

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

THIRD SECTION

DECISION

Application no. 59142/09
by Octavian BOZUN
against Romania

The European Court of Human Rights (Third Section), sitting on 12 April 2011 as a Committee composed of:

Ján Šikuta, *President,*
Ineta Ziemele,
Kristina Pardalos, *judges,*

and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 26 October 2009,

Having regard to the declaration submitted by the respondent Government on 4 November 2010 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Octavian Bozun, is a Romanian national who was born in Drobeta Turnu Severin in 1941 and lives at present in Oradea. The Romanian Government ("the Government") were represented by their Agent, Mr. Răzvan-Horaţiu Radu, from the Ministry of Foreign Affairs.

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

On 18 October 2001, the Public Prosecutor's Office initiated a criminal investigation against the applicant, accused of malfeasance in public office, fraud and uttering of forged papers.

On 26 February 2004, the applicant was brought to trial on indictment on the same charges for which the investigation had been carried out. He was represented by a qualified lawyer throughout the ensuing proceedings.

By a final judgment of 5 May 2009, the Târgu Mureş Court of Appeal ruled that the applicant was not responsible for two of the offences with which he had been charged and that he had been granted a pardon for the third.

The overall length of the criminal proceedings amounted to seven years, six months and two days. During this lapse of time, the case was heard before three degrees of jurisdiction in two procedural cycles. Moreover, between the initiation of the criminal investigation and the date on which the indictment was issued there elapsed a period of more than four years. Two referrals of the case also occurred: firstly, the case was referred to a different court of the same jurisdiction, on grounds of the first court's lack of impartiality, and secondly, the case was remitted to the first instance court for reconsideration, on grounds of procedural errors.

COMPLAINTS

1. The applicant complained under Article 6 § 1 of the Convention that the length of the criminal proceedings had been excessive and had failed to meet the "reasonable time" requirement.

2. The applicant also relied on this provision to complain as to the outcome and equity of the proceedings.

3. He complained under Article 5 § 1(c) regarding the lawfulness of the pre-trial detention.

4. Lastly, he complained under Article 5 § 5 with regard to the lack of compensation for his alleged unlawful detention.

THE LAW

A. Length of proceedings

The applicant complained about the length of the criminal proceedings against him, which he deemed unreasonable. He relied on Article 6 § 1 of the Convention which, in so far as relevant, provides as follows:

Article 6 § 1

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

By letter dated 23 August 2010, the Government submitted their proposal to secure a friendly settlement of the present case. In a further letter dated 4 November 2010 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "...the Government hereby wishes to express – by way of the unilateral declaration – its acknowledgement of the unreasonable duration of the domestic proceedings that involved the applicant within the meaning of Article 6 § 1 of the Convention.
>
> Consequently, the Government is prepared to pay the applicant the amount of EUR 2,100, which it considers to be reasonable in the light of the Court's case law. The sum referred to above, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. It will be paid into Romanian lei (RON) at the exchange rate applicable at the time of payment, into the account indicated by the applicant, within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default periods plus three percentage points. (...)
>
> The Government would respectfully suggest that the above declaration might be accepted by the Court as 'any other reason' justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention. ..."

In his letter of 31 January 2011, the applicant expressed the view that the sum mentioned in the Government's declaration was unacceptably low. He stressed that he could not accept the amount indicated in the Government's proposal as providing adequate remedy for the pecuniary, as well as non-pecuniary damage he had sustained.

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1(c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI).

The Court has established in a number of cases, including those brought against Romania, its practice concerning complaints about the violation of one's right to a hearing within a reasonable time (see, for example, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-98, ECHR 2006-....; *Abramiuc v. Romania*, no. 37411/02, § 130, 24 February 2009).

Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1(c)).

Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of this part of the application (Article 37 § 1 *in fine*).

In view of the above, it is appropriate to strike it out of the list.

B. Remaining complaints

The applicant further complained under Article 6 as to the outcome and equity of the proceedings. In particular, he alleged that the domestic courts had failed to conduct a proper examination of the evidence submitted before them; that the domestic judgments were not reasoned and that the domestic courts had not been impartial. He also complained under Article 5 § 1 (c) regarding the lawfulness of the pre-trial detention, as well as under Article 5 § 5 with regard to the lack of compensation for his alleged unlawful detention.

The Court has examined the remainder of the complaints as submitted by the applicant. However, having regard to 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. It follows that this part of the application must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration under Article 6 § 1 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases insofar as it relates to the above complaint in accordance with Article 37 § 1 (c) of the Convention.

Declares the remainder of the application inadmissible.

Marialena Tsirli	Ján Šikuta
Deputy Registrar	President