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

FOURTH SECTION

DECISION

Application no. 55663/13
Marian DIACONU against Romania
and 5 other applications
(see list appended)

The European Court of Human Rights (Fourth Section), sitting on 5 September 2017 as a Committee composed of:

Paulo Pinto de Albuquerque, *President,*
Egidijus Kūris,
Iulia Motoc, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having regard to the above applications lodged on the various dates indicated in the appendix,

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. A list of the applicants is set out in the appendix. They were represented before the Court by Ms I.A. Igna, a lawyer practising in Deva.

2. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, of the Ministry of Foreign Affairs.

3. On 17 February 2015 the complaints concerning the allegedly excessive length of the proceedings and the alleged breach of the applicants' rights under Article 8 of the Convention were communicated to the Government and the remainder of the applications were declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

A. The circumstances of the cases

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

5. In October and November 2004 the Prosecutor's Office attached to the Alba-Iulia Court of Appeal ("the prosecutor") opened criminal investigations against the applicants, who included the Deva Chief of Police and other police officers, on suspicion of their being involved in an organised criminal group linked with an international drug-trafficking and prostitution network. At various dates in September, November and December 2004 the applicants had been placed under police custody.

6. As part of this set of proceedings, on 28 December 2004 the department for the investigation of organised crime of the Alba-Iulia County Prosecutor's Office decided to indict the applicants and eighteen other people on charges of creating an organised criminal group, as well as on several counts of fraud, theft, blackmail, procuring and inflicting bodily harm. These accusations were based, *inter alia*, on statements given by sixty-eight witnesses and information obtained by intercepting the telephone conversations of certain members of the group, including some of the applicants, in 2003 and 2004. This surveillance activity was carried out under Article 91[1] of the Romanian Criminal Procedure Code ("the CPC").

7. The applicants' trial started in March 2005 before the Piteşti Court of Appeal. Some of the applicants, through their legal representatives, contested the lawfulness of intercepting their telephone conversations, the transcripts of which had been submitted as evidence by the prosecutor. They considered that the surveillance – which had been conducted before the defendants had been charged with a crime – was null and void and therefore could not be accepted as evidence in the proceedings. They also requested that the phone-tapping authorisations and the reasoning on which they had been based be submitted to the file. The court allowed this last request.

8. At the hearing of 30 January 2006 the applicants' representatives complained that only certified copies of the authorisations had been submitted. In addition, one of the authorisations submitted had been a classified document (and therefore not accessible to the parties). At the hearing of 11 July 2006 the court held that the applicants' complaints concerning the lawfulness of the phone-tapping and the acceptance of the transcripts of their intercepted conversations as evidence would be taken into consideration at the examination of the merits of the case.

9. On 26 June 2007 the Piteşti Court of Appeal convicted the applicants of the above-mentioned crimes and sentenced them to varying terms of imprisonment. The court held that the interception of the applicants' phone conversations had been lawful and that their conviction had been based on plentiful evidence, such as complaints made by injured parties, numerous

witness statements, documents, reports of house searches and undercover operations, and photographic evidence.

10. The parties lodged an appeal on points of law (*recurs*) against this judgment. The appeal was allowed by the High Court of Cassation and Justice ("the High Court"), which held in a judgment of 24 January 2008 that it was the Argeş County Court that had jurisdiction in respect of the case, and not the Piteşti Court of Appeal. Accordingly, the High Court noted that the policemen tried in the case were not members of the judiciary police – which would have triggered the competence of the Court of Appeal – and ordered that the case be retried by the Argeş County Court.

11. The Argeş County Court heard the case on the merits and on 27 April 2010 convicted the applicants on all charges. Seven postponements of hearings had previously been ordered by the County Court at the applicants' request or because of their failure to attend.

12. The applicants appealed against this judgment, asking that they be acquitted on some of the charges against them for lack of evidence or that they be given more lenient sentences. Their appeal was partially allowed on 17 November 2011 by the Piteşti Court of Appeal in respect of the calculation of the length of their sentences. The proceedings before this court had previously been postponed four times at the applicants' request.

13. The applicants lodged appeals on points of law against the above-mentioned judgment, reiterating their innocence and asking that the case be retried. Their appeals were heard by the High Court of Cassation and Justice.

