



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

1959 · 50 · 2009

THIRD SECTION

CASE OF CONSTANTIN AND STOIAN v. ROMANIA

(Applications nos. 23782/06 and 46629/06)

JUDGMENT

STRASBOURG

29 September 2009

FINAL

29/12/2009

This judgment may be subject to editorial revision.

In the case of Constantin and Stoian v. Romania,

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

Josep Casadevall, *President*,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Egbert Myjer,

Ineta Ziemele,

Luis López Guerra,

Ann Power, *judges*,

and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 8 September 2009

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

PROCEDURE

1. The case originated in two applications (nos. 23782/06 and 46629/06) 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 Marius-Georgian Constantin and Mr Florin Stoian (“the applicants”), on 1 June 2006 and 9 November 2006 respectively.

2. They were represented by Mr Niculae Constantin (the first applicant) and Mr Nicolae Trăistaru (the second applicant), lawyers practising in Bucharest. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu, of the Ministry of Foreign Affairs.

3. On 12 February 2008 the President of the Third Section decided to communicate the complaints concerning the allegations of lack of a fair trial (Article 6 §§ 1, 2 and 3 of the Convention) and the use of *agents provocateurs* to the Government. It was also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1979 and 1971 respectively. The first applicant lives in Bucharest, and the second in Afumați, Ilfov county.

5. On 11 November 2003 the prosecutor started criminal proceedings against “George” and “Florin”, later identified as the applicants, based on information that they were trafficking in drugs. No other details were given in this decision of the prosecutor.

A. The events of 18 November 2003

6. On 18 November 2003 the police division responsible for the fight against organised crime and drug trafficking (“the police”) sought authorisation from the prosecutor’s office to use an undercover agent and to obtain two grammes of heroin in order to gather evidence of the applicants’ alleged involvement in drug trafficking. It relied on Law no. 143/2000 on the fight against drug trafficking and illegal drug use (“Law no. 143”). The same day, the organised crime and drug trafficking section of the prosecutor’s office at the Bucharest Court of Appeal (“the prosecutor’s office”) authorised the operation for ten days and handed over the two grammes of heroin to the undercover agent (referred to in the domestic proceedings as “Alex 1”).

7. The police set up the surveillance operation in the car park of McDonald’s Dristor (Bucharest), where the trafficking was thought to happen. Meanwhile G.M., a police collaborator (referred to in the domestic proceedings as “Alex 2”), set up a meeting with the first applicant, whom he had known previously.

8. At 13.45 Alex 1 arrived by car in the parking area together with Alex 2. The first applicant and another man were sitting in another car. Alex 2 got out and approached the applicant; he was to tell him that Alex 1, whom the applicant did not know, wanted to contact a person who could sell him two grammes of heroin. After a short talk, Alex 2 returned accompanied by the first applicant; the latter then left by car with Alex 1. The police followed the car until it stopped in front of a building on Zizin Street. The applicant made a phone call from Alex 1’s mobile phone. He left the car and entered the building, where he remained for 10-15 minutes. He then returned with the second applicant to Alex 1’s car. The first applicant took the right front seat, while the second applicant remained standing near the right front door of the car. Alex 1 handed money to the first applicant; the latter passed it to the second applicant who took it and walked away.

9. At that moment the police got out of their cars and shouted: “Police, stop!”. The second applicant started running, abandoning his jacket and the money. He managed to escape into one of the neighbouring buildings.

10. The first applicant was identified and searched. Sixteen tablets of methadone were found on him. He admitted that the tablets belonged to him and declared that he was a rehabilitated drug user and was authorised to take methadone. A small package containing 1.5 g of heroin was visible in the car near the gear lever. The police seized it.

11. The same day a search was conducted in the flat from where the second applicant had come, and where he lived with S.F., his partner. No drugs were found.

12. The first applicant was taken into custody for 24 hours, but released on 19 November 2003. While in custody, he was taken to hospital under suspicion that he had swallowed a package of heroin. The treatment did not confirm the suspicions.

13. The second applicant was apprehended on 18 May 2004 after being noticed on the street by Alex 1. He was taken into police custody. On 20 May 2004 the Bucharest County Court ordered his pre-trial detention for thirty days. His detention was subsequently extended by the court every thirty days until the end of the proceedings before the first-instance court.

