



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

THIRD SECTION

DECISION

Applications nos. 22555/09 and 42204/09
Victor Atanase STĂNCULESCU against Romania
and Mihai CHIȚAC against Romania

The European Court of Human Rights (Third Section), sitting on 24 March 2015 as a Chamber composed of:

Josep Casadevall, *President*,

Luis López Guerra,

Ján Šikuta,

Kristina Pardalos,

Johannes Silvis,

Valeriu Grițco,

Iulia Antoanella Motoc, *judges*,

and Stephen Phillips, *Section Registrar*,

Having regard to the above applications lodged on 10 April 2009 and 14 January 2009 respectively,

Having regard to the decision of 3 July 2012,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The applicant in application no. 22555/09, Mr Victor Atanase Stănculescu, is a Romanian national who was born in 1928 and lives in Bucharest. He was represented before the Court by Mr C. R. Dancu, a lawyer practising in Bucharest.

2. The applicant in application no. 42204/09, Mr Mihai Chițac, was a Romanian national who was born in 1928 and lived in Bucharest. He died on 1 November 2010. His wife Naila Chițac expressed the wish to continue these proceedings. In its decision of 3 July 2014, the Court granted *locus standi* to his heir. The Court will continue to refer to Mr Chițac as “the

applicant”. The applicant and subsequently his heir were represented before the Court by Mr S. Andon, a lawyer practising in Bucharest.

3. The Romanian Government (“the Government”) were represented by their Agent, Ms C. Brumar, from the Ministry of Foreign Affairs.

4. The facts of the cases, as submitted by the parties, may be summarised as follows.

A. Background of the cases

5. The cases concern the events of 16-22 December 1989 in Timișoara, when a popular revolt that started in that city led eventually to the fall of the totalitarian regime in Romania. At the time in question, the applicants were high-ranking military officers who were sent to Timișoara to suppress the revolt. Orders were given by the then Head of State to kill the protesters. Seventy-two people were killed and two hundred and fifty sustained gunshot wounds. More details of these events are given in *Association “21 December 1989” and Others v. Romania*, nos. 33810/07 and 18817/08, 24 May 2011 and *Șandru and Others v. Romania*, no. 22465/03, 8 December 2009.

6. After the change of regime, the applicants took up appointments in the newly-formed government, since the general perception at that time was that during the December 1989 events they had played a significant role in bringing the army onto the side of the insurgents. They remained in power in the first few governments formed after the revolution.

7. On 14 February 1990 the Government established a truth commission in Timișoara – consisting of military personnel, civil and military prosecutors, members of civil society and specialists (including lawyers and a doctor) – with a view to investigating the events of 1989.

On 6 March 1990 twenty-seven written statements about the events were gathered. Mr. Chițac stated that R.B., a prosecutor and member of the truth commission, had assembled in one room all the army conscripts who had participated in the events and had ordered them to describe the nature of the applicant’s participation in the repression. He claimed that later on, in 1996, R.B. had used these extra-judicial declarations in the criminal proceedings against the applicants.

8. In the same year, the truth commission recommended that criminal investigations be opened in respect of several high-ranking officers, including the applicants, in order to establish the extent of their responsibility for the repression of the revolution in Timișoara.

9. On 12 January 1990, the military prosecutor’s office opened investigations in respect of several officers identified by the commission, as well as various other suspects. Some high-ranking officers of the former regime were convicted over the course of time for their role in the

repression and some servicemen were found guilty of having killed or injured individual victims.

B. The circumstances of the cases

10. On an unspecified date, criminal proceedings were instituted against the applicants. On 29 March 1996 the Military Prosecutor's Office decided not to bring criminal proceedings against a number of high-ranking officers of the former regime, including the applicants, for alleged crimes committed during the 1989 events in Timișoara. On 28 October 1997 that decision was quashed and the prosecution continued.

11. On 30 December 1997 the applicants were informed of the accusations against them and were given access to the prosecution file. On the same day they were committed for trial by the Military Prosecutor's Office on charges of aggravated murder in the context of the repression of the popular revolt of December 1989.

The bill of indictment was some fifty pages long and the prosecution file consisted of several volumes of several hundred pages each, comprising witness testimonies and documents from the time of the revolt – shorthand records of meetings, military logs and medical certificates. Thirty witnesses were summoned by the prosecutor and sixty-five civil parties joined the proceedings.

1. First set of proceedings against the applicants

12. The trial took place before the Supreme Court of Justice, first before the Military Section and then before the Criminal Section, which gave judgment in the case. Mr Stănculescu complained about alleged irregularities in the proceedings, but his requests were dismissed by the court on 29 April 1998.

The Supreme Court examined the prosecution file and heard testimonies from several witnesses for both the prosecution and the defence. The applicants also made statements before the court.

13. On 14 June 1998 the defence lodged a constitutional complaint alleging an interference with the applicants' right to two levels of jurisdiction; on the same day it was rejected by the Supreme Court, which then proceeded with its examination of the merits.

