



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

THIRD SECTION

CASE OF STOIANOVA and NEDELICU v. ROMANIA

(Applications nos. 77517/01 and 77722/01)

JUDGMENT

STRASBOURG

4 August 2005

FINAL

04/11/2005

In the case of Stoianova and Nedelcu v. Romania,

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

Mr B. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr C. BÎRSAN,

Mrs M. TSATSA-NIKOLOVSKA,

Mrs R. JAEGER,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 5 July 2005

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

PROCEDURE

1. The case originated in two applications (nos. 77517/01 and 77722/01) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Romanian nationals, Mr Dorel Stoianova and Mr Claudiu Nedelcu (“the applicants”), on 4 April 2001.

2. The applicants were represented by Mr I. Lazar, a lawyer practising in Bucharest. The Romanian Government (“the Government”) were represented by their Agent, Mrs R. Rizoiu, Under-Secretary of State.

3. On 3 February 2004 the Court decided to join the applications, declared them partly inadmissible and communicated to the Government the complaint regarding the length of the proceedings. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits at the same time as the admissibility.

THE FACTS

A. The circumstances of the case

4. The applicants were born in 1974 and 1975 respectively and live in Bucharest.

1. The initial criminal proceedings against the applicants

5. Following an incident on 17 March 1993 in which C.D. was robbed of some gold jewellery after being set upon and thumped by a group of people, the applicants were arrested and remanded in custody on 14 April 1993.

6. In an indictment of 10 June 1993 issued by the public prosecutor's office at the Bucharest Court of First Instance, the applicants were committed for trial on a charge of robbery, an offence punishable under Article 211 § 1 of the Criminal Code.

7. By a judgment of 24 November 1993, they were acquitted and released. The court held that the facts in respect of which they had been prosecuted could not be attributed to them.

8. The prosecution appealed. The Bucharest County Court gave judgment on 12 July 1994 holding that the steps taken by the prosecution in the criminal proceedings were null and void. It therefore set the judgment of 24 November 1993 aside and referred the case back to the public prosecutor's office. It noted, in particular, that the steps taken by the prosecution against the applicants had been taken in the absence of a lawyer and that, furthermore, the prosecution had omitted to question certain witnesses during the investigation and had failed to examine a number of essential facts that could have led to the identification of the perpetrators of the incident that had occurred on 17 March 1993.

9. That decision became final after being upheld by the Bucharest Court of Appeal in a judgment of 27 October 1994. Subsequently, the criminal proceedings were reopened by the public prosecutor's office at the Bucharest Court of First Instance.

10. In an order of 11 November 1997, the prosecutor N.O. decided to discontinue the proceedings. In his order he stated that, although the facts of which the victim, C.D., had complained had actually happened, it could not be proved beyond all doubt that the responsibility lay with the applicants. The prosecutor also pointed out that a long period of time had elapsed since the incident in question and ordered the police to take no further action in the case.

11. The prosecution served that decision on the applicants, at their request, by letters dated 11 March and 4 December 1998 respectively.

2. The reopening of the criminal proceedings

12. On 12 May 1999 the Principal Public Prosecutor at the Bucharest County Court set aside the order of 11 November 1997 and, relying on Articles 220 and 270 of the Code of Criminal Procedure, ordered the proceedings to be reopened against the applicants for robbery and inciting third parties to give false evidence, offences punishable under Articles 211 and 260 of the Criminal Code respectively. The public prosecutor's office

considered that the decision of the hierarchically lower public prosecutor's office had been inconsistent with the evidence on the file and that, furthermore, the prosecution had been incomplete because various steps had not been taken, such as bringing the presumed perpetrators face to face in the presence of their lawyers and taking evidence from certain witnesses.

13. On 26 May 2000 a police officer who had investigated the charges brought against the applicants asked the prosecuting authorities to stop the prosecution.

14. On 9 February 2001 the prosecuting authorities sent the investigation file back to the same police authority. No procedural steps were taken between 27 April and 30 November 2001. On 14 January 2002 the police referred the case to the public prosecutor's office at the Bucharest Court of First Instance, which referred it back to the police authority on 17 October 2002 for them to continue the investigation in respect of the applicants.

15. On a number of occasions in 2003 and 2004, the prosecuting authorities summoned the applicants, the injured party and several witnesses for questioning in relation to the incident that had occurred on 17 March 1993 (see paragraph 5 above). The documents provided show that the witnesses refused to comply with the summons on the ground that they could no longer recall the matters about which the prosecution wanted to question them.

16. In an order of 21 April 2005, the public prosecutor's office noted that the special limitation period for prosecuting the applicants, which was twelve years having regard to the maximum sentence for which they were liable for robbery, had expired on 17 March 2005. It accordingly ordered the criminal proceedings to be discontinued.

B. Relevant domestic law

17. The Code of Criminal Procedure contains the following relevant provisions:

Article 220

“Where the prosecutor finds that a procedural step or measure taken in the course of the criminal investigation is not in conformity with the law, he shall invalidate it by a reasoned order.”

