

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

THIRD SECTION

DECISION

Applications nos. 35493/06
Gabriel Nicușor MIULESCU against Romania
and 2 other applications (see Annex)

The European Court of Human Rights (Third Section), sitting on 9 April 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 applications lodged on various dates, as indicated in the Annex,

Having regard to the declaration submitted by the respondent Government on 1 October 2012 requesting the Court to strike the applications out of the list of cases and the applicants' replies, if any, to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicants are all Romanian nationals whose particulars are included in the appended table. The Romanian Government ("the Government") were represented by their Agents, Mrs Irina Cambrea and Mrs Catrinel Brumar, from the Ministry of Foreign Affairs.

All applications concern the length of the same set of criminal proceedings in which the applicants were involved, with lapses of time ranging from eight years and five months to nine years and eight months, depending on the different dates when the applicants were brought before

the domestic courts. The essential information relating to the proceedings in which they were involved is to be found in the Annex.

COMPLAINTS

1. The applicants complained under Article 6 § 1 of the Convention about the length of the criminal proceedings before the domestic courts.

2. The applicants also raised various other complaints in respect of the same set of proceedings, the details of which are to be found in the Annex.

THE LAW

On 27 March 2012 the Court allowed the Government's request to join the three applications, regard being had to the fact that all the applicants had been parties to the same set of criminal proceedings.

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

The applicants 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 1 October 2012, the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised by all three applications. They further requested the Court to strike out the applications in accordance with Article 37 of the Convention.

By this declaration the Romanian authorities acknowledged that the length of the proceedings in the applicants' cases had failed to comply with the "reasonable time" requirement set down in Article 6 of the Convention. They also declared that they were ready to pay the applicants the sums indicated 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 the applicants as just satisfaction the total sum of EUR 6,240 of which EUR 1,440 to the applicant Mazilu Ion Gheorghe, EUR 2,400 to the applicant Anescu Cristian and EUR 2,400 to the applicant Miulescu Gabriel Nicuşor, 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 applicants 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 applications is no longer justified and to strike the applications out of its list of cases, pursuant to Article 37 § 1 (c) of the Convention."

2. The applicants' positions

By letters of 31 October 2012 and 1 November 2012 respectively, the applicants in applications nos. 66861/09 and 35493/06 expressed the view that the sums mentioned in the Government's declaration were unacceptably low and therefore refused the amounts proposed by the Government. The applicant in application no. 54002/09 did not respond to the Government's proposal.

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* (preliminary issue) [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, 18 September 2007).

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 (*Abramiuc v. Romania*, no. 37411/02, §§ 103-109, 24 February 2009; *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; 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 amounts of compensation proposed – which are 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 applications (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 applications (Article 37 § 1 *in fine*).

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

Finally, the Court notes that, should the Government fail to comply with the terms of their unilateral declaration, the applications 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

Referring to other Articles of the Convention and its protocols, the applicants complained of further aspects related to the above 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 applications 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 applications 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 applications inadmissible.

Marialena Tsirli	Alvina Gyulumyan
Deputy Registrar	President

ANNEX

No.	Application no. Introduction date	Applicant's name, date of birth, place of residence, name of representative (if any)	Length of proceedings, levels of jurisdiction	Date of the unilateral declaration and compensation offered (Euros)	Other complaints
1.	35493/06 Lodged on 24 August 2006	**Gabriel Nicuşor MIULESCU** 9 January 1958, Bucharest Represented by Gheorghe SIMIONICĂ, lawyer practising in Bucharest	9 years and 7 months, 3 levels	1 October 2012 **2,400**	**Article 5 §§ 1, 2, 3, 4, 5** **Article 6 §§ 1 and 2** (fairness of the proceedings, presumption of innocence)
2.	54002/09 Lodged on 28 September 2009	**Cristian ANESCU** 9 July 1971, Bucharest Represented by Maria RUS lawyer practising in Vâlcea	9 years and 8 months, 3 levels	1 October 2012 **2,400**	**Article 6 § 1** (outcome of the proceedings) **Article 1 of Protocol No. 4**
3.	66861/09 Lodged on 15 September 2009	**Ion Gheorghe MAZILU** 10 June 1946, Bucharest Represented by Gheorghe SIMIONICĂ, lawyer practising in Bucharest	8 years and 5 months, 3 levels	1 October 2012 **1,440**	**Article 5** **Article 6 §§ 1, 2, 3** (fairness of the proceedings, presumption of innocence, refusal of the courts to re-hear all witnesses requested in defence)