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

THIRD SECTION

DECISION

Application no. 40671/12
Constantin ION
against Romania

The European Court of Human Rights (Third Section), sitting on 1 October 2013 as a Committee composed of:

Alvina Gyulumyan, *President,*
Kristina Pardalos,
Johannes Silvis, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 19 June 2012,

Having regard to the declaration submitted by the respondent Government on 11 March 2013 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:

FACTS AND PROCEDURE

The applicant, Mr Constantin Ion, is a Romanian national, who was born in 1950 and lives in Constanţa.

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

The application mainly concerns the length of criminal proceedings in which the applicant was involved, with a lapse of time of 12 years with three remittals of the case to the lower courts.

The applicant complained under Article 6 § 1 of the Convention about the length of the criminal proceedings before the domestic courts, which lasted 12 years with three remittals of the case to the lower courts. He also complained about the unfairness of the criminal proceedings brought against him. He further complained under Article 5 § 1 of the Convention about the length and lawfulness of his pre-trial detention in 2000.

THE LAW

A. Complaint under Article 6 § 1 concerning the length of criminal proceedings

The applicant complained about the length of the criminal proceedings under Article 6 § 1 of the Convention. This provision provides as follows:

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

1. The Government's unilateral declaration

After the failure of an attempt to reach a friendly settlement, by a letter sent on 11 March 2013, the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

By this declaration the Romanian authorities acknowledged that the length of the proceedings in the applicant's case had failed to comply with the "reasonable time" requirement set down in Article 6 of the Convention. They also indicated that they were ready to pay the applicant the sum tabulated below. The relevant part of the declaration reads as follows:

> "The Government declare, by way of this unilateral declaration, their acknowledgement of the existence of a violation of Article 6 § 1 of the Convention regarding the excessive delay in the domestic proceedings.
>
> The Government are prepared to pay to Mr Constantin Ion as just satisfaction the sum of EUR 3,240, amount which they consider reasonable in the light of the Court's case-law.
>
> This sum is to cover all damage as well as the costs and expenses and will be free of any taxes that may be applicable. This sum will be payable in Romanian lei to the personal account indicated by the applicant within three months from the date of the notification of the decision pursuant to Article 37 § 1 of the Convention. In the event of failure to pay this sum within the said 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 period plus three percentage points. Therefore, the Government respectfully invite the Court rule that the examination of the present application is no longer justified and to strike the application out of its list of cases, pursuant to Article 37 § 1 (c) of the Convention."

2. The applicant's position

By a letter of 15 April 2013 the applicant expressed the view that the sum mentioned in the Government's declaration was unacceptably low and therefore refused the amount proposed by the Government.

3. The Court's assessment

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 applicants wish 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); *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; *Sulwińska v. Poland* (dec.) no. 28953/03).

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 (*Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-98, ECHR 2006-....; *Majewski v. Poland*, no. 52690/99, 11 October 2005; *Wende and Kukówka v. Poland*, no. 56026/00, 10 May 2007; *Abramiuc v. Romania*, no. 37411/02, § 103-109, 24 February 2009; and *Matica v. Romania*, no. 19567/02, § 24, 2 November 2006).

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 this part 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 the application (Article 37 § 1 *in fine*).

Accordingly, this part of the applications should be struck out of the list.

Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

B. Other complaints

The applicant further complained under Article 5 § 1 of the Convention about the length and lawfulness of his pre-trial detention in 2000. Also, under Article 6 § 1 of the Convention he complained about the unfairness of the criminal proceedings.

Having regard to all the materials in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no appearance of a violation of the rights and freedoms set out in these provisions in that respect. It follows that this part of the application must be rejected pursuant to Article 35 §§ 1, 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 regarding the length of the criminal proceedings and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike this part of the application out of its list of cases in so far 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	Alvina Gyulumyan
Deputy Registrar	President