14. On 15 July 1999 the Supreme Court of Justice, sitting as a three-judge bench, convicted the applicants of aggravated murder and attempted aggravated murder and sentenced each of them to fifteen years' imprisonment, restriction of the exercise of certain civil rights, and demotion. It also ordered the applicants, together with the Ministry of Defence, to pay damages to 217 victims who had suffered injuries while the two applicants were in command of the military forces.

15. On 25 February 2000 the Supreme Court of Justice dismissed appeals that had been lodged by the applicants, the Ministry of Defence and some of the civil parties. The judgment thus became final.

16. The Ministry of Defence paid the compensation to the victims. The two applicants were imprisoned.

2. The extraordinary appeal lodged by the Procurator General

17. On 7 August 2001 the Procurator General lodged an extraordinary appeal, seeking to have the previous decisions set aside (*recurs în anulare*), on four grounds:

(i) that the courts had failed to order a psychiatric evaluation of Mr Stănculescu to be conducted, even though that requirement was mandatory for murder trials;

(ii) that the first-instance court had dismissed the constitutional complaint raised by the defence instead of allowing the Constitutional Court to examine its merits;

(iii) that Mr Stănculescu's right to be assisted by counsel had been infringed by the appeal court; and

(iv) that the acts committed by the applicants had not constituted crimes.

18. On 22 March 2004 the extraordinary appeal was allowed by the two Chambers of the Supreme Court of Justice sitting together.

The Supreme Court also nullified the execution of the sentences. The applicants were thus released from prison.

3. The second set of proceedings

19. A three-judge bench of the High Court of Cassation and Justice (formerly the Supreme Court of Justice) took over the case. On 18 January 2005 it also referred to the Constitutional Court the constitutional complaint which Mr Stănculescu had reiterated before it. The Constitutional Court dismissed it on 7 June 2005. The High Court granted requests for new evidence made by the applicants, in particular requests to adduce documents and to summon fourteen witnesses; it heard statements from the applicants and some of the witnesses and re-examined the whole body of evidence administered during the criminal prosecution and in the first set of proceedings.

20. Mr Stănculescu complained of alleged irregularities in the prosecution proceedings. On 15 February 2006 his complaints were dismissed in a thoroughly reasoned interlocutory judgment.

With regard to the merits of the case, the applicants denied committing the crimes of which they had been accused.

21. In a judgment of 3 April 2007 the High Court found the applicants guilty of aggravated murder and attempted aggravated murder and imposed

a final sentence of fifteen years' imprisonment each, together with an additional penalty restricting the exercise of certain civil rights, and demotion. It also granted the compensation claims on the same terms as in the judgment of 15 July 1999 (see paragraph 14 above). It noted that the Ministry of Defence had already paid those damages.

22. The applicants appealed and in a final decision of 15 October 2008 a nine-judge bench of the High Court dismissed the appeal and upheld the judgment delivered by the three-judge bench.

23. The applicants were imprisoned once again in execution of their sentence.

COMPLAINT

24. The applicants complained under Article 6 § 1 of the Convention that the criminal proceedings against them had lasted too long.

THE LAW

25. According to the applicants, the length of these proceedings breaches the "reasonable time" requirement laid down in Article 6 § 1 of the Convention which, in so far as relevant, reads:

"In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. The parties' arguments

26. The Government challenged the allegation. They contended that, for the applicants, the criminal investigations had not started until 30 December 1997, as no official complaint had been formulated before that date. The truth commission had not been an investigative body, its only function having been that of establishing the truth concerning the events of 1989; its tasks therefore did not fall within the ambit of Article 6. They further argued that the extraordinary appeal had been lodged in the interest of the applicants and had been rendered necessary by the complexity and extreme sensitivity of the case. Lastly on that point, the Government asserted that the period of four months and three weeks during which the first applicant's constitutional complaint had been pending with the Constitutional Court should not be counted towards the total length of the proceedings. They calculated that the first set of proceedings had lasted for two years and

two months and the second set of proceedings approximately four years and seven months.

27. They also emphasised that the case was very complex, given the volume of documents it involved and the legal controversies it raised.

28. The Government considered that the authorities had acted with due diligence and without protracting the proceedings.

29. The first applicant did not comment on the Government's position.

30. The second applicant challenged the Government's position. He argued that rather than limiting the State's responsibility to the period starting on 30 December 1997, as proposed by the Government, the first eight years – from the date of the events up to 30 December 1997, which had been omitted from that calculation – should be included and thus increase the State's responsibility. He asserted that the accusations in question had been widely known about, and it would be a fiction to maintain that he had understood their nature only when they were officially communicated to him. Moreover, he argued that from the time of the events until the formal lodging of the complaints, he had lived in a state of anxiety, his right to a private life had been breached by repeated media exposure, and the chances of establishing the truth had diminished considerably over time, thereby undermining the reputation of the judicial system.

B. The Court's assessment

31. 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). What is at stake for the applicants has also to be taken into account (see *I.J.L. and Others v. the United Kingdom*, nos. 29522/95, 30056/96 and 30574/96, § 133, ECHR 2000-IX).

