



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

THIRD SECTION

CASE OF ROSENGREN v. ROMANIA

(Application no. 70786/01)

JUDGMENT

STRASBOURG

24 April 2008

FINAL

24/07/2008

This judgment may be subject to editorial revision.

In the case of Rosengren v. Romania,

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Corneliu Bîrsan,

Alvina Gyulumyan,

Egbert Myjer,

Ineta Ziemele,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 27 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 70786/01) 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 national of both Romania and Sweden, Mr Julian Rosengren (“the applicant”), on 17 August 2000.

2. The applicant, who had been granted legal aid, was represented by Mr J. Dufvenmark, a lawyer practising in Visby, Sweden. The Romanian Government (“the Government”) were represented by their Agent, Mr R.-H. Radu, from the Ministry of Foreign Affairs. The Swedish Government, to whom a copy of the application was transmitted, under Rule 44 § 1 (a) of the Rules of Court, did not exercise their right to intervene in the proceeding.

3. On 4 May 2006 the Court declared the application admissible in so far as it concerned the length of the criminal proceedings instituted against the applicant and the alleged infringement of his right to freedom of movement by the prohibition on leaving Bucharest. It declared the remainder of the application inadmissible.

4. On 6 July 2006 the applicant requested that an oral hearing be held in the case. However, based on the evidence in its possession, the Court considers that an oral hearing is not needed in the case. It therefore rejects the applicant's request.

THE FACTS

5. The applicant was born in 1954 and lives in Visby, Sweden. At the time of the events he was living in Romania.

6. On 4 February, 20 and 29 March 1993 the Romanian police took a statement from the applicant in connection with criminal complaints lodged against him by his business partners concerning alleged fraud.

7. On 13 April 1993 criminal proceedings against the applicant were opened and he was placed in police custody on charges of fraud through his business transactions.

The next day, the prosecutor attached to the Supreme Court of Justice ordered the applicant's remand in custody.

8. On 1 November 1993 the prosecutor attached to the Supreme Court of Justice committed the applicant for trial before the Bucharest County Court.

1. The criminal proceedings against the applicant

9. On 6 December 1993 the Bucharest County Court held the first hearing in the case. The applicant's lawyer asked for a rescheduling in order to prepare the defence. Several other hearings were scheduled for the taking of evidence. On several occasions the County Court postponed the case due to shortcomings in the summoning procedure.

On 15 November 1994 a witness's testimony was heard, in the presence of the applicant and his lawyer.

10. In a judgment of 29 November 1994, the County Court convicted the applicant of fraud, sentenced him to four years' imprisonment and awarded civil damages to the victims. It also ordered the applicant's expulsion, after having served the sentence, given his Swedish nationality.

11. On 11 May 1995 the Bucharest Court of Appeal allowed an appeal by the applicant and remitted the case to the County Court for a new trial on the merits. It found that the court of first instance had not clarified all the relevant facts and that it had not examined all the charges against the applicant, as formulated by the prosecutor on 1 November 1993.

12. Between 27 June 1995 and 21 January 2000 some forty hearings were scheduled before the Bucharest County Court, the case being repeatedly adjourned for failure to properly summon the parties, the absence of the parties or the absence of the prosecution file. On 30 April 1997 the case was adjourned in order to allow the applicant to hire a new lawyer.

The applicant filed motions for bias against the judges of the County Court on 20 November 1996, 18 June and 13 August 1997. They were all dismissed.

13. On 21 January 2000 the Bucharest County Court, after reassessing the evidence adduced in the case, again convicted and sentenced the applicant to four years' imprisonment, with an obligation to pay civil damages.

14. On 16 October 2000, upon an appeal by the applicant, the Bucharest Court of Appeal ended the trial, as the criminal charges against the applicant had become time-barred. After reassessing the evidence and based on its findings, the Court of Appeal recalculated the amount of civil damages to be awarded to the victims.

15. In a final decision of 12 March 2002, the Supreme Court of Justice, after reassessing the evidence in the case, dismissed an appeal on points of law by the applicant against the decision of 16 October 2000.

16. On 25 October 2002 the Procurator-General lodged an application with the Supreme Court of Justice to have the part of the final decision of 12 March 2002 concerning the expulsion order quashed (*recurs în anulare*).

In a final decision of 7 April 2003, the Supreme Court allowed the extraordinary appeal, quashed the part of the final decision of 12 March 2002 concerning the expulsion order and set aside that order on the ground that the applicant had never lost his Romanian citizenship, which would make his expulsion unconstitutional.

2. The obligation not to leave Bucharest

17. On 19 December 1995 the Bucharest County Court, upon the applicant's request, revoked the order for his arrest, but imposed on him an obligation not to leave the city, a precautionary measure provided for by the Romanian Code of Criminal Procedure (the "CCP").