B. Applicants' statements during the criminal investigations

14. On 18 November 2003 the first applicant made a statement to the police, in the presence of a lawyer. He admitted to having facilitated the drugs sale between Alex 1 and the second applicant. He stated that he had taken the money from Alex 1 and handed it to the second applicant, who had then put a small bag of heroin near the gear lever. He also stated that he had obtained the methadone tablets from a nurse in Badgasar Hospital in exchange for a bag of coffee.

15. The prosecution file contains a second statement in the same terms, which is not dated and is signed only by the first applicant. He claimed it had been taken the same day, on his arrest.

16. The next day, however, the first applicant, in the presence of his lawyer, changed his position and stated before the Bucharest County Court that he was not a drug dealer and had not taken drugs for two years. He also stated that G.M. had requested him to make the second applicant come out of his house, where the police would be present. He had only agreed to help because he understood that it was a covert police operation. He maintained that an exchange of money for a small bag had occurred between Alex 1 and the second applicant. He also confirmed that the sixteen tablets of methadone were for his own use and that he had obtained them without prescription.

17. When interviewed by the prosecutor on 5 and 7 July 2004 the first applicant took the same position as before the County Court. He explained that he had given the statement of 18 November 2003 thinking that he would be participating in the criminal proceedings only as a witness and not as an accused.

18. On 19 May 2004 the second applicant told the prosecutor that he had not handed anything to the first applicant, that he had not known what the small package found in the car contained and that he had only agreed to accompany the first applicant to the car because the latter had told the

second applicant that he had money for the second applicant's partner, S.F. He also declared that at that moment he had not known that S.F. was a drug dealer. On 1 March 2004 S.F. was also arrested for drug trafficking in the context of a separate investigation.

19. The second applicant maintained his above statements on 20 May 2004 before the Bucharest County Court and on 7 July 2004 in an interview with the prosecutor.

20. On 12 July 2004 the prosecutor's office indicted the applicants for possession and sale of dangerous drugs in violation of Law no. 143. It established, based on the evidence gathered, that the second applicant had given the small bag of heroin to the first applicant, who had handed it to Alex 1, and that in exchange Alex 1 had given him the money, which he had then handed to the second applicant.

21. The prosecutor noted that the first applicant had been found guilty of possession and consumption of drugs in 2001 and that the second applicant had no known criminal record.

C. Proceedings before the Bucharest County Court

22. The applicants gave statements on 7 September 2004. The first applicant reiterated that he had only agreed to contact the second applicant because he had been informed of the covert police operation. The second applicant maintained his position and denied trafficking in drugs.

23. The undercover agent and the collaborator supported the prosecutor's version of the facts and maintained that the first applicant had not been aware of the police operation.

24. Some of the witnesses who had been unfavourable to the applicants during the investigations changed their statements before the court and claimed that they had signed without reading statements drafted entirely by the police.

25. At the hearing on 20 May 2005, after several reminders left unanswered by the prosecutor's office, the applicants' lawyers no longer insisted on obtaining an answer concerning the fate of the bag of heroin released to Alex 1 for the covert operation.

26. On 25 May 2005 the Bucharest County Court gave judgment, acquitting the applicants. It considered that the elements in the file indicated that on 18 November 2003 the police had sought to provoke a drug sale and had failed. Consequently, the heroin received by Alex 1 from the prosecutor's office had been placed in the car to prove the alleged commission of the criminal offence. The court also noted that the criminal proceedings had been started illegally on 11 November as at that date there had been no relevant information on the applicants' alleged criminal behaviour, and the facts under investigation had only taken place on 18 November. It also noted that the exchange of money for drugs was not

proved, and that the witnesses could not support the prosecution's version. The court ordered the second applicant's immediate release.

D. Appeal proceedings

27. On 3 October 2005 the appeal proceedings started before the Bucharest Court of Appeal, on an application lodged by the prosecutor's office. The Court of Appeal heard evidence from the prosecutor and the applicants' lawyers. The applicants used their right to address the court before the end of the hearing (*ultimul cuvânt al inculpatului*). No other evidence was requested by the parties or heard by the court.

