



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

THIRD SECTION

CASE OF MIHAI TOMA v. ROMANIA

(Application no. 1051/06)

JUDGMENT

STRASBOURG

24 January 2012

FINAL

24/04/2012

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

In the case of Mihai Toma v. Romania,

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

Josep Casadevall, *President*,

Alvina Gyulumyan,

Egbert Myjer,

Ineta Ziemele,

Luis López Guerra,

Mihai Poalelungi,

Kristina Pardalos, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 4 January 2012,

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

PROCEDURE

1. The case originated in an application (no. 1051/06) 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 Mihai Toma (“the applicant”), on 12 December 2005.

2. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan Horațiu Radu, of the Ministry of Foreign Affairs.

3. As Mr Corneliu Bîrsan, the judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court), the President of the Chamber appointed Mr Mihai Poalelungi to sit as *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court).

4. The applicant alleged, in particular, a violation of his rights guaranteed by Articles 6 and 7 of the Convention, in so far as his driving licence had been annulled almost ten years after the events that could have given rise to that measure, and in application of a law that was not available at the time of the events.

5. On 12 May 2010 the President of the Third Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1948 and lives in Târgu-Jiu.

7. On 2 December 1995 the applicant was stopped by police for drink-driving. The police informed him on the spot that his right to drive on the public roads was suspended for ninety days. The driving licence was not physically removed from the applicant's possession.

8. On 13 February 1996 the applicant was stopped by police while driving a car and was committed to trial for the offence of driving on public roads while his driving licence was suspended under Article 36 § 2 of Decree no. 328/1966 on driving on public roads ("Decree no. 328/1966").

9. In a decision of 5 June 1997 the Târgu-Jiu District Court convicted the applicant of that offence and imposed on him a criminal fine of 80,000 Romanian lei (ROL) and ordered him to pay ROL 40,000 in costs. It also informed the applicant that if he did not comply with the payment order the fine could be converted into a prison sentence (Article 63 of the Criminal Code). The decision became final, as the parties did not appeal against it.

10. On 15 December 2004 the applicant went to Gorj Road police station to ask for his old driving licence to be replaced with the new model, in accordance with the new requirements in the matter. On this occasion, the police withdrew his driving licence and informed him that it would be annulled, as the applicant had been stopped for drink-driving in 1995.

11. On the same day the police informed the applicant that under Article 101 § 1 (b) of Emergency Ordinance no. 195/2002 his driving licence had been annulled with effect from 9 December 2004. His objection to the annulment was dismissed by Gorj County Police on 25 January 2005.

12. On 10 March 2005 the applicant appealed before the Gorj County Court, seeking the revocation of the annulment order.

13. In a decision of 15 April 2005 the County Court (Administrative Law Section) allowed the action for the following reasons:

"Indeed, in the judgment of 5 June 1997 of the Târgu-Jiu County Court ... the [applicant] was sentenced to pay a fine of ROL 80,000 ... and under Emergency Ordinance no. 195/2002, the driving licence stood to be annulled if the driver was convicted of a traffic offence ...

Under Article 126 (c) of the Code of Criminal Procedure, the enforcement of the criminal fine becomes statute-barred after three years; therefore the annulment of the driving licence, being a subsidiary penalty (*pedeapsa accesorie*), becomes statute-barred at the same time as the main penalty.

The time-limits are counted from the date when the events occurred, therefore ... the penalty is at present statute-barred.”

14. The Gorj County Police appealed, and in a final decision of 12 July 2005 the Craiova Court of Appeal (Administrative Law Section) reversed the judgment and dismissed the applicant’s initial action, giving the following grounds:

“The annulment of the driving licence is not a subsidiary penalty, as the first-instance court wrongly considered; it represents an administrative measure with distinct rules applicable to it that can only be imposed by the police.

Decree no. 328/1966 and Emergency Ordinance no. 195/2002 do not provide a time-limit for the application of this measure; moreover, in the applicant’s case the measure is applied automatically, as he was criminally convicted for a traffic offence.”

II. RELEVANT DOMESTIC LAW

15. Article 36 § 2 of Decree no. 328/1966 on driving on public roads criminalises the offence of driving on public roads with a suspended driving licence. The same Act provides that a driving licence may be annulled if its owner has been convicted of a criminal offence under the regulations on driving on public roads (Article 42 § 2). The annulment is decided by the Head of the County Police once the criminal decision is final (Articles 42 § 3 and 43).

16. Decree no. 328/1966 was abolished by Emergency Ordinance no. 195/2002, which entered into force on 1 February 2003, and which in its Article 101 § 1 (b) made the annulment of the driving licence automatic. This Act was amended on several occasions, but the relevant provision was in place on the date when the final decision was rendered in the case at hand.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

17. The applicant complained about the annulment of his driving licence. He relied on Article 6 of the Convention. The Court considers that the application may raise an issue under Article 7 of the Convention. It reiterates that it is master of the characterisation to be given in law to the facts and as it could decide to examine the complaint submitted to it under

more than one of the Convention's provisions (see *Scoppola v. Italy* (no. 2) [GC], no. 10249/03, § 54, ECHR 2009-...).

Article 7 of the Convention reads as follows:

“1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.”

A. Admissibility

18. The Government contended that the measure imposed on the applicant did not constitute a “penalty” within the meaning of Article 7 and that therefore the complaint was incompatible *ratione materiae* with the provisions of the Convention.