32. The Court observes that the investigation into the events was pending with the prosecutor from 1990 to March 1996 and from October to December 1997, and subsequently with the courts from 30 December 1997 to 25 February 2000 in the first set of court proceedings and from 22 March 2004 to 15 October 2008 in the second set of court proceedings (for the exclusion of extraordinary appeal proceedings from the overall duration of proceedings see, *mutatis mutandis*, *Cerăceanu v. Romania* (no. 1), no. 31250/02, § 47, 4 March 2008). Furthermore, given that the respondent State ratified the Convention on 20 June 1994, only some two years of the entire prosecution phase fell within the Court's *ratione temporis* jurisdiction (see *Stoianova and Nedelcu v. Romania*, nos. 77517/01 and 77722/01, § 21, ECHR 2005-VIII as well as *Reiner and Others v. Romania*, no. 1505/02, § 56, 27 September 2007).

33. The applicants failed to inform the Court of the exact date on which they had first been notified that criminal proceedings had been instituted against them (see paragraph 10 above). The only information available to the Court is that on 28 October 1997 the prosecutor was ordered to start again the criminal investigation against the applicants. By that time they must have become aware of the criminal proceedings against them. There is no reason for the Court to consider any date other than 28 October 1997 as the starting point of the criminal proceedings.

34. The proceedings of the truth commission and the first investigations do not fall within the ambit of Article 6 as no formal complaint was brought against the applicants at that time and the applicants do not provide any details about the exact date when they had become affected by the investigations. Moreover, the Court dismisses the second applicant's allegations that the eight years that elapsed between the events and the formal complaints should count towards the overall duration (see paragraph 30 above). It considers that public knowledge about the accusations against high-ranking officers cannot be seen as equating to an official complaint against the applicants, since no criminal proceedings against them had been instituted. Moreover, at the time when they were allegedly suffering from anxiety because of the investigations into the events, they had maintained their high positions within the Romanian Government.

35. However, even if it were to be accepted that the criminal investigations concerning the applicants had started before 28 October 1997, the Court would still not calculate a period exceeding approximately two years, that is to say from 20 June 1994 (the date of ratification of the Convention by the respondent State) to 29 March 1996 (the date when the criminal investigation ended) and from 28 October 1997 (when the prosecution restarted) to 30 December 1997 (when the applicants were committed to trial).

36. The first set of court proceedings lasted for a little over two years at two levels of jurisdiction and the second set of court proceedings lasted for a little over four and a half years at two levels of jurisdiction, giving a total of some six and a half years at two levels of jurisdiction.

37. The Court is mindful of the complexity of the case for the investigator, with some three hundred victims, either dead or injured, and a great number of participants in the events. In addition the applicants' anguish during the proceedings must have been alleviated by the fact that the proceedings were fair and any procedural defects that might have occurred were rectified at the domestic level by means such as the extraordinary review lodged on their behalf by the Procurator General (see *Stanculescu and Chitac v. Romania* (dec.), nos. 22555/09 and 42204/09, §§ 59, 63, 67, 69, and 70, 3 July 2012). It also notes that during the phases of the proceedings relevant for the present case there were no significant periods of inactivity caused or otherwise sustained by the authorities.

38. Lastly, the Court considers that, although they have their origins in the same events, the present case is essentially different from *Șandru and Others* where the Court found a breach of the procedural limb of Article 2 of the Convention because of the manner in which the investigations had been carried out, including their length (*Șandru and Others*, cited above, §§ 73, 79, and 80). In particular the Court observes that the case *Șandru and Others* it examined the criminal proceedings from the standpoint of the victims of the armed repression who had been involved in the proceedings for a significantly longer period than the applicants in the current case. Furthermore, the length of proceedings was not the sole argument that led the Court to find a violation in *Șandru and Others* whereas the current case only addresses this issue. Lastly, the facts in *Șandru and Others* gave rise to an examination under Article 2 of the Convention, while the present case is examined under Article 6 § 1 alone.

39. In the light of the above, the Court considers that a period of roughly six and a half years for examination by two levels of jurisdiction is in line with the Court's case-law on the matter. Lastly, even assuming that the two years for the prosecution phase are taken into account (see paragraph 35 above), an overall duration of roughly eight years for the criminal proceedings (the investigation and the trial before four courts at two levels of jurisdiction) is compatible with the Court's case-law on the matter, in particular given the complexity of the case and its extreme importance for all the participants in the proceedings and society as a whole (see, *mutatis mutandis*, *Idalov v. Russia* [GC], no. 5826/03, §§ 187, 192, 22 May 2012; *I.J.L. and Others*, cited above, § 138; *Năstase v. Romania* (dec.), no. 80563/12, §§ 86-87, 18 November 2014; or *G.C.P. v. Romania* (dec.), no. 20899/03, 2 June 2009).

For these reasons, the Court, unanimously,

Declares the remainder of the applications inadmissible.

Done in English and notified in writing on 16 April 2015.

Stephen Phillips
Registrar

Josep Casadevall
President