28. On 10 October 2005 the Court of Appeal convicted and sentenced the first applicant to seven year's imprisonment and the second applicant to six years' imprisonment. It considered that the detailed description of the events made by the undercover agent and the collaborator should have been given more weight as they corroborated the police reports on the arrest in *flagrante delicto* and thus reflected the truth. The court decided that the first applicant had not been honest in his statements and that he had only claimed to have been aware of the covert police action because he knew from his own experience that collaborators were protected by law. It also concluded that the second applicant's aim had been to protract the investigations. The court took the fact that the witnesses changed their position as proof of their dishonesty.

The Court of Appeal set aside the County Court's finding of incitement as follows:

"The court considers, unlike the first-instance court, that Article 68 §§ 1 and 2 of the Code of Criminal Procedure is not applicable so long as the evidence does not show that Constantin Marius Georgian was threatened or coerced to commit the facts. Likewise it is not proved that he was persuaded by the police to commit a crime, ... he agreed to facilitate the drug sale, but no longer admitted to it before the court."

It considered the arguments based on the origin of the heroin found as follows:

"... Constantin Marius Georgian himself stated when apprehended by the police and in subsequent statements that the drugs found in the car had been handed over by Stoian Florin, in exchange for 6,000,000 lei."

29. The first applicant was also convicted of illegal possession of sixteen tablets of methadone.

30. The court deducted the second applicant's preventive detention from "19 May 2004 to 25 May 2004". It also confiscated, under Article 17 § 1 of Law no. 143/2000, the eight tablets of methadone and 1.48 g of heroin left after the laboratory tests from the first and the second applicant respectively.

31. On 11 May 2006 the High Court of Cassation and Justice upheld the conviction following an appeal on points of law lodged by the applicants.

It also corrected the material error in the appeal decision concerning the second applicant's preventive detention, and in an interlocutory judgment of 14 July 2006 noted that he had been detained from 19 May 2004 to 25 May 2005.

E. Other proceedings

32. On 7 July 2004 and on 2 June and 16 August 2006 the applicants lodged criminal complaints against G.C., the prosecutors in charge of their investigation, the undercover agent and the witnesses alleging that they had given false testimony to the investigative authorities. In addition, the first applicant, in the appeal of 7 July 2004, complained that several items adduced by him as evidence had disappeared from the criminal file. On 11 October 2004 and 23 May and 13 June 2007 the prosecutor's office at the High Court of Cassation and Justice decided not to prosecute G.C. and Alex 1. On 25 February 2008 a similar decision was taken in respect of the witnesses by the prosecutor's office at the Bucharest District Court.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

33. Article 68 of the Code of Criminal Procedure reads as follows:

Article 68

"1. It is forbidden to use violence, threats or other means of coercion, as well as inducements, in order to obtain evidence.

2. It is also forbidden to incite a person to commit or continue committing a criminal offence for the purpose of obtaining evidence."

34. The relevant provisions of Law no. 143 read as follows:

Article 1

"In the present Act the terms and expressions below shall have the following meaning:

...

(k) Undercover agents: police officers specifically designated to carry out, with the prosecutor's authorisation, investigations with a view to collecting data regarding the existence of the offence and the identification of the offender and precursory acts, under another identity than their real one. Such authorisation shall be conferred for a limited time only."

Article 21

“1. The prosecutor may authorise the use of undercover agents to determine the facts, identify the offender and obtain evidence where there is good reason to believe that a criminal offence as defined in the present Act has been perpetrated or is about to be committed.”

Article 22

“1. Police officers from the special units who act as undercover agents, as well as persons acting with them, shall be allowed to procure drugs, base and compound chemical substances with the prosecutor’s prior authorisation, with a view to discovering criminal activities and identifying the persons involved in such activities.

2. The results of the actions of the police officers and persons acting with them referred to in paragraph 1 may constitute evidence.”

35. The Council of Europe’s texts on the use of special investigative techniques are detailed in *Ramanauskas v. Lithuania* [GC], no. 74420/01, §§ 35-37, ECHR 2008-....

THE LAW**I. JOINDER OF THE APPLICATIONS**

36. In view of the similarity of the cases in terms of both fact and law, the Court finds it appropriate to join and examine them together.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

37. The applicants complained that they had not received a fair trial in the criminal proceedings against them, alleging a violation of Article 6 §§ 1, 2 and 3 (a), (b) and (c) of the Convention, which reads as follows:

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- (b) to have adequate time and facilities for the preparation of his defence;
- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;"

38. In particular, the applicants complained that they had been incited to commit a criminal offence by the undercover police agent and his collaborator acting as *agents provocateurs*.

