



The dismissal of a customs officer for extended absence from work on account of his pre-trial detention did not breach his human rights

In its decision in the case of [Tripon v. Romania](#) (application no. 27062/04), the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

Principal facts

The applicant, Teodor Octavian Tripon, is a Romanian national who was born in 1968 and lives in Beius (Romania).

On 21 September 2001 Mr Tripon, a customs officer at a border post, was placed in pre-trial detention on suspicion that he, together with six of his colleagues, had committed an offence of abuse of office to the detriment of the State's interests. The court extended his detention until 1 December 2001, when he was released.

In the meantime, on 28 November 2001, Mr Tripon had been dismissed on the basis of Article 130 (j) of the Labour Code, which made it possible to dismiss an employee if he or she was placed in pre-trial detention for more than 60 days, on whatever grounds.

Mr Tripon appealed against his dismissal before the Oradea Court of Appeal. The latter applied to the Constitutional Court of its own motion requesting it to examine whether Article 130 (j) of the Labour Code was compatible with the right to be presumed innocent, since it allowed conclusions to be drawn in the sphere of employment law before a person's guilt or innocence had been established by a final ruling.

On 14 January 2003 the Constitutional Court found that the right to dismiss an employee who was placed in pre-trial detention for more than 60 days was justified by an objective fact, namely the person's extended absence from work. In the Constitutional Court's view, the reasoning behind Article 130 (j) was to protect employers against the possibly damaging consequences of the prolonged absence of an employee who did not fulfil his or her contractual obligations as a result.

On 24 February 2003 the Oradea Court of Appeal held that Mr Tripon's dismissal had been in accordance with the law. In a final judgment of 16 January 2004 the Supreme Court of Justice upheld that ruling and dismissed the further appeal lodged by Mr Tripon.

The applicant was sentenced by the Oradea Court of First Instance to one year and eight months' imprisonment, suspended. The court found that Mr Tripon and six of his colleagues from the same customs post had committed the offences of abuse of office to the detriment of the State's interests and forgery, as their misconduct in the performance of their duties as customs officers had cost the Finance Ministry around 500 million euros in taxes and excise duties not paid into the State budget.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 6 July 2004.

Relying on Articles 5 (right to liberty and security) and 6 (right to a fair trial) of the European Convention on Human Rights, the applicant complained that his right to be presumed innocent had been infringed because he had been dismissed following his placement in pre-trial detention, before even being found guilty of the offences of which he had been accused. He maintained that the right of employees placed in pre-trial detention to be presumed innocent could better be protected by suspending their contracts until the court concerned had given a final decision determining their guilt.

The decision was given by a Chamber of seven, composed as follows:

Josep **Casadevall** (Andorra), *President*,
Alvina **Gyulumyan** (Armenia),
Egbert **Myjer** (the Netherlands),
Ján **Šikuta** (Slovakia),
Ineta **Ziemele** (Latvia),
Luis **López Guerra** (Spain),
Kristina **Pardalos** (San Marino), *Judges*,

and also Marialena **Tsirli**, *Deputy Section Registrar*.

Decision of the Court

Article 6 § 2

The Court considered it necessary to examine the whole of Mr Tripon's complaint from the standpoint of Article 6 § 2 (presumption of innocence), which guaranteed to each individual the right not to be identified or treated as guilty of an offence before his or her guilt had been established by a court. The Court's task was to ascertain whether the decision taken by the applicant's employer, the Directorate-General of Customs, to dismiss him in accordance with the employment legislation before he had been finally convicted amounted to a statement or act reflecting an opinion that he was guilty or prejudging the assessment of the facts by the court.

The Court noted that the right, under Article 130 (j) of the Labour Code, to dismiss an employee placed in pre-trial detention for more than 60 days was based on an objective factor, namely the extended absence of the employee concerned from his or her post, and not on any other considerations. In enacting that provision the national legislature had sought to protect employers against the possibly damaging consequences of the prolonged absence of an employee who did not fulfil his or her contractual obligations as a result. The Court also observed that the Romanian legislation at the relevant time had provided sufficient safeguards against arbitrary or abusive treatment of employees who were absent from work because they were in custody. Any extension of the period of detention beyond 30 days had to be ordered by a court, giving reasons, and had to be necessary. Since 2005, only an independent and impartial judge for the purposes of Article 6 § 1 of the Convention had the power to place persons suspected of an offence in pre-trial detention, by means of a reasoned decision against which it was possible to appeal.

The Court noted that in Mr Tripon's case no representative of the State, whether a judge, court or other public authority, had made any statements reflecting an opinion that Mr Tripon was guilty of an offence before his guilt had been established by the Oradea Court of Appeal judgment of 11 October 2004.

After detailed examination in the course of adversarial proceedings held in public, the courts had upheld the prosecution's charges against Mr Tripon. It was true that, in the event of an acquittal, the law did not require the applicant's former employer to reinstate him. Nevertheless, he would have had the option of bringing an action against the State seeking compensation for the judicial error made in his case.

Having regard to all the evidence in its possession, the Court considered that the decision to dismiss Mr Tripon, taken by his employer in accordance with the national legislation, did not amount to an infringement of his right to be presumed innocent. As it likewise found no evidence of a violation of the other rights and freedoms protected by the Convention, the Court declared Mr Tripon's application inadmissible.

The decision is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.