



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

THIRD SECTION

CASE OF CRĂCIUN v. ROMANIA

(Application no. 5512/02)

JUDGMENT

STRASBOURG

30 September 2008

FINAL

26/01/2009

This judgment may be subject to editorial revision.

In the case of Crăciun v. Romania,

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

Josep Casadevall, *President*,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Egbert Myjer,

Ineta Ziemele,

Luis López Guerra, *judges*,

and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 9 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 5512/02) 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 Nicolae Crăciun (“the applicant”), on 23 February 2001.

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

3. On 3 May 2007 the Court decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1950 and lives in Bucharest.

5. On 1 October 1993 G.G.C. and I.S. founded a company G. in Focșani to run a mutual aid scheme of the Caritas-type, which promised eight to ten times the money invested in seventy-five to eighty-five working days.

6. On 11 January 1994 the applicant became the sole shareholder of the company and on 17 February 1994 he withdrew by transferring all the shares of the capital to P.I. The transfer was registered at the Office of Commerce Registry attached to the Vrancea Chamber of Commerce and

Industry and it was stated that the applicant continued to act as general director of the company.

7. On 11 March 1994, following some written notifications, the police, the public prosecution and the Financial Guard (*Garda Financiară*) started investigating the company's activity and found several illegalities.

A. First set of criminal proceedings

8. On 23 March, 15 April, 20 September and 19 October 1994 the public prosecutor ordered the sequestration of the movable and fixed assets belonging to the applicant, to his wife and to three companies involved in business with him in his capacity as the sole shareholder of the company G., and the freezing of his personal bank accounts until the resolution of the case, with a view to recovering the damage.

9. On 24 March 1994 the public prosecutor initiated a criminal action against the applicant for fraudulent bankruptcy, fraud, forgeries and use of forgery, and issued a provisional detention order against him, mentioning these offences in the order.

10. At least on 18 April, 17 May, 15 June and 14 July 1994 the Focșani Court of First Instance, on successive applications by the prosecutor, repeatedly extended the applicant's pre-trial detention by thirty days. The applicant remained in pre-trial detention until 13 October 1995.

11. The applicant contested his detention pending trial. At least on 17 May, 8 and 29 June, and 26 July 1994 the Vrancea Regional Court rejected his demands as groundless.

12. On 2 November 1994 the prosecutor showed the applicant the investigation file and told him about the classification of the offences as fraud and fraudulent bankruptcy.

13. On 7 November 1994, on an application by the public prosecutor, the applicant was committed for trial before the Focșani Court of First Instance for fraud and fraudulent bankruptcy, together with four other persons. The prosecutor's indictment mentioned that the applicant had misled thousands of people and had illegally appropriated the amount of 555,528,448 Old Romanian Lei (ROL).

It further revealed that during investigations 4,927 depositors had requested to participate in the proceedings as injured parties and formed themselves into an association. The indictment also recorded a company and the liquidation commission as injured parties and three companies as parties bearing civil responsibility.

14. On 27 December 1994 the public prosecutor committed the applicant for trial for mismanagement.

15. On 8 February 1995 the Focșani Court of First Instance considered that the case was within the jurisdiction of the Bucharest Court of First Instance and remitted the case to that court.

16. Of the twenty-two hearings held between 22 June 1995 and 28 June 2001, eighteen minutes mentioned that the court had failed to properly summon different parties in the proceedings, including two when the applicant also requested an adjournment for his and his lawyer's absence. In particular, ten hearings held between 25 January 1996 and 14 December 2000, when I.S., one of the co-accused, had to be summoned in the United States, were adjourned at intervals ranging from three to almost eight months.

During the hearing of 14 December 2000 the Bucharest Court of First Instance eventually considered, *inter alia*, that I.S. was evading the proceedings and therefore his lawyer's request that he continue to be summoned in the United States was to be considered abuse of procedural law.

17. On 29 April 1999 the applicant contested before both the prosecutor and the court, under Article 168 of the Code of Criminal Procedure, the sequestration of one of his fixed assets.

18. On 13 July 2001 the Court of First Instance convicted the applicant of fraud and sentenced him to one year, six months and twenty-four days' imprisonment, considering the sentence to have been executed during his provisional detention between 24 March 1994 and 14 October 1995. It further acquitted the applicant of fraudulent bankruptcy and terminated the criminal proceedings in respect of mismanagement because of the prescription of criminal liability. It also held him personally liable for ROL 555,528,448 towards the association of the injured depositors. The court maintained the preventive measures taken during pre-trial investigations.