39. They considered that the prosecutor had not observed the procedural requirements in issuing the indictment; that the prosecution had been based on evidence gathered by pressuring witnesses into giving false testimony; that the first applicant had not been assisted by a lawyer when he had given his first statement and when the prosecutor had informed him of the accusations on 18 November 2003 and had not been properly summoned during the investigations; and that the second applicant had not been informed of the prosecution acts between 18 November 2003 and 19 May 2004.

40. They also complained about the way the Court of Appeal had changed the interpretation of the facts without hearing evidence and without clarifying where the money given by Alex 1 had come from or what had happened to the money and the two grammes of heroin released by the prosecutor to the undercover police officer. The second applicant also pointed out that the Court of Appeal had not ordered the examination of the bag of heroin for fingerprints in order to establish whether he had touched that bag.

41. In addition, the first applicant complained that he had been authorised to have the methadone as a rehabilitated drug user, and had thus been convicted of a crime he had not committed.

42. Lastly, the applicants complained that the way the Court of Appeal had interpreted the evidence had infringed their right to the presumption of innocence.

A. Admissibility

43. The Court notes that this part of the application 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

1. *The parties' submissions*

(a) The Government

44. The Government averred that a system allowing for covert police operations was common to other European countries and was recommended by the Council of Europe and the European Union in certain instances.

45. Regarding the facts of the present case, they denied that there had been police incitement, arguing that the information prior to the covert operation had revealed that the first applicant had been predisposed to commit a criminal offence (they referred to *Sequeira v. Portugal* (dec.), no. 73557/01, ECHR 2003-VI). They pointed out that the second applicant had had no direct contact with the undercover agent.

46. The Government admitted that the first applicant seemed to have been interviewed once by the prosecutor in the absence of his lawyer. However, they considered that the applicant's defence rights had not been affected by that episode, in so far as he had not made any incriminating statements. Moreover, that remained an isolated episode, the applicant having been assisted by his lawyer throughout the other more complex interviews.

They also pointed out that the second applicant had not been informed about the investigations because he had absconded from 18 November 2003 until May 2004.

47. The Government rejected the allegations of unfairness in the proceedings before the Court of Appeal. In their view, the court had given a detailed interpretation of the evidence and explained its conclusions thoroughly. The decision had, in addition, been upheld by the High Court of Cassation and Justice.

Moreover, unlike in the case of *Teixeira de Castro v. Portugal* (9 June 1998, *Reports of Judgments and Decisions* 1998-IV), the courts in the case at hand had not based their decision solely on the undercover agents' testimonies. The applicants had been heard by the first-instance court (the Government referred, *a contrario*, to *Ilişescu and Chiforec v. Romania*, no. 77364/01, 1 December 2005) and had had the possibility of cross-examining the undercover agent (they referred, *a contrario*, to *Dănilă v. Romania*, no. 53897/00, 8 March 2007).

In their view, it was enough for the first-instance court to examine the evidence directly.

48. The Government pointed out that the Court of Appeal had cleared up the doubts concerning the origin of the drug, as it had established that the package had been handed over by the second applicant in exchange for the

money from Alex 1. Moreover, they averred that the applicants' lawyers had not requested further evidence before the Court of Appeal.

49. The Government also submitted that both courts and prosecutors had examined the applicants' allegations of police incitement and dismissed them in thoroughly reasoned decisions.

50. Lastly, the Government argued that the first applicant had not produced a valid prescription for the methadone. In any case the appeal courts had answered his plea.

(b) The applicants

51. The first applicant reiterated that he had been informed from the very beginning of the covert operation and had been asked to help "catch" the second applicant in *flagrante delicto*. In his view Alex 1 had acted as an *agent provocateur* and used the two grammes of heroin to frame the applicants. He pointed out that the courts had been unable to establish what had happened to that heroin. Lastly, he argued that he had submitted a valid authorisation to possess methadone at the material time.

52. The second applicant did not present his views within the time-limits set by the Court.

2. The Court's assessment

53. The Court observes that in contesting the fairness of the proceedings, the applicants put forward two arguments. Firstly, they argued that they had only committed the offence because of the intervention of *agents provocateurs*, the first applicant claiming that he had been aware of the covert police operation and the second applicant that he had only agreed to accompany the first applicant to the car in order to receive his partner's money. Secondly, they argued that in convicting them, the Court of Appeal had not carried out a thorough examination of the evidence.

