



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

THIRD SECTION

CASE OF TASE v. ROMANIA

(Application no. 29761/02)

JUDGMENT

STRASBOURG

10 June 2008

FINAL

10/09/2008

This judgment may be subject to editorial revision.

In the case of Tase 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 Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 20 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 29761/02) 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 Cristian Tase (“the applicant”), on 30 July 2002.

2. The applicant, who had been granted legal aid, was represented by Mr Corneliu Teodor Bucur, a lawyer practising in Ploiești. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu, of the Ministry of Foreign Affairs.

3. On 25 October 2006 the Court decided to give notice of the application, under Article 5 §§ 1 (c), 3 and 5 of the Convention, to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1957 and lives in Ploiești.

5. The Ploiești police started an investigation into allegations that the applicant had stolen petroleum products from his employer, an oil company.

6. On 6 June 2002, the applicant was apprehended by the police.

On 7 June 2002 the prosecutor attached to the Prahova County Court issued an arrest warrant against the applicant for thirty days, until

6 July 2002. The prosecutor's order gave the following reasons for seeking the applicant's arrest:

"the offence is punishable by more than two years' detention, and [the applicant's] continued liberty represents a threat to *ordre public*."

7. On 4 July 2002 the applicant was brought before the County Court in order to have the lawfulness of his committal for trial and of his pre-trial detention verified. The applicant's lawyer requested that the detention order be set aside and the applicant released, arguing, in particular, that the arrest warrant was unlawful and that the measure of placing the applicant in pre-trial detention had been taken automatically and too easily, as there was no evidence that he had committed the offence in question.

8. On 4 July 2002 the Prahova County Court, considering that the reasons justifying the initial measure remained unchanged, ordered the applicant's detention in custody for thirty more days, namely until 5 August 2002. It noted that its decision was subject to appeal at the same time as the judgment on the merits of the case.

9. Four more hearings took place before the County Court. Each time the applicant's pre-trial detention was extended for similar reasons to those of 4 July 2002, until the judgment on the merits was delivered. No further grounds were given by the County Court.

10. On 9 October 2002 the Prahova County Court convicted the applicant of aggravated theft and imposed a one-year suspended sentence.

11. The applicant was released from custody on 10 October 2002.

12. The Supreme Court of Justice dismissed an appeal lodged by the applicant and upheld the County Court's judgment in a final decision of 7 July 2003.

13. Meanwhile, on 8 August 2002, the applicant was dismissed from his job in application of the Labour Code, as his detention had exceeded sixty days. He found a new job on 12 December 2004.

II. RELEVANT DOMESTIC LAW

14. The procedure for lodging complaints against preventive measures, including pre-trial detention, is described in Article 140¹ of the Code of Criminal Procedure (see *Anghelescu v. Romania* (dec.), no. 46430/99, 2 December 2003).

15. Under Article 141 of the Code of Criminal Procedure, only the decision whereby the court takes, sets aside, replaces or ends a preventive measure can be appealed against independently from the judgment on the merits of the case, and this must be done within three days of the date of the interlocutory judgment.

16. Persons who have been unlawfully detained can avail themselves of two actions for damages described in the Code of Criminal Procedure and in the Civil Code respectively.

17. The relevant Article of the Code of Criminal Procedure provides:

Article 504

“Anyone who has been convicted by a final decision is entitled to compensation from the State for any loss or damage sustained where, after a retrial, it is held in a judgment against which no appeal lies that he did not commit the offence in question or that no offence was committed.

Anyone against whom a preventive measure has been taken, and in whose favour a decision to discontinue proceedings or acquit has been given for the reasons listed in the preceding paragraph, also enjoys a right to compensation for damage sustained...”

18. In a decision of 10 March 1998, published on 18 May 1998 in the Official Journal, the Constitutional Court, to which an objection had been submitted alleging that the first paragraph of Article 504 of the Code of Criminal Procedure was unconstitutional, ruled as follows:

“Under Article 48 of the Constitution, the State is liable for damage caused by miscarriages of justice committed in criminal proceedings. It follows that the principle of the State’s liability towards victims of a miscarriage of justice in a criminal trial must be applied to all victims of such a miscarriage. ... The Court notes that the legislature has not brought the provisions of Article 504 of the Code of Criminal Procedure into conformity with those of Article 48 § 3 of the Constitution. ... Consequently, bearing in mind that Article 504 of the Code of Criminal Procedure provides for only two cases in which the State’s responsibility for miscarriages of justice committed in criminal proceedings may be engaged, it follows that this restriction is unconstitutional, since Article 48 § 3 of the Constitution does not allow for any such limitation.”

Article 504 has been modified by Law no. 281/2003. Its new version reflects the Constitutional Court’s decision above.

19. The relevant Articles of the Civil Code provide:

Article 998

“Anyone who, through his own fault, causes damage to another shall be liable to make reparation for it.”

Article 999

“Anyone who causes damage as a result of his own action, his failure to act or his negligence shall be liable for that damage.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

20. The applicant complained that he had been unlawfully arrested and kept in detention in the absence of any solid reasons and that he could not obtain compensation for his pre-trial detention in so far as the outcome of the criminal proceedings had been unfavourable to him. He invoked Article 5 §§ 4 and 5 of the Convention. The Court considers that the complaint falls within the scope of Article 5 §§ 1 (c), 3 and 5 of the Convention, which read as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

...

