



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

THIRD SECTION

CASE OF FLORIN MACOVEI v. ROMANIA

(Application no. 38128/03)

JUDGMENT

STRASBOURG

2 April 2013

This judgment is final but it may be subject to editorial revision.

In the case of Florin Macovei v. Romania,

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

Alvina Gyulumyan, *President*,

Kristina Pardalos,

Johannes Silvis, *judges*

and Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 12 March 2013,

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

PROCEDURE

1. The case originated in an application (no. 38128/03) 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 Florin Alexandru Macovei (“the applicant”), on 14 October 2003.

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

3. On 30 June 2010 the application was communicated to the Government. In accordance with Protocol No. 14, the application was assigned to a Committee of three Judges.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

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

5. On 1 September 1999 the Romanian Copyright Office (“ORDA”) suspended the applicant from work for gross misconduct, that is, suspicion of fraud, malfeasance in public office and document destruction. A criminal complaint was further filed by ORDA with the prosecution authorities on 14 September 1999.

6. On an unspecified date in November 2000 the applicant complained about the protraction of the investigation. His complaint was admitted on 10 November 2000 by the Public Prosecutor’s Office as no procedural act had been carried out until that date. The prosecuting authorities were instructed to deal with the complaint within reasonable delays.

7. On 21 February 2001 the Public Prosecutor's Office with the Bucharest District Court no. 1 ("the Prosecutor") decided to initiate the criminal prosecution against the applicant.

8. By a subsequent decision of 31 January 2002 the Prosecutor rejected the initiation of prosecution in respect of the applicant as his conduct did not meet the statutory essential elements of the prosecuted offences. ORDA contested this decision before the Higher Ranking Prosecutor.

9. On 6 March 2002 the contestation was allowed and the criminal prosecution was resumed.

10. Subsequent to the examination of evidence (hearing of four witness testimonies and examination of few documents, without the commission of any expert study), the Prosecutor decided on 8 May 2002 to discontinue the investigation in respect of the applicant. The decision was challenged by ORDA before the Public Prosecutor's Office with the High Court of Cassation and Justice.

11. On 6 March 2003 the contestation was allowed and the impugned decision was quashed. The case was reopened for further investigation before the prosecuting authorities.

12. On 23 July 2003 the Prosecutor decided to discontinue the investigation against the applicant in respect of the charges of fraud and malfeasance in public office. At the same time, an administrative fine was imposed for charges of document destruction.

13. The decision was upheld before the Higher Ranking Prosecutor and became final on 17 October 2003.

14. Subsequent to the decisions to discontinue the criminal prosecution against him, the applicant requested to resume his work at ORDA. Following the latter's refusal, the applicant brought two sets of labour litigations against his employer on 22 February 2002 and on an unspecified date in 2003 respectively.

15. On 15 April 2003 the Bucharest County Court dismissed the first action. It ruled that the applicant could not resume work since the decision to discontinue the criminal investigation had not been final at that time. Later on the applicant was reinstated to a different position at ORDA. Shortly afterwards, the employment contract was voluntarily terminated.

16. The second action was allowed by way of a final decision. On 6 July 2006 the Court of Appeal of Bucharest awarded the applicant the retroactive payment of wages he had been entitled to.

THE LAW

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

17. The applicant complained that the length of the criminal 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...”

A. Admissibility

18. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

19. The Government submitted that the delays accrued at the criminal investigation were mainly due to the particular complexity of the case. It pointed out to the complex documentation adduced at court and to the generally exceptional character of both factual and legal questions involved. They added that there had been no signs of inactivity on the part of the authorities which had thoroughly and attentively examined the case. The Government went on to suggest that although the applicant had not exercised his rights such as to hold back the proceedings, he had nevertheless contributed to their length by not being present at all the hearings. In sum, the Government held that the “reasonable time” requirement had been complied with in the present case.

20. The applicant contested these arguments. He drew attention to the fact that although his complaint for delays had been admitted in November 2000 and the prosecuting authorities had been urged to carry out the investigation within a reasonable delay, it took some additional three years for the proceedings to be finalised. He further disagreed with the Government’s view on the complexity of the case. He pointed out that no more than four witnesses had been heard in the case and the documentation adduced before the court had been rather insignificant.

21. The proceedings began on 14 September 1999 when ORDA filed the criminal complaint against the applicant, and ended on 17 October 2003 when the criminal investigation was finalised. The total length of the

proceedings was thus of four years, one month and three days at one level of jurisdiction.

22. 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 and what was at stake for the applicant in the dispute (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

23. 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* and *Frydlender*, cited above, *Abramiuc v. Romania*, no. 37411/02, § 103-109, 24 February 2009).

24. Turning to the facts of the present case, the Court notes that the criminal investigation of charges related to the applicant's professional conduct did not raise issues able of triggering a lengthy trial. It involved the hearing of some four witness testimonies and the examination of rather few documents, without any expert studies conducted in the case. Thus, it was neither procedurally nor factually of exceptional complexity.

25. The Court draws its attention to the decision of 10 November 2000 whereby the Public Prosecutor's Office had urged the relevant authorities to deal with the case speedily, as no procedural act had been carried out in the previous year (see paragraph 6 above). Despite this recommendation, the entire investigation had been underway for more than three years, space of time within which the case had moved back and forth between the prosecuting authorities (see paragraphs 8-12 above) until it was finally settled (see *Vachev v. Bulgaria*, no. 42987/98, § 96, ECHR 2004-VIII (extracts)).

26. The Court can find no sufficient justification for such a lapse of time, the responsibility for which lies entirely with the authorities.

27. As for the applicant's conduct, there is no evidence that at any stage of the proceedings he showed dilatory conduct or otherwise upset the proper conduct of the investigation. His requests did not exceed what was normally acceptable in the exercise of his defence rights and he cannot be said to have contributed in any other manner to the total length of the proceedings.

28. In conclusion, the Court considers that in the instant case the length of the criminal proceedings was excessive and failed to meet the "reasonable time" requirement.

29. There has accordingly been a breach of Article 6 § 1 as regards the length of criminal proceedings.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

30. Relying on Article 6 § 1 the applicant further complained about the outcome of the civil proceedings which ended by the final judgments of 15 April 2003 and 6 July 2006 respectively, alleging that the domestic courts had failed to conduct a proper examination of the evidence submitted to them.

31. Having considered the applicant's submissions in 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.

32. It follows that this part of the application must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage, sum which was to cover the consequences the four years of criminal investigation had had on his social and family life, as well as on his professional situation. He also sought reimbursement of the pecuniary damage consisting of the wages he had been deprived of pending investigation, as he had been suspended from work. He did not advance any amount and failed to submit any documentation in this respect.

35. The Government contested these claims. They submitted that the amount requested had been speculative, excessive and unsupported by documents. They also added that the mere finding of a violation would in itself constitute sufficient just satisfaction.

36. The Court does not discern any causal link between the violation found in respect of the length of criminal proceedings and the pecuniary damage alleged. All the more, the domestic courts awarded the applicant the payment of retroactive wages. It therefore rejects this claim.

37. The Court considers that the applicant must have certainly sustained non-pecuniary damage which is not sufficiently compensated by the finding of a violation of the Convention. Ruling on an equitable basis, it awards him EUR 1,200.

B. Costs and expenses

38. The applicant did not claim any amount under this head.

C. Default interest

39. The Court considers it appropriate that the default interest rate 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 criminal 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 criminal proceedings;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, EUR 1,200 (one thousand two hundred euros), to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (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 2 April 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Maridalena Tsirli
Deputy Registrar

Alvina Gyulumyan
President