54. The Court reiterates its recent case-law on Article 6 in which it elaborated on the concept of entrapment as distinct from the use of legitimate undercover techniques and reaffirmed the domestic courts' obligation to carry out a careful examination of the material in the file where an accused invokes police incitement. In this context, the Court has also established that its function under Article 6 § 1 is not to determine whether certain items of evidence were obtained unlawfully, but rather to examine whether such "unlawfulness" resulted in the infringement of another right protected by the Convention; it has thus to review the quality of the domestic courts' assessment of the alleged entrapment and to ensure that they adequately secured the accused's rights of defence, in particular the right to adversarial proceedings and to equality of arms (see *Ramanauskas*, cited above, §§ 49-61; *Malininas v. Lithuania*, no. 10071/04, §§ 34-35, 1 July 2008; and *Bykov v. Russia* [GC], no. 4378/02, §§ 88-93, 10 March 2009).

55. To ascertain whether or not the undercover police confined themselves to “investigating criminal activity in an essentially passive manner” in the present case (see *Ramanauskas*, cited above, § 55), the Court has regard to the following considerations. Nothing in the applicants’ past suggested a predisposition to trafficking in drugs. The fact alone that one of them was a convicted drug user (see paragraph 21 above) cannot change the Court’s conclusion. The Court notes that the prosecutor did not give details, or refer to any objective evidence, concerning the applicants’ alleged unlawful behaviour in his decision to start criminal proceedings. Moreover, no heroin was found either in the first applicant’s possession or in the second applicant’s home (see paragraphs 10-12 above).

56. The Court also notes that the parties gave different interpretations of the events that had occurred on 18 November 2003. According to the Government, the first applicant had agreed to broker the deal between the undercover agent, whose identity he did not know, and the second applicant, and the drugs found in the agent’s car had resulted from that deal. However, the first applicant, claiming police incitement, stated that he had been informed of the covert operation, while the second applicant claimed that he had been tricked into accepting the money; both applicants claimed that the two grammes of heroin found by the police were the same as those released by the prosecutor’s office for the covert operation.

57. In the light of this controversy, and notwithstanding its subsidiary role in assessing the evidence, the Court shall examine whether the applicants were able to raise effectively the issue of incitement (see *Ramanauskas*, §§ 60-61, and *Malininas*, § 34, both cited above).

58. The first-instance court concluded that the evidence taken from the applicants, the undercover agent and witnesses confirmed that there had been police incitement, and therefore acquitted the applicants on that ground.

59. However, based on the same evidence, the appeal court reversed the decision and convicted the applicants of trafficking in drugs. In doing so, the Court of Appeal did not interview the persons who had appeared before the prosecutor and the County Court. It decided to give precedence to the statements obtained by the prosecutor and considered that those given before the first-instance court had been false.

60. The Court reiterates that when a court of appeal is called upon to examine the case as to the facts and the law and to make a full assessment of the question of the applicant’s guilt or innocence, as it was in the present case, it cannot, as a matter of fair trial, properly determine the issues without a direct assessment of the evidence given in person by the applicant where he or she claims not to have committed the act alleged to constitute the criminal offence (see *Dănilă v. Romania*, no. 53897/00, § 35, 8 March 2007). The Court of Appeal failed, in the present case, to take any evidence, let alone interview directly the applicants on the merits of the accusations;

the fact that the applicants did not specifically request further evidence to be taken by the Court of Appeal, as the Government pointed out, does not preclude that court from taking positive measures to that effect (see *Dănilă*, cited above, § 41). Likewise, the applicants' last address to the court cannot be equated with their right to be heard by the court during the trial (see *Constantinescu v. Romania*, no. 28871/95, § 58, ECHR 2000-VIII).

