

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

THIRD SECTION

DECISION

Application no. 10762/04
Eduard Mihael CĂCESCU and others
against Romania

The European Court of Human Rights (Third Section), sitting on 2 October 2012 as a Chamber composed of:

Josep Casadevall, *President,*
Egbert Myjer,
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria,
Kristina Pardalos, *judges,*

and Santiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 19 February 2004,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr Eduard Mihael Căcescu ("the first applicant"), Mr Mihael Căcescu ("the second applicant") and Mrs Viorica Căcescu ("the third applicant"), are Romanian nationals who were born in 1982, 1949 and 1952 respectively and live in Tecuci. The second and third applicants are the first applicant's parents. They are all represented before the Court by the second applicant, who is a lawyer practising in Tecuci.

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

A. The events on 9/10 December 2000

3. On 9 December 2000 the first applicant, who was then eighteen years old, went with eleven school friends in four cars to a neighbouring town, Focşani, to attend a concert. After the event they drank soft drinks and coffee at a restaurant. At around 1 a.m. they returned to their cars in order to leave for home. The applicant was on the back seat of one of the four cars when a patrol composed of a police officer and a gendarme approached him and asked him to produce the car papers.

4. According to the applicant, he replied that he did not have the papers as he was not the driver. The police officer became angry and told him to step out of the car. When the applicant did so, the police officer immobilised him and started to punch and kick him, hitting him about the head and mouth with his walkie-talkie. The applicant fell to the ground but the police officer continued kicking him in the mouth. The gendarme and two security guards from the restaurant also took part in the attack.

5. The first applicant was bleeding heavily and lost consciousness. When he woke up he was at the police station in Focşani, where he had been taken along with two of his friends. He was held there for three hours and informed that he would be fined for refusing to present his identity papers. The applicant refused to sign the contravention report, which he later contested before the courts. In a final decision of 12 September 2001 the Vrancea County Court annulled the report.

B. Medical examination and treatment of the first applicant

6. One of the first applicant's friends contacted the second and third applicants and told them what had happened to their son. At 4 a.m. the parents went to Focşani police station and found their son bleeding, toothless and with torn clothes. They took him to Tecuci Hospital, where he was examined by a doctor and sent to Sfânta Elena Clinic in Galaţi.

7. The medical reports drafted on 11 December 2000 stated that the applicant had swollen lips, recent post-traumatic lesions and broken teeth.

8. From 12 to 18 December 2000 the first applicant underwent corrective dental surgery in Elisabeta Doamna Hospital in Galaţi.

9. On 27 December 2000 a forensic doctor issued a further medical report that confirmed the conclusions of the previous examinations and described the operations. It concluded as follows:

> "1. Căcescu Eduard Mihael presents traumatic facial and dental lesions which could have been caused by being hit with a hard object.
>
> 2. The lesions could have occurred on the night of 9/10 December 2000.
>
> 3. They require thirty to forty days of medical care from the day of their occurrence, if no complications arise, with the repair of broken teeth by means of prostheses."

10. On 27 June 2002 the first applicant underwent a dental examination in a private clinic in order to assess the need for further treatment. The orthodontist noted that six teeth were still affected and needed prostheses, and that one tooth had been removed completely due to post-traumatic complications. The orthodontist mentioned that, in any case, the applicant's teeth could not be restored to their original condition by more than 75%. The orthodontist estimated the cost of the surgery at 77,207,500 Romanian lei (ROL).

C. Criminal proceedings against the alleged aggressors

11. On 27 December 2000 the first applicant lodged a criminal complaint against the police officer, the gendarme and the two security guards.

12. The Bacău Military Prosecutor's Office started investigations and on 16 May 2002 committed the police officer, the gendarme and one civilian security guard for trial accused of serious bodily injury causing disfigurement ("*vătămare corporală gravă având ca urmare sluţirea*"). In addition, the police officer was indicted for abusive behaviour (*"purtare abuzivă*").

13. The applicants participated in the proceedings as civil parties.

14. Before the Iaşi Military Court the prosecutor asked for the offence to be re-classified as bodily injury, in the light of the medical reports. The civil parties objected to the re-classification.

15. On 5 February 2003 the Military Court gave judgment on the case.

16. On the facts, it found that the police intervention had been prompted by a fight that had occurred in the vicinity of the restaurant where the applicant had been drinking with his friends. It also found that when asked to identify himself, the applicant had refused and told the police officer that he "did not show identification papers to a night watch" and that his father was a lawyer. The court examined the evidence and ruled that only the injuries sustained to the head had been proven and that nothing in the case file supported the applicant's allegations that he had sustained punches and kicks to his entire body while lying on the ground. As for the gravity of the abuse, the court noted that the first applicant needed only thirty to forty days to recuperate and had suffered only temporary aesthetic damage.

17. Given the less severe consequences of the abuse, the court changed the legal classification of the offence as proposed by the prosecutor. It then found, based on the evidence in the file, that by hitting the applicant in the face, the culprits had committed the offence of bodily injury (all culprits) and abusive behaviour (the police officer), and convicted them of those offences. The court gave the police officer a two-year suspended sentence and the other two culprits received eighteen-month suspended sentences.

18. Lastly, the court examined the civil claims in the light of the extensive evidence. It set aside part of the pecuniary claims as it found that they had not been properly justified, and held that the amount sought by the first applicant for non-pecuniary compensation was exaggerated. It therefore awarded him ROL 14,996,713 in respect of pecuniary damages and ROL 50,000,000 in respect of non-pecuniary damages. It dismissed entirely the non-pecuniary claims lodged by the second and third applicants, as it held that they were not entitled to make any claims in the proceedings and that in any case they could enjoy the award made to the victim under that head.