18. On 27 February 1996 the applicant lodged with the Bucharest County Court a request to have this prohibition revoked. He argued that, if allowed to travel abroad for business purposes, the funds to pay the damages could be recovered more quickly. In a decision delivered on the same day, the County Court dismissed the request. It held that it was not necessary for the conduct of his business that the applicant travel abroad or to another town, since he could appoint a representative.

19. On 29 March 1996 the Bucharest Court of Appeal dismissed an appeal by the applicant against this decision. It held that, according to the CCP, the applicant could only challenge the prohibition when appealing against the decision on the merits of the case.

20. On 5 and 26 June, 11 September and 16 October 1996 the County Court rejected further requests from the applicant to have the measure lifted, without specifying reasons. On 18 December 1996 the County Court rejected a similar request on the ground that the circumstances that had led to the taking of the measure had not changed.

21. On 22 October 2001 the applicant left Romania of his own free will and took up residence in Sweden.

THE LAW

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

22. The applicant complained that the length of the 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 considered that the case had been rather complex and that the applicant had contributed significantly to its protraction, in particular by his absence from several hearings. Significant delays had been caused by the fact that witnesses had not appeared before the courts. On the other hand, there had not been long periods of inactivity attributable to the authorities.

24. The period to be taken into consideration began only on 20 June 1994, when the recognition by Romania of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of the proceedings at the time. Accordingly, at that date, sixteen months after the date of the first notification of the criminal investigation against the applicant, the case was pending before the court of first instance.

The period in question ended on 12 March 2002. The proceedings in the extraordinary appeal lodged subsequently by the Procurator-General and which aimed to have the final decision of 12 March 2002 quashed by the Supreme Court of Justice should not count towards the determination of the period relevant for the length complaint, as they do not concern “criminal charges” against the applicant, in so far as the appeal only concerned the expulsion order and not the merits of the charges against the applicant (see, *mutatis mutandis*, *Raimondo v. Italy*, judgment of 22 February 1994, Series A no. 281-A, p. 20, § 43).

The proceedings thus lasted nine years for three levels of jurisdiction, of which eight years are within the Court's *ratione temporis* competence. Five courts heard the case throughout this period.

25. 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, and 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).

26. 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).

Moreover, the Court has already found that, although it is not in a position to analyse the juridical quality of the case-law of the domestic courts, since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings discloses a serious deficiency in the judicial system. Moreover, this deficiency is imputable to the authorities and not the applicants (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003, and *Matica v. Romania*, no. 19567/02, § 24, 2 November 2006).

27. 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. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 4 TO THE CONVENTION

28. The applicant complained that the prohibition on leaving Bucharest imposed on him by the Bucharest County Court on 19 December 1995 had violated his right to freedom of movement guaranteed by Article 2 of Protocol No. 4 to the Convention, which reads as follows:

“1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.”

A. The parties' submissions

29. The Government noted that it had been at the applicant's request that the precautionary measure had been imposed on him after his release from pre-trial detention and that the measure had ended with the judgment of the Bucharest County Court of 21 January 2000, by virtue of Article 357 of the CCP.

30. While not disputing that the measure represented an interference with the applicant's freedom of movement, the Government stated that the measure was provided by law, followed the legitimate aim of ensuring the good administration of justice and was proportionate to the aim pursued, in so far as it had served exclusively as a temporary preventive measure to ensure the applicant's appearance before a competent legal authority pending the judgment of the case by the first-instance court.

Moreover, the fact that the applicant had been absent from several hearings after his release from custody reinforced the conclusion that the prohibition on his leaving Bucharest had been justified in the circumstances of the case.

31. In the applicant's view the prohibition on leaving Bucharest had put him in a harsher situation than that in which he had been while in detention during the judicial proceedings.

B. The Court's assessment

32. The Court notes from the outset that there is no dispute between the parties as to the fact that the prohibition on leaving Bucharest imposed on the applicant constituted an interference with his freedom of movement.

33. This interference breaches Article 2 of Protocol No. 4 unless it is "in accordance with law", pursues one of the legitimate aims set out in Article 2 §§ 3 and 4 of Protocol No. 4 and is, in addition, necessary in a democratic society to achieve the aim or aims in question (see *Fedorov and Fedorova v. Russia*, no. 31008/02, § 36, 13 October 2005; and *Ivanov v. Ukraine*, no. 15007/02, § 86, 7 December 2006). The Court reiterates that it is not in itself questionable that the State may apply various preventive measures restricting the liberty of an accused in order to ensure the efficient conduct of a criminal prosecution, in so far as such a measure, and in particular its duration, is proportionate to the aims sought (see, *mutatis mutandis*, *Nagy v. Hungary* (dec.), no. 6437/02, 6 July 2004; *Fedorov and Fedorova*, cited above, § 41; and *Petre v. Romania*, no. 71649/01, § 47, 27 June 2006).

