



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

THIRD SECTION

CASE OF BALINT v. ROMANIA

(Application no. 44954/04)

JUDGMENT

STRASBOURG

26 January 2010

FINAL

26/04/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Balint v. Romania,

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

Josep Casadevall, *President*,

Elisabet Fura,

Corneliu Bîrsan,

Alvina Gyulumyan,

Egbert Myjer,

Luis López Guerra,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 5 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 44954/04) 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 Ion Balint (“the applicant”), on 26 October 2004.

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

3. On 15 November 2006, the President of the Third Section decided to communicate the complaint concerning the length of the proceedings to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1969 and lives in Bucharest.

5. On 29 September 1994, the applicant was arrested mainly on charges of robbery and trespassing. The criminal proceedings against him and three other persons were opened the same day.

6. On 28 November 1994, he was released from custody.

7. In an indictment dated 29 September 1995, the Prosecutor's Office attached to the Bucharest County Court committed the applicant and the three other persons for trial.

8. On 12 October 1995 the case was registered with the Bucharest District Court.

9. On 2 April 1996, on an appeal by one of the co-accused against an interlocutory judgment rendered in the case, the file was sent to the Bucharest County Court, from where it was returned on 13 May 1996 and was entered into the court's list on 29 May 1996. However, none of the contents of the file could be found after this date.

10. Consequently, on 7 March 1997, the District Court sent the case back to the County Prosecutor's Office to reconstitute the file.

11. On 6 June 1997, under Article 510 of the Code of Criminal Procedure, the County Prosecutor's Office referred the case back to the District Court, this being the appropriate judicial authority to reconstitute the file at that stage of the proceedings.

12. Therefore, on 30 June 1997, the case was re-entered into the District Court's list.

Several items, such as the indictment and the arrest warrants, were requested from the Prosecutor's Office.

13. On 7 December 2001 the District Court considered the file reconstituted. It gave judgment on 7 February 2003, sentencing the applicant to six years' imprisonment.

14. Most of the adjournments of the hearings were caused by the failings of the judicial authorities in summoning the defendants or civil parties

15. Following an appeal by the applicant, the sentence was upheld in a decision of 12 May 2004 of the Bucharest County Court and lastly in a final decision of 29 July 2004 of the Bucharest Court of Appeal.

THE LAW

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

16. The applicant complained about the outcome of the proceedings and the length of the proceedings, which he considered 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..."

17. The Government contested that argument invoking mainly the complexity of the case and the conduct of the applicant as a cause of the unnecessary delays.

18. The period to be taken into consideration began on 29 September 1994 and ended on 29 July 2004. It thus lasted nearly ten years for three levels of jurisdiction.

A. Admissibility

19. The Court notes that the complaint regarding the length of proceedings 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.

20. As for the reminder of the application, namely, the complaint regarding the outcome of the proceedings under Article 6 § 1, the Court finds that in the light of all the material in its possession, and 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. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Merits

21. 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)

22. 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).

23. 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. The Court does not deny the relative complexity of the case due mainly to the fact that there were three defendants charged with several offences and a large number of victims and civil parties. However, it appears from the analysis of the file that most of the delays in the domestic proceedings were caused by the failings of the judicial authorities in summoning the defendants or civil parties and the loss of the file.

24. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed 100,000 Euros (EUR) in respect of non-pecuniary damage. He did not claim any specific sum for pecuniary damage or costs and expenses

27. The Government contested this claim.

28. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 3,200 under that head.

B. Default interest

29. 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 as regards the length of proceedings;
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 3,200 (three thousand two hundred Euros) in respect of non-pecuniary damage, to be converted into Romanian lei 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 26 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President