The court considered, *inter alia*, that the proceedings had been delayed for a long time by the fact that on 25 January 1996 it was decided to summon I.S. in the United States. It also noted that on 9 December 1999 it was decided to summon G.G.C., another co-accused, in the United States as well and that the court reconsidered those measures on 14 December 2000.

19. On 10 May 2002 the Bucharest Regional Court allowed the appeals lodged by the applicant, by the public prosecutor and by G.G.C., quashed the previous judgment and sent the case back to the first-instance court for a fresh examination. It considered that the civil limb of the case had not been correctly assessed.

20. During the retrial, twenty-six hearings were held between 4 October 2002 and 11 March 2005, none of which was adjourned as a result of requests by the applicant.

21. On 14 March 2005 the Bucharest Court of First Instance noted in a judgment that the prescription of the applicant's criminal liability had occurred on 16 August 2001 and that he had requested, together with two other co-accused, that the criminal proceedings be continued under

Article 13 of the Code of Criminal Procedure. The court ordered that the case be severed, fixing a hearing for 22 April 2005.

22. Of the eighteen hearings held between 22 April 2005 and 25 May 2007, one was adjourned at the applicant's request.

23. On 11 November 2005 the Bucharest Regional Court upheld the appeals introduced by both the public prosecutor and the applicant, quashed the judgment of the first-instance court on the grounds that it had not examined some objections raised by the parties, including the provisional measures taken during criminal investigations, and that the procedure had been vitiated, and sent the case back for retrial.

During the retrial, on 17 March 2006 the Bucharest Court of First Instance decided to rejoin the various claims in the case, considering that by quashing the judgment of 14 March 2005 in its entirety, the order to sever the case had also been quashed.

24. The proceedings are still pending and the Government did not inform the Court of the course of proceedings following the hearing of 25 May 2007.

On 8 July 2008 the applicant informed the Court that a new hearing will take place on 21 October 2008.

B. Second set of criminal proceedings

25. On 16 March 1994 the applicant allegedly behaved violently in the presence of a journalist who had come to gather information in respect of the mutual aid scheme, and destroyed the latter's microcassette recorder.

26. On 21 April 1994 the public prosecutor issued a provisional detention order against the applicant for a period of thirty days. His detention lasted until 20 July 1994.

27. On 22 April 1994, on an application by the public prosecutor, the applicant was committed for trial before the Focșani Court of First Instance for criminal damage, abusive conduct and slanderous defamation.

28. On 27 November 1997 the Court of First Instance acquitted the applicant of criminal damage and abusive conduct and convicted him of slanderous defamation. The court further noted that the applicant, in accordance with Law no. 137/1997, had been pardoned as regards his sentence.

29. On 16 April 1999 the Harghita Regional Court upheld the public prosecutor's appeal and rejected that of the applicant, quashed the judgment of the first-instance court in part and also convicted the applicant of criminal damage and abusive conduct, noting that under Law no. 137/1997 he had been pardoned as regards his sentence.

30. On 30 November 1999 the Târgu Mureș Court of Appeal, in a final decision, allowed the applicant's appeal and quashed the previous judgments in part. The court changed the classification of the offences from

abusive conduct to assault or other forms of violence, convicted the applicant of the latter and noted that he had been pardoned as regards the sentence under Law no. 137/1997. It also removed the provision regarding the dismissal of the applicant's appeal by the Regional Court.

C. Third set of criminal proceedings

31. On 19 April 1994 the public prosecutor started criminal proceedings against the applicant for fraudulent bankruptcy, fraud, forgery of official documents and forgery, and issued a provisional detention order for a period of thirty days. The prosecutor found that the applicant had falsified receipts and had made anticipated payments to several persons.

32. The Focșani Court of First Instance, on successive applications by the public prosecutor, repeatedly extended the applicant's pre-trial detention by thirty days until 14 August 1994, when he was released.

33. The applicant contested his detention pending trial and at least on 8 June 1994 the Vrancea Regional Court rejected his demand as groundless.

34. On 22 February 1995, on an application by the public prosecutor and together with four other persons, the applicant was committed for trial before the Focșani Court of First Instance for fraudulent bankruptcy, forgery of official documents and forgery in respect of falsification of eight receipts for anticipated payment to some depositors.

35. On 30 October 1996 the Giurgiu Court of First Instance acquitted the applicant. That decision was upheld on 8 July 1997 by the Giurgiu Regional Court and on 1 June 1998 by a final decision of the Bucharest Court of Appeal.