19. All the parties appealed against the judgment. On 24 June 2003 the Bucharest Military Court noted that general Amnesty Law no. 543/2002 was applicable to the criminal sentences in the case and modified the judgment accordingly. It maintained the lower court's decision concerning the civil awards and noted that recent expert medical reports had attested that the victim had by then recovered completely as a result of treatment.

20. The accused persons appealed on points of law. In a final decision of 30 October 2003 the Bucharest Military Court of Appeal dismissed the appeals and upheld the decision of 24 June 2003. The final decision became available to the parties on 14 November 2003.

COMPLAINTS

21. The first applicant complained under Article 6 § 1 of the Convention that both the military prosecutor and the military judges had lacked the independence and impartiality required by the Convention, as they belonged to the same hierarchical military structure as two of the perpetrators. He argued that several elements of the proceedings had proved his allegations, in particular the protraction of the case for eighteen months, the re-classification of the offence, the light sentences and the small awards made to the victim.

22. He also alleged that Articles 13, 14 and 17 of the Convention had been violated as he had been unable effectively to object to the re-classification of the offence, because the prosecutor was the only party allowed to ask for it or object to it during the proceedings.

23. In addition, the first applicant complained under Article 5 of the Convention that he had been beaten up by a police officer and a gendarme, who, by virtue of their office, should have protected rather than harmed him.

24. Lastly, the second and third applicants complained under Article 6 § 1 of the Convention that they had been denied access to court, in

so far as they had not been recognised as civil parties to the proceedings entitled to make civil claims.

THE LAW

A. Article 6 § 1 of the Convention

25. Relying on Articles 6 § 1, 13, 14 and 17 of the Convention, the applicants complained about several aspects of the criminal investigation of the police officer who had beaten the first applicant, in particular about an alleged lack of independence and impartiality of the military prosecutor and judges.

26. The Court, being master of the characterisation to be given in law to the facts of the case, decided to examine the above complaints under Article 6 § 1 alone (see *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I).

Article 6 § 1 of the Convention reads, in so far as relevant, as follows:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time by an independent and impartial tribunal established by law."

27. The Court reiterates that in order to establish whether a tribunal can be considered "independent" for the purposes of Article 6 § 1, regard must be had, *inter alia*, to the manner in which its members are appointed and to their term of office, the existence of safeguards against outside pressures and the question whether it presents an appearance of independence. As to the condition of "impartiality" within the meaning of that provision, there are two tests to be applied: the first consists in trying to determine the personal conviction of a particular judge in a given case (the objective test), and the second in ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect (the subjective test) (see *Piersack v. Belgium*, 1 October 1982, § 30, Series A no. 53, and *Incal v. Turkey*, 9 June 1998, § 65, *Reports* 1998-IV).

28. The Court has already ruled that the fact that investigations into allegations of police abuse were carried out by a military prosecutor and military courts could raise doubts as to the independence and impartiality of those officials, in so far as both police officers on the one hand and the military prosecutors and military judges on the other hand belonged to the same military hierarchy (see *Barbu Anghelescu v. Romania*, no. 46430/99, § 67, 5 October 2004).

29. However, it has also ruled that the matter of the independence and impartiality of a court is to be examined in the concrete circumstances of the case (see *Mantog v. Romania*, no. 2893/02, § 70, 11 October 2007).

30. On the facts of the case under examination, the Court notes that the first applicant failed to justify concretely, either objectively or subjectively, his allegations of lack of impartiality and independence of the military judges. It further finds no such indication in the case. It reiterates that the proceedings were overall favourable to the victim. In addition the amnesty law was applied automatically and not left at the discretion of the judges.

31. In particular, the perpetrators were put to trial by the domestic authorities and sentenced (see paragraphs 17 and 19 above) and the victim of the police abuse was awarded compensation. The fact that the sentence was not enforced by virtue of a general amnesty law was of no consequence for the first applicant, as the award of damages to the victim remained unaffected by that law.

32. The Court finds no indication of arbitrariness in the manner in which those courts examined the case. In these circumstances, the first applicant's discontent with the reclassification of the crimes, the sentences imposed and the amount of damages awarded appear to be complaints of a fourth-instance nature which the Court, by virtue of the subsidiarity principle, will not deal with (see, *mutatis mutandis*, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

33. For all these reasons, in the concrete circumstances of the case, the Court cannot discern any indication of lack of fairness of the proceedings.

34. The Court considers further that the length of the criminal proceedings of nearly three years for three levels of jurisdiction does not contradict the applicable standards developed in its case law.

35. Lastly, the Court notes that the second and third applicants complained of lack of access to court.

However, in the 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. In particular, it notes that the applicants' claims were duly examined and dismissed by means of reasoned decisions and that there is no indication of arbitrariness or unfairness in the domestic courts' conclusions.

36. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Article 5 of the Convention

37. In addition, the first applicant complained under Article 5 of the Convention that he had been beaten up by a police officer and a gendarme,

who, by virtue of their office, should have protected rather than harmed him.

38. However, the only time when the applicant was under police control was the night of 9-10 December 2000. As this complaint was not made to the Court until 19 February 2004, the applicant failed to observe the six-month time-limit.

It follows that this complaint has been made out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President