61. Moreover, notwithstanding the fact that it cannot hold in the abstract that evidence given by a witness in open court and on oath should always be relied on in preference to other statements made by the same witness in the course of criminal proceedings, not even when the two are in conflict (see *Doorson v. the Netherlands*, 26 March 1996, § 78, *Reports* 1996-II), the Court is not convinced by the summary reasoning given by the Court of Appeal to justify the precedence given to the statements obtained by the prosecutor. It notes, in particular, that the doubts harboured by the Court of Appeal concerning the lack of honesty of the witnesses were not supported by the findings of the investigators in the matter. The fact that the applicants were heard by the first-instance court and had the possibility of cross-examining witnesses at that stage of the proceedings does not alter the Court's conviction on this point.

62. Lastly, unlike the Government, the Court is not convinced by the answer the authorities, in particular the courts, gave to the allegations of police incitement (see *Ramanauskas*, cited above, § 61). Whether or not the first applicant knew of the police action and whether or not the second applicant was tricked into accepting the money, the facts of the case indicate that if it had not been for the agent's express request to buy drugs, none of the events of 18 November would have occurred.

63. The Court considers that the Court of Appeal failed to properly examine the first applicant's change of position, considering without further explanation that he had refused, before the courts, to admit to his involvement in the drug trafficking.

64. In conclusion, while being mindful of the importance and the difficulties of the task of the investigating agents, the Court considers, having regard to the foregoing, that the actions of the undercover police officer and his collaborator had the effect of inciting the applicants to commit the offence of which they were convicted, going beyond the mere passive investigation of existing criminal activity, and that the domestic courts did not investigate sufficiently the allegations of incitement. For these reasons the applicants' trial was deprived of the fairness required by Article 6 of the Convention.

There has accordingly been a violation of Article 6 § 1 of the Convention on this account.

65. Furthermore, the Court considers that the conclusion above makes examination of the remainder of the complaint redundant.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

66. The Court has examined the remainder of the complaints. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. In particular, the second applicant complained under Article 6 § 1 of the Convention that because of the domestic courts' erroneous recording of his pre-trial detention, he would have to serve one additional year of detention. This error was, in fact, corrected by the High Court of Cassation and Justice on 14 July 2006 (see paragraph 31 above). Lastly, invoking in substance Article 1 of Protocol No. 1 to the Convention, the second applicant complained that he could not comply with the confiscation order concerning the 1.48 g of heroin, since the heroin found on 18 November had already been surrendered to the investigators and he did not possess any other drugs. The Court notes, however, that the confiscation order referred to the same drugs that were seized by the police during the events on 18 November (see paragraph 30 above), and that no other measures were taken against the applicants that would affect their property rights for the purposes of Article 1.

67. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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

69. The first applicant asked the Court to establish a reasonable amount in compensation for pecuniary and non-pecuniary damage.

The second applicant claimed, in his initial application to the Court, 252,000 euros (EUR) in respect of pecuniary damage and EUR 300,000 for non-pecuniary damage; he did not answer the Court's request, on 17 June 2008, to formulate his claims according to Rule 60 of the Rules of Court. After the time-limits set for submission expired and the applicant was warned that his application might be struck out, he informed the Court that he maintained his previous claims.

70. The Government argued that the first applicant's claim for pecuniary damages should be dismissed as he had failed to adduce any evidence as to the damage actually incurred.

In their view the second applicant's claims should be dismissed as he had failed to present them in line with Article 60 of the Rules of Court. They referred to *Nițescu v. Romania* (no. 26763/03, § 48, 21 April 2009). In addition, they argued that the claims for the alleged pecuniary damage were excessive and unjustified and that there was no causal link to any acts of the authorities.

They also considered that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage alleged by the applicants.

71. The Court does not discern any causal link between the violation found and the pecuniary damage alleged by the first applicant; it therefore rejects this claim. On the other hand, it awards the first applicant EUR 10,000 in respect of non-pecuniary damage.

72. Lastly, the Court notes that the second applicant, who was represented by counsel, did not comply with the conditions for submitting his claims, nor did he present a reasonable justification for his failure to comply with the time-limits. It therefore rejects his claims entirely.

B. Costs and expenses

73. The applicants made no claim under this head.

C. Default interest

74. 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. *Decides* to join the applications;
2. *Declares* the complaint concerning Article 6 (fairness of the criminal proceedings and presumption of innocence) admissible and the remainder of the applications inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on the ground of police incitement and failure of the domestic authorities to investigate the matter;

4. *Holds* that there is no need to examine the remainder of the complaint under Article 6 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 29 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Deputy Registrar

Josep Casadevall
President