Teleorman once again upheld the action and recognised that the judgment of the Lisbon Court had the force of res judicata in Romania.

22. The former king Mihai and Anne of Bourbon-Parme appealed against this judgment. By a decision of 14 January 2003, the Bucharest Court of Appeal rejected the appeal.

23. By a final judgment of 14 April 2005, the High Court of Cassation and Justice allowed the plaintiffs' appeal and the case was referred back to the Bucharest Court of Appeal for a new decision on the appeal. On 29 September 2005, the Court of Appeal upheld the appeal of former King Mihai and Anne of Bourbon-Parme, annulled the judgment of 1 July 2002 and referred the case back to the County Court of Teleorman for a new judgment on the merits.

24. On 26 June 2006, this court suspended the case following the death of the first applicant, setting a deadline for the communication of the names of his heirs - the wife of the first applicant, the second applicant and his brother.

25. On 4 June 2007, the second applicant requested that the proceedings be resumed.

26. On 6 August 2007, the court granted the second applicant's request to resume the proceedings as successor in title to his father.

27. In a judgment of 29 December 2008, the court allowed the action.

28. On 14 January 2009, the defendant and the intervener appealed against this judgment.

29. On 30 March 2009, the Bucharest Court of Appeal, hearing the appeal, referred the case to the County Court of Teleorman, with a view to regular communication of the judgment of 29 December 2008 to an applicant domiciled in the United Kingdom.

IN LAW

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

30. Invoking Article 6 § 1 of the Convention, the applicants complained about the length of the exequatur procedure for the Lisbon court's judgment on Romanian soil.

A. On admissibility

31. The Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that there are no other grounds for inadmissibility.

A. On the substance

32. The Government submitted that the second applicant, Mr Paul Philip de Hohenzollern (from Romania), could only claim to be the victim of a violation of Article 6 § 1 of the Convention from 6 August 2007, the date on which he became a party to the exequatur proceedings in his own name, as he had previously acted only as his father's representative. The second applicant's complaint must therefore be rejected as manifestly ill-founded, as the length of the proceedings directly affecting him was not excessive.

33. As to the first applicant, the Government stated that the length of the proceedings in question was justified both by the complexity of the case and by the applicants' conduct, which had allegedly contributed to the length of the

proceedings. The Government further submitted that the courts have been diligent and that any delays have been justified by objective reasons.

34. The applicants object to this view.

35. The Court notes that it has already applied Article 6 § 1 of the Convention to exequatur proceedings (see *Pellegrini v. Italy*, no. 30882/96, § 40, ECHR 2001-VIII, *Ern Makina Sanayi ve Ticaret A. Ş. v. Turkey*, application no. 70830/01, 3 May 2007).

36. The Court recalls its case-law on the applicability of Article 6 § 1 of the Convention to interventions in civil proceedings in the applicant's own name or as an heir (*Cocchiarella v. Italy* [GC], no. 64886/01, § 113, ECHR 2006-V): where an applicant has become a party to the proceedings as an heir, he can complain about the entire duration of the proceedings, whereas where he intervened in the domestic proceedings solely in his own name, the period to be taken into consideration starts to run from that date. It points out that in the present case the two applicants, father and son, referred the matter to it on 22 April 2002. At that time, only the complaints raised by the first applicant were admissible. It was only on 6 August 2007, after the death of the first applicant, that the proceedings began in respect of the second applicant, that is to say, on the date when he became a party to the exequatur proceedings as his father's heir. In these circumstances, the Court considers that he can rely on Article 6 § 1 only from that date. It also considers that the length of time that has elapsed since that date is not contrary to Article 6 § 1 of the Convention and that there has been no violation of Article 6 § 1 of the Convention in the second applicant's case.

37. The Court then recalls that the reasonableness of the length of proceedings is assessed in the light of the circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case, the conduct of the applicant and of the competent authorities and the importance of the dispute for the parties concerned (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

38. It notes that on 20 June 1994, the date of entry into force of the Convention for Romania, the case was pending before the County Court of Teleorman. The Court considers that the period to be considered begins to run from that date.

39. However, although the Court can only consider the complaint concerning the length of proceedings from 20 June 1994, it must also take account of the state of the proceedings at that date (see the *Mitap and Müftüoğlü v. Turkey* judgments of 25 March 1996, *Reports* 1996-II, p. 410, § 28). However, by that date the case had been pending at first instance for almost three years, the applicants having applied to the domestic courts on 7 August 1991.

40. The Court considers that an exequatur procedure which has lasted more than fifteen years and which has not yet been completed is particularly lengthy

and does not comply with Article 6 § 1 of the Convention. It found that the national courts had not been sufficiently diligent to ensure that the applicants' case was dealt with expeditiously. In particular, it must be noted that the case remained pending before the Bucharest Court of Appeal for three years and almost six months, until 1 April 1999.

41. In the light of the foregoing, the Court considers that in the present case the length of the proceedings at issue, as far as the first applicant is concerned, does not meet the "reasonable time" requirement.

42. There was therefore a violation of Article 6 § 1 of the Convention.

II. ON THE OTHER COMPLAINTS UNDER ARTICLE 6 § 1 OF THE CONVENTION

a. Lack of impartiality of national courts

43. The applicants complained of a lack of impartiality on the part of the national courts due to the fact that the President of Romania had appeared in public with the former King Mihai, supporting him.

