



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

THIRD SECTION

CASE OF ABABEI v. ROMANIA

(Application no. 34728/02)

JUDGMENT

STRASBOURG

27 July 2010

FINAL

27/10/2010

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

In the case of Ababei v. Romania,

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

Josep Casadevall, *President*,

Elisabet Fura,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Egbert Myjer,

Luis López Guerra, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 6 July 2010,

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

PROCEDURE

1. The case originated in an application (no. 34728/02) 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 Ștefan Ababei (“the applicant”), on 17 August 2002.

2. The applicant was represented by Ms Ecaterina Ababei, a lawyer practising in Bucharest. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu, of the Ministry of Foreign Affairs.

3. On 16 March 2009 the President of the Third Section decided to communicate the complaints concerning the length of the criminal proceedings, the lack of access to civil courts and the right to respect for possession to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

4. The applicant was born in 1946 and lives in Bucharest.

A. First set of proceedings

5. On 8 February 1998 the applicant was arrested under suspicion of fraud and remanded in custody until 12 February 1998. His detention was not extended as it was already covered by the arrest warrant issued in another proceeding (see paragraph 9 below).

6. The Bucharest County Court examined the facts of the case, heard evidence – notably expert reports and witness testimony – proposed by the parties, including the applicant.

On 3 March 2000 the County Court convicted the applicant of fraud (*înşelăciune*) and sentenced him to fifteen years' imprisonment; it also noted that the applicant was remanded in custody in connection with another investigation (the proceeding described below at paragraphs 9-15) and maintained his continued detention.

7. On appeal, on 29 December 2000 the Bucharest Court of Appeal reduced the sentence to ten years' imprisonment.

8. Deciding on the appeal on points of law, in a final decision of 10 April 2002 the Supreme Court of Justice reduced the sentence to eight years.

B. Second set of proceedings

9. On 12 February 1998 the applicant was arrested under suspicion of having falsified documents.

10. On 22 June 1998 the prosecutor attached to the Bucharest Court of Appeal indicted the applicant on several accounts of fraud and forgery.

11. In a judgment of 13 September 1999 the Bucharest County Court convicted the applicant of fraud.

On 13 April 2000 the Bucharest Court of Appeal modified the sentence on appeal, and on 24 October 2002 the Supreme Court of Justice quashed both previous decisions and sent the case back to the first-instance court. The Supreme Court considered that the lower courts had made errors in their judgments and had examined superficially the facts and evidence.

12. The County Court held some thirty hearings in the case, at steady intervals of approximately one month. About six hearings were postponed because defence counsel was absent or asked for more time to prepare the defence. The other hearings were mainly postponed because of errors in the summoning procedure or absence of the civil parties.

On 20 April 2006 the applicant was again convicted by the County Court and sentenced to eight years, two months and thirteen days' imprisonment. The court noted that he had already served the sentence and ordered his release.

13. On the same day, he was released from detention.

14. On 27 April 2006 the applicant lodged an appeal. The Court of Appeal held almost thirty hearings, at steady intervals of approximately one month; the defence requested about five postponements.

The decision on appeal was adopted on 18 June 2008; the court upheld the first instance judgment.

15. On 3 December 2008 the High Court of Cassation and Justice adopted the final decision in the case, upholding the previous decisions.

C. Winding up of the applicant's company (insolvency proceedings)

16. In 1991 the applicant and three other persons founded company A. On 7 March 1996 the applicant bought the shares from the other individuals and became the sole owner of the company.

17. While the criminal proceedings described above were pending against the applicant, company A.'s creditors initiated the insolvency proceedings against it. It appears that the applicant empowered A.I. to represent the company in some of the litigation with the creditors.

A.I. represented the company in the insolvency proceedings as well. He hired counsel and on several occasions objected to the measures taken by the liquidators.

18. On 8 December 2000 the Bucharest County Court allowed the creditor's request and started the insolvency proceedings. The company's representative was present at the hearing. He did not appeal against the interlocutory judgment rendered by the court at that date.

19. On 21 March 2003 the County Court took account of the liquidator's final report on the distribution of the sums obtained from the sale of the company's assets. It ordered that the company be dissolved and that notice of dissolution be entered in the Trade Record (*Registrul Comerțului*). It then closed the proceedings. No objections were raised.

20. By the same judgment of 21 March 2003 the County Court decided to examine separately the action in tort lodged by one of the creditors against the applicant and another individual. The applicant participated in the proceedings and on 6 January 2004 he lodged a defence.

On 12 March 2004 the action was rejected by the County Court as inadmissible. In a final decision of 24 February 2005 the Bucharest Court of Appeal upheld the judgment.

21. On 16 February 2007 the Bucharest County Court dismissed the applicant's request for the annulment of the 21 March 2003 decision (*contestație în anulare*). The court noted that the applicant lost the right to administer the company's assets when the insolvency proceedings started, and therefore he no longer had standing in the proceedings.

