



No objective sign of bias by judges in Romanian property dispute case

In its decision in [Ilie v. Romania](#) (application no. 26220/10) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the alleged lack of impartiality of judges in a dispute over property rights.

The Court held that there was no objective justification for the applicant's allegation that four judges who had dealt with her dispute over a piece of land had lacked impartiality. When the judges had dealt with the case in a final set of proceedings they had not been dealing with the same facts or evidence as in the earlier proceedings they had been involved in.

Domestic decisions to reject her claim of bias against one judge and to refuse to let three other judges recuse themselves had been based on law and had been taken in an independent manner.

Her worries about bias had been without foundation and her complaint about that issue had to be rejected as manifestly ill-founded.

Principal facts

The applicant, Elena Ilie, is a Romanian national who was born in 1944 and lives in Vâlcea (Romania).

In 1991 Ms Ilie's ancestor applied successfully under domestic legislation to have land restored to her which had been nationalised by the communist regime. She subsequently inherited the land.

In 2005 private parties requested the annulment of the documents acknowledging the ancestor's rights to the land. Judge M.F. of the District Court held that the authorities had acknowledged that they had made a mistake in producing the documents and that the applicant was unable to prove her ancestor's ownership of the land before it had been nationalised. That judgment was quashed in 2007 by the County Court, which recognised the validity of the documents and the ancestor's entitlement to the property.

A few months later the same private parties sought a court order acknowledging they had acquired property rights to the land by prescription. In 2008, the County Court, with M.V., G.D., and L.I. as judges, found that the private parties had possessed the disputed land for more than 30 years.

Proceedings by the private parties for the return of the land were presided over by Judge M.F. A challenge for bias by the applicant over the judge's role in the earlier case was dismissed in 2009 and the court went on to allow the private parties' claim.

An appeal by the applicant against both judgments came before Judges M.V., G.D. and L.I., who sought to recuse themselves owing to their earlier involvement. However, the recusal request was rejected. The County Court found in November 2009 that both parties held property titles to the land but that those of the private parties were better defined.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 30 April 2010.

Relying on Article 6 § 1 (right to a fair hearing), the applicant complained that the proceedings which were concluded by the final judgment of 24 November 2004 of the Vâlcea County Court were unfair because of the judges' lack of impartiality, a wrong assessment of the evidence by the domestic courts and their misinterpretation of the applicable legislation.

Relying on Article 1 of Protocol No. 1 (protection of property), the applicant further complained of a breach of her property rights due to the fact that she had been deprived of land that she had obtained under property restitution laws.

The decision was given by a Committee of three judges, composed as follows:

Faris **Vehabović** (Bosnia and Herzegovina), *President*,
Iulia Antoanella **Motoc** (Romania),
Péter **Paczolay** (Hungary),

and also Andrea **Tamietti**, *Deputy Registrar*.

Decision of the Court

Article 6

The Court examined whether the applicant's fears about a lack of impartiality in the third and final set of proceedings had been objectively justified. Those fears had arisen because all four of the judges had at some point adjudicated on aspects of the property dispute. However, it could not be said that the third set of proceedings had concerned the same facts or evidence as the first two.

In fact, the final set of proceedings had related solely to a comparison of the parties' property titles and the courts' function had been to determine, on the basis of objective factors, which title was better defined. There had been no room for reviewing the validity of the earlier judgments, which had become final and enforceable. While statements and findings from the earlier proceedings had been reproduced in the final proceedings, they had by then become *res judicata* and binding.

The applicant had also alleged an incorrect assessment of the evidence as the courts in the third set of proceedings had ignored some documents which had proved her title. However, the Court noted that both at first instance and on appeal in that set of proceedings the judges had expressly recognised that both parties had confirmed property rights, based on the available evidence, including previous judgments.

Furthermore, the applicant's challenges for bias against Judge M.F. and the recusal application by M.V., G.D., and L.I. had been dismissed after being examined by judges whose impartiality had not been questioned and who had referred to the applicable law. The reasons for the dismissal of the challenge for bias and of the application for recusal were neither arbitrary nor unreasonable.

Overall, there had been no objective justification for the applicant's misgivings about the judges' impartiality and her complaint on that issue had to be rejected as manifestly ill-founded.

Having also considered her other complaints under Article 6 and Article 1 of Protocol No. 1, the Court found that they did not seem to demonstrate any violation and rejected that part of her application as manifestly ill-founded.

The decision is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.