44. The Court observes that former King Mihai is a very well-known personality in Romania. His relationship with successive Romanian governments, as well as with the presidents of Romania, is well known. In this context and in relation to the elements of the case file, the Court finds no indication of bias in the case. It notes that the domestic courts examined the documents submitted by the parties, applied the law without any appearance of arbitrariness and issued decisions that included detailed reasons in fact and in law.

45. It follows that this part of the application is manifestly ill-founded and must be rejected under Article 35 §§ 3 and 4 of the Convention.

b. Lack of procedural fairness (equality of arms) due to the intervention of the public prosecutor

46. The applicants also complained of a lack of fairness in the proceedings before the Supreme Court due to the intervention in the proceedings of the Romanian General Prosecutor, through his application to dismiss the appeal.

47. The Court notes that the public prosecutor's intervention in question took place on 9 February 2002, when the second applicant was not a party to the domestic proceedings (see also § 36 above). He is therefore not a victim in relation to this alleged violation of the Convention.

48. As regards the first applicant, the Court will examine this complaint in the light of the principle of equality of arms, which requires a "fair balance between the parties": each must be given a reasonable opportunity to present its case in conditions which do not place it at a distinct disadvantage compared with its opponent(s) (see, among others, the *Ankerl v. Switzerland*

judgment of 23 October 1996, *Reports of Judgments and Decisions* 1996-V, pp. 1567-1568, § 38, the *Nideröst-Huber v. Switzerland* judgment of 18 February 1997, *Reports* 1997-I, pp. 107-108, § 23, and the *Kress v. France* [GC] judgment, no. 39594/98, § 72, ECHR 2001-VI.)

49. The Court observed that under Article 45(3) of the Code of Civil Procedure in force at the time, it was open to public prosecutors to participate in proceedings in a civil case of public interest in order to ensure the defence of public order, rights and freedoms of citizens.

50. It also notes that the General Prosecutor expressed before the Supreme Court of Justice his point of view in his capacity as such in a case that was of definite public interest, given its mediatisation and the importance of the personal and patrimonial stakes arising from the execution on Romanian soil of the Lisbon Court's judgment. It concerns the consequences of the restitution of the former royal estates to the members of the royal family, according to the restitution laws adopted in Romania after the Revolution.

51. The Court therefore considers that this part of the application is manifestly ill-founded and must be rejected under Article 35 §§ 3 and 4 of the Convention.

III. ON THE APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. Under Article 41 of the Convention,

> "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 allows only partial redress of the consequences of that violation, the Court shall, if appropriate, afford just satisfaction to the injured party."

A. Damage

53. The applicants claim £1,400,000 for non-pecuniary damage, citing distress, pain and suffering caused by the length of the exequatur procedure. The second applicant also alleges that the delay in the proceedings contributed to the death of his father.

54. The Government objected to the award of that amount and referred to the Court's case-law on the subject. It submitted that there was no causal link between the proceedings at issue and the death of the first applicant.

55. The Court recalls that it found a violation of Article 6 § 1 of the Convention in relation to the first applicant on account of the particularly long duration of the exequatur procedure.

56. The Court accepts that the first applicant may have suffered frustration as a result of this delay and awards the second applicant, in his capacity as heir to the first applicant, the sum of EUR 9,500 on this account.

B. Costs and expenses

57. The applicants claim GBP 115,000 for costs and expenses incurred before the domestic courts and the Court, without providing any evidence.

58. The Government observed that the applicants had not provided any documentary evidence of the costs and expenses incurred. It did not object to the reimbursement of those costs and expenses, provided that they were proven, necessary and connected with the case.

59. The Court recalls that, under Article 41 of the Convention, only costs which are shown to have been actually incurred, to have been necessary and to have been reasonable in amount may be reimbursed (see, inter alia, *Nikolova v. Bulgaria* [GC], no. 31195/96, 79, CEDH 1999-II).

60. In view of the fact that the applicant has not substantiated the costs and expenses incurred, the Court decides not to award him any sum in this respect.

C. Default interest

61. The Court considers it appropriate to base the rate of default interest on the interest rate of the marginal lending facility of the European Central Bank plus three percentage points.

ON THESE GROUNDS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible as regards the complaint based on the length of the proceedings (Article 6 § 1 of the Convention) and inadmissible as regards the remainder;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the first applicant;
3. *Holds* that there has been no violation of Article 6 § 1 of the Convention in respect of the second applicant;

4. *Says*

a) that the respondent State shall pay to the second applicant, in his capacity as heir of the first applicant, within three months of the date on which the judgment becomes final under Article 44 § 2 of the Convention EUR 9,500 (nine thousand five hundred euros), to be converted into the currency of the respondent State at the rate applicable on the date of settlement, for non-pecuniary damage, plus any amount that may be due by way of tax on that sum;

b) that, from the expiry of the abovementioned period until payment, simple interest shall be payable on this amount at a rate equal to the marginal lending facility of the European Central Bank applicable during that period, plus three percentage points;

5. *Dismisses* the claim for just satisfaction as to the remainder.

Done in French, then communicated in writing on 27 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Procedure.

Stanley NaismithJosep Casadevall
Deputy RegistrarPresident