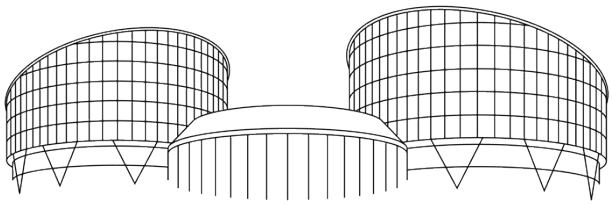

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 15242/07
Violeta Liliana PRICOP and Others
against Romania

The European Court of Human Rights (Third Section), sitting on 30 April 2013 as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Luis López Guerra,
Nona Tsotsoria,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco, *judges,*

and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 15 January 2007,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Ms Violeta Liliana Pricop ("the first applicant"), Ms Adela Medeleanu ("the second applicant"), Ms Daniela Irimia ("the third applicant") and Ms Cornelia Doina Popovici ("the fourth applicant"), are Romanian nationals who were born in 1959, 1941, 1962 and 1948 respectively and live in Iași. Mr Andrea Manfredini ("the fifth applicant") is an Italian national who was born in 1969 and lives in Porto Mantovano. He is the son of R.M., who died in December 2006.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicants, may be summarised as follows.

1. Background to the case

3. The first four applicants are former employees of S.C. Antibiotice S.A. ("Antibiotice"), the only pharmaceutical company in Romania to produce antibiotics and vitamins obtained by biosynthesis. R.M. was the representative of the Italian company Bioindustrie Mantovane.

4. During the years 1992 to 1994, four contracts were concluded between the two companies for the sale of four technologies. The first four applicants were involved in a training programme on the methods of implementing them.

5. In 1992, R.M. founded the company Biofin Laboratories in Italy, and in 1994 he founded the company S.C. MIB-TH S.A ("MIB-TH") in Romania.

6. In 1994 the first three applicants decided to leave Antibiotice and were redeployed to MIB-TH. The fourth applicant remained employed at Antibiotice.

7. In 1995 a new contract between Biofin Laboratories and Antibiotice was concluded. The transfer of technological know-how was realised through two different contracts; Biofin Laboratories transferred the know-how to MIB-TH, which in turn transferred it to Antibiotice.

2. Criminal proceedings

8. On 2 April 1996 a public prosecutor granted authorisation to the Romanian Intelligence Service, as permitted by the National Security Act (Law no. 51/1991), to access the third applicant's apartment and to place her telephone under surveillance for a period of six months. The authorisation for the monitoring of her telephone conversations was repeatedly extended until 12 May 1997. During that period, telephone conversations between the first four applicants were intercepted and recorded.

9. On 24 April 1997 the public prosecutor ordered a criminal investigation to be initiated in respect of the first four applicants, who were accused of operating a data collection system capable of affecting national security and collecting and transmitting secret or confidential information by illegal means (an offence under section 19 of the National Security Act), and of false and unfair competition. On 24 March 1997 the public prosecutor ordered a criminal investigation to be initiated in respect of R.M., who was accused of instigating, organizing and establishing a data collection system in Romania capable of affecting national security and collecting and transmitting secret or confidential information by illegal

means (also an offence under section 19 of National Security Act), and of false and unfair competition.

10. On 29 May 1997 the investigation was completed and the first four applicants were allowed access to the case file by the prosecutor in charge. It was then that they learned they had been the subject of telephone tapping and interception between 1996 and 1997.

11. On 30 May 1997 the first four applicants and R.M. were charged, and the case was referred to the Iași County Court ("the County Court"). During the trial the applicants alleged, *inter alia*, that the surveillance of their telephone conversations had been unlawful.

12. On 29 June 1998, the County Court reached a verdict, finding the applicants guilty. It convicted the first and third applicants of false and unfair competition and of operating a data collection system capable of affecting national security and collecting and transmitting secret or confidential information by illegal means. They were sentenced to two years and four months' imprisonment and three years' imprisonment respectively. The second and fourth applicants were also convicted of that offence, but not of false and unfair competition. They were sentenced respectively to two years and four months' imprisonment and two years' imprisonment suspended. R.M. was convicted of instigating, organizing and establishing a data collection system in Romania capable of affecting national security and collecting and transmitting secret or confidential information by illegal means. He was sentenced to four years and six months' imprisonment.

13. The first four applicants and R.M. appealed against the judgment of 29 June 1998.

14. On 18 January 2002 the Iași Court of Appeal ("the Court of Appeal") ordered that the first four applicants' appeals be dealt with separately from the appeal lodged by R.M.

15. On 19 February 2002 the Court of Appeal allowed the first four applicants' appeals and reduced their sentences.

16. On 19 March 2003 the High Court of Justice and Cassation allowed an appeal on points of law by the first four applicants, quashing the judgment of 29 June 1998 and the decision of 19 February 2002 and referring the case to the County Court, which was advised to order a technical expert report.

17. On 21 December 2004 R.M.'s appeal against the decision of 29 June 1998 was dismissed by the Court of Appeal. He appealed on points of law.

18. On 26 April 2005 the County Court acquitted the first four applicants. The Iasi County Court noted that the surveillance of the applicants' telephone conversation was unlawful as it raised problems in respect for private life, right guaranteed under Article 8 of the Convention.

19. An appeal was then lodged by the prosecutor's office; however, this was dismissed by the Court of Appeal on 6 December 2005.

20. On 30 March 2006 the High Court of Justice and Cassation decided that R.M.'s appeal on points of law and the prosecutor's office's appeal on points of law should be dealt with jointly.