In a final decision of 19 June 2007 the Bucharest Court of Appeal declared the appeal lodged by the applicant null and void, as the latter failed to submit the reasons for appeal within the time-limit set by law.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION (LENGTH OF PROCEEDINGS)

22. The applicant complained that the length of the second set of criminal proceedings instituted against him had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

23. The Government contested that argument.

A. Admissibility

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

B. Merits

25. Both parties sent observations on the merits of the complaint.

26. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

27. On the facts of the case, it notes that the period to be taken into consideration began on 12 February 1998 and ended on 3 December 2008. It thus lasted almost eleven years for three levels of jurisdiction.

28. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Stoianova and Nedelcu v. Romania*, nos. 77517/01 and 77722/01, § 26, ECHR 2005-VIII; and *Soare v. Romania*, no. 72439/01, § 29, 16 June 2009).

29. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

In particular, the Court notes that on 24 October 2002, after it had been already pending for almost four years and had been examined by three

courts, the case was sent back to the first-instance court for a fresh examination. This referral was not imputable to the applicant. Furthermore, the protraction caused by the defence was not significant in comparison to the delays caused by procedural faults and does not render the applicant's behaviour abusive (see, *a contrario*, *Bican v. Romania*, no. 37338/02, § 72, 22 September 2009).

30. Having regard to the above arguments and its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLES 6 § 1 (ACCESS TO COURT) AND 1 OF PROTOCOL No. 1

31. Under Article 6 § 1 of the Convention the applicant complained about the lack of access to court in the insolvency proceedings initiated against his company, arguing that the 21 March 2003 interlocutory judgment had not been served on him and therefore he could not object to it. He also complained that he had incurred loss as result of the winding up of his company, in violation of Article 1 of Protocol No. 1 to the Convention.

32. Both parties presented observations on the matter.

33. In particular, the Government raised an objection of lack of victim status, arguing that the applicant was not party to the insolvency proceedings and was not the sole shareholder of the company.

34. Based on the evidence in the file, the Court considers that the objection is not founded, in so far as the applicant was the only shareholder and administrator of the company and there were no conflicting interests between him and the company.

35. As for the merits of the complaint raised under Article 6, the Court reiterates at the outset that limitations on the capacity of the shareholder to take action during the winding up proceedings represent a legitimate restriction of his right to a court, in so far as it protected the rights of the company's creditors (see *Marini v. Albania*, no. 3738/02, §§ 115-117, ECHR 2007-XIV (extracts)).

On the facts of the present case, the Court notes that the applicant empowered A.I. to administer the company (see paragraph 17 above) and that A.I. participated in the winding up proceedings. Moreover, an appeal could have been lodged against the decision of 8 December 2000 by means of which the company was placed under judicial administration and the applicant lost his administration rights. However, neither the applicant nor A.I. or their counsel lodged that appeal. After the decision of 8 December 2000 had become final, the applicant lost all possibility to control the company during the winding up process.

36. As for the alleged loss under Article 1 of Protocol No. 1, the Court notes that the company's possessions were sold by the liquidator, which is a normal step during the winding up, and it serves the purpose of covering the company's debts. In any case, as the applicant failed to contest the 8 December 2000 decision, he lost any possibility to control the company's possessions. The loss allegedly incurred is not imputable to the State.

37. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

38. Under Article 5 of the Convention, the applicant complained about his arrest and continuing detention for eight years without being convicted by means of a final decision.

39. Under Articles 6 §§ 1 and 3 (a) and 13 of the Convention he complained of lack of a fair trial and non respect of the rights of the defence as well as about the length of the first set of criminal proceedings; in particular he complained about the changes in the composition of the courts and about the way the courts assessed the evidence.

40. Under Article 1 of Protocol No. 4 to the Convention, the applicant argued that he had been convicted and imprisoned for a commercial debt.

41. The Court has examined the remainder of the applicant's complaints.

However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed 67,291,937 euros (EUR) in respect of pecuniary damage, representing the value of his company's assets, his investments from 1994 to 1998 and the loss of profit. He also claimed

EUR 900,000 in respect of non-pecuniary damage, representing his salary during detention, reparation for the actual time spent in detention and for the suffering caused by the death of his wife while he was in detention.

44. The Government contested these claims and considered that they were exaggerated and lacked the causal link with the alleged violations.

45. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it acknowledges that the applicant suffered distress as a result of the length of the criminal proceedings against him and ruling on an equitable basis, it awards him EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

46. The applicant also claimed EUR 110,000 for the costs and expenses incurred before the Court. He produced invoices of 4,287.07 Romanian Lei (RON) paid for sending letters to the Court, RON 1,787.6 for translations and RON 187.6 for copying documents.

47. The Government contested the claim.

48. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,500 for the proceedings before the Court.

C. Default interest

49. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the second set of criminal proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

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:

(i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; and

(ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, for costs and expenses;

(b) that the above amounts are to be converted into the respondent State's national currency at the rate applicable at the date of settlement;

(c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President