D. The applicant's criminal record

36. On 4 January 2001 the General Inspectorate of Police issued the applicant with his criminal record, which stated that he had been convicted of criminal damage and abusive conduct, and sentenced to six months and one year's imprisonment respectively by the judgment of 27 November 1997 of the Focșani Court of First Instance, which became final by the judgment of 30 November 1999 of the Târgu Mureș Court of Appeal. The sentences were pardoned under Law no. 137/1997. It further stated that on 7 November 1994 and 27 December 1994 criminal proceedings had been initiated against the applicant for fraud and mismanagement.

37. On 5 January 2006 the General Inspectorate of Police issued the applicant with his criminal record, mentioning that he had been convicted of destruction and slanderous defamation and sentenced to six months and one year's imprisonment respectively by the judgment of 27 November 1997 of the Focșani Court of First Instance, which became final by the judgment of

30 November 1999 of the Târgu Mureş Court of Appeal. The sentences were pardoned under Law no. 137/1997.

THE LAW

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

38. The applicant complained that the length of the first set of proceedings 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...”

39. The Government contested that argument, considering the case particularly complex due to what was at stake and to the great number of parties, namely over 6,000 civil parties.

40. The period to be taken into consideration began only on 20 June 1994, when Romania ratified the Convention. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

The period in question has not yet ended. It has thus lasted more than fourteen years and four months for two levels of jurisdiction. Four courts examined the case during this period.

A. Admissibility

41. 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

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

43. The Court finds that the complexity of the case and the applicant’s conduct alone cannot explain the overall length of the proceedings. It

considers that a number of delays (in particular, repetitive adjournments of hearings in view of the other parties' absence and remittals of the case for a fresh consideration) are attributable to the respondent State. Moreover, a delay of approximately five years was caused by the court's inability to properly summon one of the co-accused in the United States (see paragraph 16 above).

44. 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).

45. 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 (see, among other authorities, *Lavents v. Latvia*, no. 58442/00, 28 November 2002), 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 ALLEGED VIOLATIONS OF THE CONVENTION

46. The applicant relied on Articles 3, 5 §§ 1 (a), (c), 2-4 with regard to the period of detention, complaining of ill-treatment, that he had contracted diabetes, tuberculosis and hepatitis, and of lack of medical treatment, of unlawful arrest, that there had been no reasonable suspicion of him having committed an offence, that he had not been informed of the reasons for his arrest, that he had been arrested by the prosecutor and had not been brought before a magistrate, and that the right to contest the extension of the pre-trial detention was theoretical and ineffective.

47. The applicant complained under Article 6 § 1, in respect of the first and second set of proceedings, that the solution had been unfair, that the domestic courts had failed to assess the facts correctly, had misinterpreted the domestic law, and had not admitted, during the first set of proceedings, any evidence on his behalf. He further alleged a violation of Article 6 § 2 on account of the preventive measures taken by the prosecutor and of the provisional inscriptions in his criminal record, and of Article 8 in so far as the preventive measures had interfered with his and his wife's private life.

The applicant also relied on Article 7 of the Convention and Article 1 of Protocol No. 4.

48. Having carefully considered the applicant's submissions in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

49. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicant claimed at least 41,250 euros (EUR) in respect of pecuniary damage, representing the wages he could have earned since April 1994. He also asked the Court to determine the amount of compensation in respect of non-pecuniary damage.

52. The Government contested the claim in respect of pecuniary damage on the ground that such a claim had not been raised in the present application. Further, they considered that a finding of a violation would constitute in itself sufficient just satisfaction for any non-pecuniary damage the applicant may have suffered.

53. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicant must have sustained non-pecuniary damage in respect of the violation found. Ruling on an equitable basis, the Court awards him EUR 7,200 under that head.

B. Costs and expenses

54. The applicant claimed reimbursement of the costs and expenses he had incurred in the proceedings in the national courts and before the Court, without quantifying them or submitting any supporting documents. He left it to the Court's discretion to determine the amount to be awarded under this head.

55. The Government contested the claim as unsubstantiated.

56. The Court reiterates that under Article 41 of the Convention it will reimburse only the costs and expenses that are shown to have been actually and necessarily incurred and are reasonable as to quantum (see *Arvelakis v. Greece*, no. 41354/98, § 34, 12 April 2001). Furthermore, Rule 60 § 2 of the Rules of Court provides that itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the

relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part.

57. In the instant case, the Court observes that the applicant has not substantiated his claim in any way, as he has neither quantified his costs nor submitted any supporting documents. Accordingly, the Court does not award any sum under this head (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, §§ 133-134, ECHR 2004-XI).

C. Default interest

58. 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 complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
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 the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,200 (seven thousand two hundred euros), plus any tax that may be chargeable, 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;
 - (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 30 September 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Deputy Registrar

Josep Casadevall
President