21. On 14 July 2006 the High Court of Justice and Cassation allowed the prosecutor's office's appeal on points of law and convicted the first four applicants of false and unfair competition, and of operating a data collection system capable of affecting national security and collecting and transmitting secret or confidential information by illegal means. They were sentenced respectively to one year's imprisonment and one year and six months' imprisonment suspended. The High Court of Justice and Cassation also allowed R.M.'s appeal on points of law and reduced the sentence imposed on him to three years' imprisonment suspended. It based its decision on the fact that the first four applicants' telephones had been under surveillance. The High Court of Justice and Cassation noted that Antibiotice was the only company in the country to produce pharmaceuticals and vitamins obtained by biosynthesis and that the information held by the applicants was considered to be secret and confidential, thus falling within the scope of section 19 of National Security Act. The applicants obtained a copy of this decision on 18 July 2006.

3. Prohibition order on leaving the local area and the withdrawal of the applicants' passports

22. On 2 September 1997 the County Court made an order prohibiting the first four applicants from leaving the local area and requiring them to surrender their passports. The latter measure was revoked on 11 September 1997 by the Court of Appeal. On 10 November 2000, the court lifted the ban on their leaving the local area.

23. Between October and November 2004 the first four applicants received their passports back after having taken the necessary steps themselves to have them returned.

B. Relevant domestic law

24. The legislation in force at the relevant time concerning telephone tapping, including Law no. 51/1991 on national security, is described in *Dumitru Popescu v. Romania (no. 2)* (no. 71525/01, §§ 39-46, 26 April 2007). Section 19 of the National Security Act reads as follows:

> "The instigation, organisation and establishment of a data collection system in Romania capable of affecting national security; supporting or operating such a system ... or collecting and transmitting secret or confidential information by illegal means, constitutes an offence and shall be punishable by a sentence of two to seven years' imprisonment ...."

COMPLAINTS

25. Relying on Article 6 § 1 of the Convention, the first four applicants complained that the criminal proceedings had been unreasonably lengthy, that the domestic courts had refused to agree to order a technical expert report, and that the proceedings against them had been unfair because their conviction had been based on unlawfully obtained recordings of their telephone conversations. The fifth applicant submitted that his father had been convicted following an unfair and unreasonably lengthy trial.

26. Relying on Article 8 of the Convention, all five applicants complained that the Romanian Intelligence Service had tapped and intercepted their telephone conversations unlawfully, given that the information held was sensitive within the realms of the pharmaceutical industry but was not a State secret.

27. Relying on Article 1 of Protocol No. 1 to the Convention, the first four applicants complained about the way in which the domestic courts had interpreted the clauses of the contracts concluded between the Italian companies and Antibiotice. They also complained of a breach of their right to compensation for non-pecuniary damage and for the legal expenses incurred as a result of the criminal proceedings.

28. Relying on the same Article, the fifth applicant complained about the damage caused to the reputation of Biofin Laboratories as a result of the criminal proceedings.

29. Relying on Article 2 of Protocol No. 4 to the Convention, the first four applicants complained about the court order which had prohibited them from leaving the local area and had required them to surrender their passports.

THE LAW

A. Complaint under Article 8 of the Convention

30. Relying on Article 8 of the Convention, the applicants complained that the surveillance of their telephone conversations had been unlawful and that it had breached their right to respect for their private life as the legislation that had been used to justify it had been the National Security Act, despite the fact that the information held had not concerned State secrets or other classified material which could be considered to be a threat to national security. Article 8 reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.

> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

31. As regards the first four applicants, the Court considers that it cannot determine the admissibility of this complaint from the information contained in the case file, and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of it to the respondent Government.

32. In respect of the fifth applicant, the Court notes that his conversations have never been recorded. Therefore, he cannot claim to be a victim within the meaning of Article 34 of the Convention. It follows that his complaint is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must therefore be rejected in accordance with Article 35 § 4.

B. Complaints under Article 6 of the Convention concerning the fairness and the length of the criminal proceedings

33. The applicants complained that that the criminal proceedings brought against them had been unfair because their conviction had been mainly based on unlawfully obtained recordings of their telephone conversations. They also complained that the length of the criminal proceedings was incompatible with the "reasonable time" requirement set out in Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing within a reasonable time... by [a] ... tribunal ..."

34. In respect of the first four applicants, the Court considers that it cannot determine the admissibility of these complaints from the information contained in the case file, and that it is therefore necessary, in accordance with Rule 54 § 2 (b), to give notice of it to the respondent Government.

35. In respect of the fifth applicant, the Court notes that he had not actually been party to the domestic criminal proceedings which he complained that were unfair and too lengthy (contrast *Grădinar v. Moldova*, no. 7170/02, § 95, 8 April 2008). Moreover his father, R.M. died in December 2006, after the final decision in the criminal proceedings in his case had been given by the national courts and he did not submit any application to the Court himself before his death. It follows that his complaint is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

C. Other complaints

36. The applicants raised several other complaints under Article 6 § 1, Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4 to the Convention. However, in the light of all the material in its possession, and in so far as they fall within its jurisdiction, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that these complaints are inadmissible and must be rejected in accordance with Article 35 §§ 1, 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the first four applicants' complaints concerning the interference with their private life, the excessive length of the criminal proceedings against them and the unfairness of those proceedings;

Declares the remainder of the application inadmissible.

Marialena Tsirli
Deputy Registrar

Josep Casadevall
President