



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

SECOND SECTION

CASE OF ALIUTA v. ROMANIA

(Application no. 73502/01)

JUDGMENT

STRASBOURG

11 July 2006

FINAL

11/10/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Aliuță v. Romania,

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr R. TÜRMEŢEN,

Mr C. BÎRSAN,

Mr M. UGREKHELIDZE,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĖ, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 20 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 73502/01) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian national, Mr Gheorghe Aliuță (“the applicant”), on 14 August 2000.

2. The Romanian Government (“the Government”) were represented by their Agent, Mrs Roxana Rizoiu, succeeded by Mrs Beatrice Rămăşcanu, from the Ministry of Foreign Affairs.

3. On 23 March 2004, the Court decided to communicate the complaint concerning the length of the proceedings to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

4. The applicant was born in 1959 and lives in Romania.

5. On 30 September 1997, the applicant was placed in police custody on charges of robbery, and informed that an investigation had been opened against him by the prosecutor attached to the Supreme Court of Justice. On 24 October 1997, the prosecutor committed the applicant for trial before the Bucharest County Court.

6. The Bucharest County Court acquitted the applicant in a judgment of 2 December 1998, upheld, on 9 June 1999, by the Bucharest Court of Appeal. However, in a final decision of 21 March 2000, the Supreme Court of Justice reversed the judgment, convicted the applicant and sentenced him

to four years and six months' imprisonment. He was detained from 30 September 1997 to 10 February 1998 and again from 14 April 2000 to 19 February 2001.

7. On April 2001, the Procurator-General, following the applicant's request, lodged an extraordinary appeal with the Supreme Court of Justice to have the final decision of 21 March 2000 quashed ("*recurs în anulare*").

8. On 8 October 2001, the Supreme Court of Justice allowed the extraordinary appeal. It quashed the final decision of 21 March 2000, the decision of 9 June 1999 and the judgment of 2 December 1998 and sent the case back to the prosecutor to continue the investigations. It held that the evidence adduced in the case was contradictory and needed further clarification before the case could be tried by the courts.

9. In a decision of 10 July 2002, the prosecutor attached to the Supreme Court of Justice closed the criminal investigations against the applicant. On 23 May 2003, the same prosecutor informed the applicant that he had reversed his previous decision and reopened the criminal investigations in the case.

10. On 18 March 2004 the prosecutor again committed the applicant for trial before the Bucharest County Court, which acquitted the applicant in a judgment of 15 December 2005.

11. The prosecutor attached to the Bucharest County Court appealed against this judgment to the Bucharest Court of Appeal, where the case is still pending today.

12. In a judgment of 26 June 2003, the Bucharest County Court dismissed as premature a civil action lodged by the applicant against the State through its Ministry of Finances, seeking damages for his arrest, which he judged to have been illegal. It appears from the file that the applicant did not appeal against this judgment.

THE LAW

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

13. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, provided 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..."

14. The Government contested that argument. They considered that there had been two different sets of proceedings, the first which had started on 30 September 1997 and had ended on 31 March 2000 and the second

which had begun to run on 8 October 2001 and is pending to date. In their view, the Court should assess them separately and find that they both meet the requirements set forth in the case-law as regards the length of proceedings.

15. The Court cannot agree with the Government's view that the two sets of proceedings should be assessed separately. It recalls that in its decision of 8 October 2001, the Supreme Court of Justice quashed all previous judgments and sent the case back to the prosecutor to continue the investigations. Hence, it set at naught all judicial proceedings in the case. Thus, more than four years after the date on which the applicant was first informed of its existence (that is 30 September 1997), the case was at the same stage as it was when the proceedings started.

The Court observes that the delay in the proceedings seems to have been caused mainly by the failings of the judicial authorities, in so far as the decisions adopted had to be quashed and the case sent back to the prosecutor to continue the investigations. Nothing indicates that the applicant contributed significantly to the protraction of the case.

16. However, the Court considers it appropriate to take into account only the periods when the case was actually pending before the courts, that is the periods when there was no effective judgment and when the authorities were under an obligation to pass such a judgment (see, *mutatis mutandis*, *Rudan v. Croatia* (dec.), no. 45943/99, 13 September 2001; *Markin v. Russia* (dec.), no. 59502/00, 16 September 2004). Therefore, in the present case, it will not take into account the period between the final decision of 21 March 2000 and 8 October 2001, when the Supreme Court allowed the extraordinary appeal (see, *mutatis mutandis*, *Yaroslavtsev v. Russia*, no. 42138/02, § 22, 2 December 2004, and *Klyakhin v. Russia*, no. 43082/99, § 91, 30 November 2004).