19. The applicant contested the Government's position.

20. The Court reiterates that the concept of a “penalty” in Article 7 of the Convention is, like the notions of “civil rights and obligations” and “criminal charge” in Article 6 § 1, an autonomous Convention concept. The starting-point in any assessment of the existence of a penalty is whether the measure in question is imposed following conviction for a “criminal offence”. Other factors that may be taken into account as relevant in this connection are the nature and purpose of the measure in question; its characterisation under national law; the procedures involved in the making and implementation of the measure; and its severity (see *Welch v. the United Kingdom*, 9 February 1995, §§ 27-28, Series A no. 307-A).

21. The Court has established in the case *Maszni v. Romania* (no. 59892/00, § 66, 21 September 2006) that although the annulment of a driving licence is regarded by the national law as an administrative measure, it constitutes rather a criminal matter for the purpose of Article 6 of the Convention, in so far as its severity gives it a punitive and dissuasive character pertaining to criminal sanctions (see also *Welch*, cited above, § 28; and *Nilsson v. Sweden* (dec.), no. 73661/01, 13 December 2005).

The measure at issue in the present case should thus be seen as a criminal penalty for the purpose of Article 7.

22. It follows that the exception raised by the Government is inadmissible (see also *Welch v. the United Kingdom*, 9 February 1995, § 28, Series A no. 307-A).

23. The Court also 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

24. The applicant argued that the Court of Appeal had breached his Convention rights as it had disregarded the statute of limitations in respect of the implementation of the measure taken against him.

25. The Government contested that argument. They argued that the applicant should have been able to foresee that he risked the annulment of his driving licence as the measure was clearly prescribed both in the old law and in the new law and there was no time-limit for the authorities to apply that measure. Therefore, they disagreed with the applicant's claims that a heavier penalty had been imposed on him because of the application of the new law.

2. The Court's assessment

26. The Court makes reference to the well-established principles developed in its case-law in the context of Article 7 of the Convention (see, notably, *Kokkinakis v. Greece*, 25 May 1993, § 52, Series A no. 260-A; *Dragotoniu and Militaru-Pidhorni v. Romania*, nos. 77193/01 and 77196/01, §§ 33-38, 24 May 2007; *Kafkaris v. Cyprus* [GC], no. 21906/04, §§ 139-141, ECHR 2008-...; *Sud Fondi S.r.l. and Others v. Italy*, no. 75909/01, §§ 105-110, 20 January 2009; and *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, §§ 92-109, 17 September 2009). It reiterates that Article 7 of the Convention requires that an offence must be clearly defined in law, that the law must be predictable and foreseeable and both prohibit the retrospective application of the more stringent criminal law to the detriment of the accused and guarantee the retrospective application of the more lenient criminal law (*Scoppola (no. 2)*, cited above, §§ 93 and 109).

27. In the instant case, the Court notes that under the Emergency Ordinance the annulment of the driving licence was no longer left to the police's discretion, but became automatic for cases like the applicant's (contrast *Coëme and Others*, cited above, § 149; *mutatis mutandis*, *Jamil v. France*, 8 June 1995, § 32, Series A no. 317-B; and *M. v. Germany*, no. 19359/04, §§ 127-128, 17 December 2009).

28. It follows that in applying the new law the authorities deprived the applicant of the possibility not to have this measure taken against him, a possibility that had been opened on the date when he had committed the acts in issue.

29. Given the passage of time between the date of the acts and the imposition of this penalty, as well as the lack of any action by the police during this time, it is reasonable to expect that the applicant was comforted by the thought that the police had decided not to annul his driving licence.

30. In addition, the Court notes the lack of any mention in the new law as to the possibility of retroactive application. Therefore, the applicant could not have foreseen that the new law might be applied to him.

31. It follows that in automatically imposing this penalty, ten years after the facts, by virtue of a new law which lacked foreseeability, the authorities (the police and the courts) made the applicant's situation worse and thus breached the principle of non-retrospective application of criminal law to the detriment of the accused.

There has accordingly been a violation of Article 7 of the Convention.

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

32. The applicant complained that the Court of Appeal had made an erroneous interpretation of the applicable laws, in contravention of his right to a fair trial as provided for in Article 6 § 1 of the Convention.

33. Both parties submitted observations on this complaint.

34. Having regard to the finding relating to Article 7 of the Convention (see paragraph 31 above), the Court considers that this complaint is admissible, but that it is not necessary to examine whether, in this case, there has been a violation of Article 6 of the Convention (see, among other authorities, *Bota v. Romania*, no. 16382/03, § 59, 4 November 2008).

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

35. The applicant lastly complained that the final decision of 12 July 2005 had infringed his property rights guaranteed by Article 1 of Protocol No. 1 to the Convention.

36. 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 enshrined in Article 1 of the Protocol.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant considered that he had incurred both pecuniary and non-pecuniary damage and asked the Court to decide the amount.

39. The Government asked the Court not to award damages to the applicant as he had failed to quantify and substantiate his claims, as required by Rule 60 of the Rules of Court.

40. The Court notes that the applicant did not make a quantified request for pecuniary damages and failed to substantiate such a claim. It therefore rejects the claim made in respect of pecuniary damage. However, it awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

41. The applicant did not claim any amount under this head.

C. Default interest

42. 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 complaints concerning Articles 6 § 1 and 7 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 7 of the Convention;
3. *Holds* that there is no need to examine the complaint under Article 6 § 1 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros), to be converted into the respondent State's national currency at the rate applicable on the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;

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

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

Done in English, and notified in writing on 24 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President