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

A. Lawfulness of the applicant’s arrest

21. The Court will examine under Article 5 § 1 (c) the applicant’s allegations that he was unlawfully arrested in the absence of any solid reasons.

1. Admissibility

22. The Government raised a plea of non-exhaustion of domestic remedies in so far as this complaint is concerned. In their view, the applicant should have appealed against the prosecutor's order of 7 June 2002 under Article 140¹ of the Code of Criminal Procedure. They contended that such a remedy was accessible, adequate and sufficient and therefore had to be exhausted.

23. The applicant claimed that the appeal would not have been effective in his case.

24. The Court reiterates that the judicial control of such detention must be automatic and cannot be made to depend on a previous application by the detained person (see, *mutatis mutandis*, *Aquilina v. Malta* [GC], no. 25642/94, § 49, ECHR 1999-III).

25. Consequently, notwithstanding the implications that the effectiveness of the complaint under Article 140¹ might have for the purpose of Article 5 § 4 of the Convention, the Court considers that the fact that the applicant failed to use it does not make his Article 5 § 1 (c) complaint inadmissible for non-exhaustion of domestic remedies.

It therefore dismisses the Government's objection.

26. 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.

2. Merits

27. The Government submitted that the prosecutor's order of 7 June 2002 had been in compliance with the national legislation in so far as it had stated the facts, the applicable law and the concrete reasons for taking the measure (Article 137 of the Code of Criminal Procedure). They noted that a prosecutor could order detention pending trial if the anticipated sentence for the offence exceeded two years and if the continued liberty of the accused person constituted a threat to *ordre public* (Article 148 (h) of the Code of Criminal Procedure).

28. The applicant alleged that, neither at the time of his arrest nor during the proceedings, had there been a reasonable suspicion that he had committed a crime.

29. The Court has already found that, contrary to the requirements of the national law, it was the Romanian prosecutors' standard practice not to give concrete reasons for an arrest, in particular in so far as the alleged danger to *ordre public* was concerned. The Court has previously concluded that there was a breach of Article 5 § 1 (c) for that reason (see, *mutatis mutandis*, *Pantea v. Romania*, no. 33343/96, §§ 222-223, ECHR 2003-VI (extracts), and *Rupa v. Romania* (dec.), no. 58478/00, § 94, 14 December 2004).

30. The Court notes that in the instant case the prosecutor also failed to give concrete reasons for the applicant's arrest.

Therefore, it will not depart from its previous case-law in the matter. It considers that the failure to comply with the "procedure prescribed by law" at the time of the applicant's arrest entailed a violation of Article 5 § 1 (c) of the Convention.

B. Extension of the applicant's pre-trial detention

31. The Court will examine under Article 5 § 3 the lawfulness of the orders repeatedly extending the applicant's pre-trial detention.

1. Admissibility

32. The Government averred that the complaint concerning the extension of the applicant's detention should also be declared inadmissible for non-exhaustion of domestic remedies, in so far as the applicant failed to appeal against each of the interlocutory judgments extending his detention pending trial. They contended that such a remedy was accessible, adequate and sufficient and therefore had to be used by the applicant. In this connection the Government furnished the Court with a number of decisions rendered by various county courts and courts of appeal around the country (but not by the Ploiești Court of Appeal) in which such appeals had been allowed.

33. Referring to the indications given by the domestic courts in the interlocutory judgments, the applicant asserted that he could only lodge an appeal at the same time as the appeal against the merits of the criminal case.

34. The Court reiterates that the only remedies which an applicant is required to exhaust are those that relate to the breaches alleged and which are at the same time available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see, among other authorities, *Navarra v. France*, judgment of 23 November 1993, Series A no. 273-B, p. 27, § 24, and *Aquilina*, cited above, § 39).

35. It notes that, according to the applicable law and its interpretation given by the courts in the case at hand, the applicant could only have appealed against the interlocutory judgments at the same time as an appeal on the merits of the case. However, the applicant was released from custody the day after the adoption of the judgment on the merits, which rendered such an appeal ineffective in the circumstances of the case.

36. The Court notes the case-law submitted by the Government to justify the effectiveness of this appeal. However, it observes that none of the decisions adduced was adopted by the Ploiești County Court or Court of

Appeal, the latter being the court that would have heard such an appeal by the applicant. Moreover, none of the decisions came from the High Court of Cassation and Justice. The Court therefore considers that, given that the law is silent on the point and no regulations have been issued by the High Court on the matter, the practice of some domestic courts is not sufficient to make such an appeal a remedy that should have been exhausted in the applicant's particular case.

For these reasons, the Court dismisses the Government's preliminary objection.

37. 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.

2. Merits

38. The Government submitted that the suspicions on which the prosecutor had initially based his opinion that the applicant should be remanded in custody had persisted throughout his pre-trial detention, which had been quite short - only four months and three days. While admitting that the County Court's interlocutory judgments might appear repetitive, the Government contended that they should be read in the light of all the material in the file before that court.