The Court will also disregard the period between the two decisions of the prosecutor, that of 10 July 2002, which closed the criminal investigations against the applicant and that of 23 May 2003, which reopened the investigations, since the applicant was not under criminal charges during that period (*Stoianova and Nedelcu v. Romania*, nos. 77517/01 and 77722/01, § 20, 4 August 2005).

17. Accordingly, the period under consideration goes from 30 September 1997 to 21 March 2000, from 8 October 2001 to 10 July 2002 and from 23 May 2003 to date, the proceedings being still pending before the Bucharest Court of Appeal. They have thus lasted so far more than six years and four months.

Six courts examined the applicant's case during this time, corresponding to three degrees of ordinary jurisdiction and one extraordinary appeal.

A. Admissibility

18. 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

19. 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 that of the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II)

20. 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 *Pélissier and Sassi*, cited above).

21. 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. 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.

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

II. OTHER COMPLAINTS

22. The applicant further complained about the unfairness of the proceedings as his rights of defence had not been observed, and alleged that the presumption of his innocence had been infringed. The Court recalls that the question of whether court proceedings have been fair, as required by Article 6 § 1, can only be answered by examining the proceedings as a whole, i.e., only once they have been concluded (see *H. v. France*, judgment of 24 October 1989, Series A no. 162 A, p. 23, § 61 and *Vass v. Hungary*, no. 57966/00, § 47, 25 November 2003).

23. The Court finds that, as the applicant’s case is still pending before the Bucharest Court of Appeal, these complaints are premature and must be rejected under 35 §§ 1 and 4 of the Convention.

24. Lastly, the applicant complained that the Bucharest County Court rejected on 26 June 2003 his civil claims for compensation for unlawful detention. It appears from the file that the applicant did not appeal against the judgment of 26 June 2003.

25. The Court reiterates that the object of the rule on exhaustion of domestic remedies is to allow the national authorities (primarily the judicial authorities) to address allegations made of a violation of a Convention right and, where appropriate, to afford redress before those allegations are submitted to the Court (see *Azinas v. Cyprus* [GC], no. 56679/00, § 38, 28 April 2004; and *Kudla v. Poland* [GC] no. 30210/96, § 152, ECHR 2000-XI).

Moreover, nothing in the present case indicates that the appeal against the civil judgment of the County Court would not have been effective. The applicant should, thus, have exhausted that remedy before lodging the complaint with the Court.

26. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. 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 applicant claimed 200,000 euros (EUR) in respect of non-pecuniary damage. He did not claim any specific sum for costs and expenses, asserting that he had not kept the receipts that would justify them.

29. The Government contested these claims.

30. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 1,200 under that head.

31. It further recalls that according to the Court’s case-law, an applicant is entitled to reimbursement of his 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 information in its possession and the above criteria, the Court does not make an award under this head.

B. Default interest

32. 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

1. *Declares* unanimously the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* by six votes to one that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* by six votes to one
 - (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, EUR 1,200 (one thousand two hundred euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, 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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mrs Fura-Sandström is annexed to this judgment.

J.-P. C.
S.H.N.

DISSENTING OPINION OF JUDGE FURA-SANDSTRÖM

I voted against the majority, which found a violation of Article 6 § 1. In my view, there is no violation of Article 6 § 1 for the following reasons.

I agree with the Government's statement that there were two different sets of proceedings which should be evaluated separately. When doing that, I find that both sets of proceedings meet the requirements set forth in the Court's case-law as regards the length of proceedings in criminal cases.

Even assuming that the two sets of proceedings are to be assessed as one, as the majority has found, and taking into account only the periods when the cases were actually pending before the courts, I cannot find the length (to date more than six years and three months) excessive. Six courts examined the case, corresponding to three degrees of ordinary jurisdiction and one extraordinary appeal (see paragraph 17 of the judgment). Even if in my view the length so far (the proceedings are still pending) does meet the requirement of a "reasonable time", I do not exclude that there might be a problem in the future. However, this issue is premature.