Article 270

“The investigation shall be resumed in the event of ... reopening of the criminal proceedings.”

Article 273

“1. The prosecutor may order criminal proceedings to be reopened if, subsequent to a decision discontinuing the proceedings, it is established that the ground on which his earlier decision was based did not actually exist or no longer exists.

2. Proceedings shall be reopened following an order of the prosecutor to that effect.”

THE LAW

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

18. The applicants alleged that the length of the proceedings instituted against them on 14 April 1993 had breached the “reasonable time” requirement prescribed by Article 6 § 1 of the Convention, which provides:

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

19. The Government did not dispute that submission and left the matter to the Court's discretion. Relying on the Court's case-law, they maintained, however, that the period to be taken into consideration had begun to run on 12 May 1999, when the proceedings were resumed against the applicants, and had therefore lasted approximately six years.

20. The Court notes that the criminal proceedings against the applicants comprised two separate phases. The first began on 14 April 1993, when they were arrested and remanded in custody, and ended on 11 November 1997 when the prosecutor N.O. made an order discontinuing the proceedings. The second phase began on 12 May 1999, when the prosecution ordered the proceedings to be reopened, and ended on 21 April 2005 when the prosecution ordered the proceedings to be discontinued.

21. The Court cannot accept the Government's contention that the first phase should not be taken into account for the purposes of Article 6 § 1. It considers that the order discontinuing the proceedings made by the prosecutor N.O. on 11 November 1997 cannot be regarded as having terminated the proceedings against the applicants because it was not a final decision (contrast *Löffler v. Austria*, no. 30546/96, § 19, first sub-paragraph *in fine*, 3 October 2000). It has to be said in that connection that, under Article 270 of the Code of Criminal Procedure, the prosecution had the power to set aside an order discontinuing the proceedings and reopen a criminal investigation without being bound by any time-limit.

There was not merely a theoretical possibility that the prosecution would pursue the charge (contrast *Withey v. the United Kingdom* (dec.), no. 59493/00, ECHR 2003-X): it was open to the prosecution to reopen the criminal investigation without having to seek leave from any domestic court that would have been obliged to consider the application according to certain criteria, including the fairness of reopening the case and whether an excessive period had passed since the decision discontinuing the investigation (contrast *Withey*, cited above). In that connection the Court cannot disregard the fact that prosecutors in Romania, acting as members of the Procurator-General's Department, did not satisfy the requirement of independence from the executive (see *Vasilescu v. Romania*, judgment of 22 May 1998, *Reports of Judgments and Decisions* 1998-III, p. 1075, §§ 40-41, and *Pantea v. Romania*, no. 33343/96, §§ 238-39, ECHR 2003-VI).

Furthermore, the criminal proceedings were ordered to be reopened on the ground that the initial investigation had been incomplete (see paragraph 12 above). The applicants were not responsible for those shortcomings on the part of the authorities and should not therefore be put at a disadvantage as a result of them.

Lastly, the Government have not in any way shown that resurrecting a charge that had been dropped by an order of the prosecutor was an exceptional step (contrast *Withey* cited above).

22. The period that the Court must take into account in examining compatibility with the requirements of Article 6 § 1 therefore lasted from 20 June 1994, when recognition by Romania of the right of individual petition took effect, until 11 November 1997, and from 12 May 1999 until 21 April 2005. It therefore lasted nine years and four months in total.

A. Admissibility

23. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It notes further that no other ground for declaring it inadmissible has been established.

B. Merits

24. 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 regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). It also reiterates that one of the purposes of the right to trial within a reasonable period of time is to protect individuals from “remaining too long in a state of

uncertainty about their fate” (see *Stögmüller v. Austria*, judgment of 10 November 1969, Series A no. 9, p. 40, § 5).

25. The Court has on many occasions examined cases raising questions akin to the one in issue here and concluded that there had been a breach of Article 6 § 1 (see *Pélissier and Sassi*, cited above).

26. After examining all the evidence submitted to it, the Court considers that the Government have advanced no fact or argument justifying a different conclusion in the present case. Having regard to 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.

Accordingly, there has been a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicants claimed 100,000 United States dollars each in respect of the non-pecuniary damage they had sustained as a result of the unlawfulness of their pre-trial detention and the length of the proceedings against them.

29. The Government regarded those claims as excessive.

30. The Court notes that in the instant case the only basis for awarding just satisfaction lies in the fact that the length of the proceedings against the applicants was excessive and did not satisfy the “reasonable time” requirement (see paragraph 26 above). The Court considers that the applicants undoubtedly sustained non-pecuniary damage. Making its assessment on an equitable basis, it awards each of them 3,500 euros under this head.

B. Default interest

31. 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 remainder of the applications admissible;
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 each of the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (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;
4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in French, and notified in writing on 4 August 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
RegistrarPresident

Boštjan ZUPANČIČ