34. In the case at hand, the interference was in accordance with law (Article 136 of the CCP; for a summary of the relevant law see *Rosengren v. Romania* (dec.), no. 70786/01, 4 May 2006) and pursued the legitimate

aims set out in Article 2 § 3 of Protocol No. 4, in particular, the prevention of crime and the protection of the rights and freedoms of others.

35. It remains to be assessed whether the interference was proportionate to the aims sought.

36. The Court has ruled on the compatibility with Article 2 of Protocol No. 4 of obligations restricting the applicant's freedom of movement in a series of cases where criminal proceedings were at stake. In particular, in the *Antonenkov and Others* case (see *Antonenkov and Others v. Ukraine*, no. 14183/02, §§ 59-67, 22 November 2005), where the length of such a restriction within the course of criminal proceedings was four years and ten months, the Court found no violation of Article 2 of Protocol No. 4. In the *Fedorov and Fedorova* case cited above (§§ 32-47), where the impugned obligation was imposed on the applicants for four years and three months, the Court found that in the circumstances of the case the restriction on the applicants' freedom of movement was not disproportionate.

However, in the *Ivanov* case (also cited above, § 96), the Court considered that a nearly eleven-year-long prohibition, of which about nine years were within the Court's *ratione temporis* jurisdiction, constituted a violation of the freedom of movement by its mere duration.

37. In the Court's view, the present application is closer to the *Ivanov* case than to the *Antonenkov and Others* and *Fedorov and Fedorova* cited above, in terms of both the duration of the impugned measure and the factual circumstances.

38. In the present application, the prohibition on leaving Bucharest was imposed on the applicant on 19 December 1995 and lasted until the end of the proceedings, on 13 March 2002, although the charges against the applicant became time-barred on 16 October 2000.

Moreover, although it appears from the file that the applicant did not encounter any difficulties in leaving Bucharest on 22 October 2001 (see paragraph 21 above), he was at no point informed by the authorities of a revocation of the prohibition (see also *Ivanov*, cited above, § 85). Moreover, the Court reiterates that in the case of *Raimondo v. Italy* it found a violation of Article 2 of Protocol No. 4 with regard to a five-month delay in drafting the grounds for a decision by means of which the domestic court revoked a measure that affected the applicant's rights under this Article, as well as an eighteen-day delay in communicating that decision to the applicant (see *Raimondo*, cited above, p. 19, § 39).

The measure in the present case thus lasted for six years and three months, a duration that can constitute in itself a violation of Article 2 of Protocol No. 4.

39. Furthermore the Court notes that the domestic courts did not give relevant reasons for taking or prolonging the measure, although the applicant repeatedly challenged it (see, *mutatis mutandis*, *Labita v. Italy*

[GC], no. 26772/95, §§ 152-153, ECHR 2000-IV). The Court considers that the absence of reasons in the domestic courts' decisions is increasingly jeopardising for the applicant's rights, as the necessity for imposing the restriction will inevitably diminish with the passage of time (see *Luordo v. Italy*, no. 32190/96, § 96, ECHR 2003-IX, and, *mutatis mutandis*, *Labita*, cited above, § 159).

40. For all these reasons, the Court concludes that a fair balance between the demands of the general interest and the applicant's rights has not been struck.

There has accordingly been a violation of Article 2 of Protocol No. 4 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. The applicant claimed the following sums in respect of pecuniary and non-pecuniary damage:

- 850,000 American dollars (USD) representing the loans he had to take in order to cover his daily expenses during the proceedings;
- USD 3,000,000 representing the damage caused to his business by the prohibition on leaving Bucharest;
- USD 800,000 to compensate for physical and mental suffering (including for diseases contracted), while in detention during the judicial proceedings;
- USD 4,000,000 in respect of non-pecuniary damage caused by his illegal arrest and the destruction of his reputation as a businessman in Romania;
- USD 100,000 in respect of non-pecuniary damage caused by his inability to see his family in Sweden during the prohibition on travelling; and
- USD 637,500 in respect of the damage caused to him, in his capacity as a foreign national, by the restriction on his freedom of movement.

43. The Government contested these claims. They considered that there was no causal link between the just satisfaction sought and the measures taken by the State against the applicant. In any case they considered that the

applicant had failed to substantiate his claims and had requested exorbitant amounts for non-pecuniary damage.

44. The Court reiterates that it found a violation of Article 6 of the Convention in respect of the length of the criminal proceedings and of Article 2 of Protocol No. 4 in so far as the prohibition on leaving the city unjustifiably infringed the applicant's right to freedom of movement. It does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

45. The applicant did not make any claims for the costs and expenses incurred before the domestic courts or before the Court. The Court recalls that the lawyer received EUR 701 in legal aid.

46. Regard having had to the situation above, the Court does not make an award under costs and expenses.

C. Default interest

47. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* that there has been a violation of Article 2 of Protocol No. 4 to 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, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the respondent State's national currency at the rate applicable at the date of settlement;
 - (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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President