39. The applicant disagreed with the Government's submissions and alleged that the interlocutory judgments had not given any concrete arguments for extending his detention.

40. The Court reiterates that a person charged with an offence must always be released pending trial unless the State can show that there are "relevant and sufficient" reasons to justify the continued detention. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Sarban v. Moldova*, no. 3456/05, §§ 95 and 97, 4 October 2005, and *Castravet v. Moldova*, no. 23393/05, §§ 32-33, 13 March 2007). Quasi-automatic prolongation of detention contravenes the guarantees set forth in Article 5 § 3 (see *Mansur v. Turkey*, judgment of 8 June 1995, Series A no. 319-B, p. 50, § 55, and *Kalashnikov v. Russia*, no. 47095/99, §§ 116-118, ECHR 2002-VI).

41. In the present case the Court notes that the Ploiești County Court extended the applicant's detention five times by using the same formula and without giving details of the grounds for its decisions. The Court cannot agree with the Government that the lack of reasoning in the County Court's decisions was supplemented by the evidence in the file. It reiterates that it is only by giving a reasoned decision that there can be public scrutiny of the administration of justice (see *Suominen v. Finland*, no. 37801/97, § 37, 1 July 2003).

42. The foregoing considerations are sufficient to enable the Court to conclude that, given the lack of concrete reasons in the domestic court's decisions, the repeated extension of the applicant's detention pending trial infringed Article 5 § 3 of the Convention.

C. Access to compensation

1. Admissibility

43. Lastly, the applicant complained that he had been denied compensation for his detention pending trial.

44. The Government contended that Article 5 § 5 was inapplicable in the case in so far as the applicant had not allowed the domestic courts to establish the alleged unlawfulness of his detention.

45. The Court reiterates that Article 5 § 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4. The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the preceding paragraphs of Article 5 has been established, either by a domestic authority or by the Court (see *Stoichkov v. Bulgaria*, no. 9808/02, § 72, 24 March 2005).

46. The Court reiterates that in the present case it has found the applicant's pre-trial detention to have been in violation of Article 5 §§ 1 and 3 of the Convention. It has also concluded that the applicant had no effective remedy by which to challenge the lawfulness of his detention.

Therefore, the Court considers that Article 5 § 5 is applicable in this case.

47. The Court also 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.

2. Merits

48. The parties did not submit further comments on the merits of the complaint.

49. The Court notes that the applicant was unable to claim compensation as his detention has never been declared unlawful by the domestic courts. Accordingly, he could not avail himself of the procedure prescribed in Article 504 of the Code of Criminal Procedure and a claim under the general law of tort did not have a reasonable prospect of success.

50. In view of the foregoing, the Court concludes that Romanian law does not afford the applicant an enforceable right to compensation as required by Article 5 § 5 of the Convention.

There has accordingly been a violation of Article 5 § 5 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant claimed the following sums in respect of pecuniary damage:

- 13,000 euros (EUR) for the 130 days spent in detention;
- EUR 1,500 representing the salary that he did not receive while unemployed;
- EUR 1,500 for two operations and his hospitalisation from 10 October 2002 to 6 December 2002.

He also claimed EUR 50,000 in respect of non-pecuniary damage.

53. The applicant produced a copy of his employment record that showed that his salary before his dismissal on 8 August 2002 was 5,528,494 Old Romanian Lei (ROL) and that his new salary after December 2004 was comparable.

54. The Government contended that the applicant's claims were unsubstantiated and excessive.

55. The Court notes that in August 2002 the applicant was dismissed because of his detention which it has found to have been unlawful. Therefore, the loss of income from 8 August to 10 October 2002 was caused by his unlawful detention. However, no causal link between the violation found and the other claims in respect of pecuniary damage can be discerned.

Furthermore the Court considers that the applicant must have sustained non-pecuniary damage.

56. Therefore, ruling on an equitable basis, the Court awards the applicant EUR 500 in respect of pecuniary damage and EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

57. The applicant also claimed EUR 1,000 for lawyers' fees and EUR 200 for the fees paid to the Romanian State. He sent invoices of ROL 15,000,000 representing lawyers' fees paid in 2002, ROL 2,200,000

representing court fees paid in 15 September 2003, ROL 1,000,000 for an expert report drawn up during the domestic proceedings and 510 New Romanian Lei (RON) for translations paid for in 2007.

58. The Government contested the claims.

59. The Court notes that the costs incurred in the domestic courts have no causal link with the violation found. However, it finds it reasonable that the applicant incurred costs for translations for the Court; these have been at least partially covered by the EUR 850 received by the applicant in legal aid.

No further justification for the alleged costs and expenses having been put forward by the applicant, the Court dismisses the claims made under this head.

C. Default interest

60. 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. *Dismisses* the Government's preliminary objections of non-exhaustion of domestic remedies.
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 5 §§ 1, 3 and 5 of the Convention;
4. *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 500 (five hundred euros) in respect of pecuniary damage and
 - (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;both sums 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 amounts 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 10 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Deputy Registrar

Josep Casadevall
President