14. At a hearing of 24 January 2013 before the High Court the applicants' representatives complained that the case file did not contain the authorisation in respect of that part of the phone-tapping that had been classified (see paragraph 8 above). The prosecutor replied that transcripts of all phone conversations had been included in the case file, as well as all authorisations. As regards the classified authorisation, it was accessible only to those who had the right to access classified documents. The High Court requested further clarification from the prosecutor as regards the possibility of declassifying the authorisation in question and postponed the debates until 7 March 2013.

15. At the hearing of 7 March 2013 the prosecutor noted that the classified authorisation had been issued in respect of another suspect and did not concern those defendants who had requested that it be declassified. Therefore, it was not necessary to declassify this document. In their final submissions on the merits the applicants' representatives requested that they be acquitted, as some of the crimes in question had become statute-barred, while the rest had not been committed by the applicants. As an alternative, they asked that the case be retried in order for the courts to re-evaluate the evidence. The applicants requested on four occasions that a hearing before the High Court be postponed.

16. On 18 March 2013 the High Court of Cassation and Justice partially allowed the applicants' appeals on points of law in respect of the calculation of their sentences and the application of the statute of limitations in respect of some of the crimes. The judgment became final.

B. Relevant domestic law

17. The legislation concerning phone-tapping in force at the relevant time, together with changes to the relevant law which came into effect on 1 January 2004, are described in *Dumitru Popescu v. Romania (no. 2)* (no. 71525/01, §§ 39-46, 26 April 2007).

COMPLAINTS

18. The applicants complained under Article 6 § 1 of the Convention of the excessive length of the criminal proceedings against them.

19. The applicants in applications nos. 55663/13, 56306/13, 59954/13 and 62521/13 also complained that the interception of their phone conversations had breached their rights guaranteed by Article 8 of the Convention.

THE LAW

A. Joinder of the applications

20. Having regard to the similar subject matter of the applications, the Court finds it appropriate to order their joinder (Rule 42 § 1 of the Rules of Court).

B. Complaint under Article 6 § 1 of the Convention

21. The applicants' first complaint relates to the length of the proceedings, which, they allege, was incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which in so far as relevant, reads as follows:

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

22. The Government asked the Court to take into consideration the efforts made by the Romanian authorities to address the applicants' difficult and complex criminal case in a prompt manner. They submitted that the

duration of the proceedings had been influenced by a number of factors, such as postponements requested by the defendants, the large number of defendants and the large number of crimes committed.

23. 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 and 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).

24. In the current case the period to be taken into consideration began at different dates in between September and December 2004, when the applicants had been placed under police custody (see paragraph 5 above), and ended on 18 March 2013, when the High Court of Cassation and Justice gave its final judgment (see paragraph 16 above). The criminal investigation and proceedings before the courts at three levels of jurisdiction thus lasted approximately a total period of eight years and six months.

25. Having examined all the material before it, the Court considers that for the reasons stated below, the respondent Government cannot be held liable for non-compliance with the "reasonable time" requirement. In particular, the Court notes that the proceedings in the current case may be considered particularly complex, bearing in mind the large number of accused persons, as well as their official positions as policemen and the international aspect and the nature of the crimes (see paragraphs 5 and 6 above). The proceedings comprised a criminal investigation and trials at three degrees of jurisdiction; what is more, repeated postponements of the trial were necessitated by the applicants' conduct (see paragraphs 11 and above) and the Court cannot discern any significant periods of inactivity imputable to the authorities (compare and contrast *Marinică Tiţian Popovici v. Romania*, no. 34071/06, § 28, 27 October 2009).

26. Therefore, bearing in mind the conduct of both the applicants and the authorities, the Court is of the opinion that no appearance of a violation of the "reasonable time" requirement can be found in the present case (see, *mutatis mutandis* and among many other authorities, *Ion Popescu v. Romania* (dec.), no. 4206/11, §§ 41-44, 17 March 2015, and *Turturică and Others v. Romania* (dec.), nos. 18805/10, 17305/11 and 52266/12, 16 June 2016).

27. In view of the above, the Court finds that this complaint is manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 and 4 of the Convention.

C. Complaint under Article 8 of the Convention

28. The applicants in applications nos. 55663/13, 56306/13, 59954/13 and 62521/13 also complained that the interception of their phone

conversations had breached their rights under Article 8 of the Convention. They argued that the transcripts of the intercepted conversations should not have been accepted as evidence against them since they had been obtained unlawfully.

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."

29. The Government contended that the applicants had not exhausted the domestic remedies in respect of this complaint. Specifically, the applicants had had the option of bringing a civil action for damages under Articles 998-99 of the Civil Code. The Government relied in this respect on the Court's findings in the cases of *Patriciu v. Romania* ((dec.) no. 43750/05, § 86, 17 January 2012) and *Tender v. Romania* ((dec.) no. 19806/06, 17 December 2013). The Government further pointed out that, in addition, the applicants had failed to raise any complaints concerning an alleged breach of their right to private life at the hearing of 7 March 2013 before the High Court of Cassation and Justice (see paragraph 15 above).

30. The applicants did not comment on this point.

31. The Court reiterates that under Article 35 § 1 it may only deal with a matter after all domestic remedies have been exhausted. Applicants must have provided the domestic courts with the opportunity, in principle intended to be afforded to Contracting States, of preventing or putting right the violations alleged against them (see *McFarlane v. Ireland* [GC], no. 31333/06, § 107, 10 September 2010).

32. The Court further notes that it had already held that a civil action for damages provided under Articles 998-99 of the Civil Code constituted an effective remedy available under the domestic legal system in respect of the type of complaint raised by the applicants (see *Mucea v. Romania* (dec.), no. 24591/07, §§ 29-31, 24 May 2016).

33. In respect of the current cases, the Court observes that the applicants failed to seek compensation under the provisions of Articles 998-99 of the Civil Code.

34. To the extent that the applicants maintained that they had raised their Article 8 complaints within the context of the criminal proceedings against them, the Court acknowledges that such a remedy may also be considered effective (see *Mucea*, decision cited above, § 30). On this point the Court notes that the applicants contested the lawfulness of the acceptance as evidence of the transcripts of the intercepted conversations in the criminal

trial against them (see paragraphs 7 and 8 above). However, this type of complaint concerns the fair-trial guarantees under Article 6 § 1 of the Convention (see *Kruitbosch v. Romania* (dec.), no. 25812/03, § 26, 19 March 2013). The applicants' complaints as regards an alleged breach of fair trial had already been examined and declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court (see paragraph 3 above).

35. Be as it may, the Court notes that in any event the applicants did not raise any complaints concerning a breach of their Article 8 rights in the retrial proceedings or in their submissions before the High Court of Cassation and Justice (see paragraphs 11-15 above). Notably, at the hearing of 24 January 2013, without challenging the lawfulness of the telephone interceptions *per se*, the applicants' representatives confined themselves in complaining that the case file did not contain the authorisation in respect of that part of the phone-tapping that had been classified (see paragraph 14 above). However, it later became clear that the classified authorisation had been issued in respect of another suspect and did not concern those defendants who had requested that it be declassified (see paragraph 15 above).

36. The Court therefore concludes that it does not appear from the evidence in the case file that the applicants raised their complaints concerning a breach of their rights guaranteed by Article 8 of the Convention before the domestic authorities, and in particular before the last-instance court (see, *mutatis mutandis*, *Mucea*, cited above, § 34; contrast, for example, *Uzun v. Germany*, no. 35623/05, § 38, 2 September 2010, and *Tender*, decision cited above, §§ 14 and 22).

37. It follows that this part of the application must be rejected, pursuant to Article 35 § 1 of the Convention, for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 28 September 2017.

Andrea Tamietti
Deputy Registrar

Paulo Pinto de Albuquerque
President

APPENDIX

No.	Application no.	Lodged on	Applicant name date of birth place of residence
1.	55663/13	29/08/2013	**Marian DIACONU** 22/01/1970 Deva
2.	56306/13	03/09/2013	**Constantin Nicolae BUMBARU** 16/05/1968 Deva
3.	57374/13	02/09/2013	**Marius Constantin BRELIAN** 26/01/1979 Deva
4.	58858/13	03/09/2013	**Lucian Gheorghe SIRBU** 06/07/1968 Deva
5.	59954/13	04/09/2013	**Emilian George IGNA** 27/07/1962 Deva
6.	62521/13	18/09/2013	**Ioan DAVID** 09/06/1952 Aninoasa