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

THIRD SECTION

DECISION

Application no. 7986/06
Ovidiu MOLDOVAN
against Romania

The European Court of Human Rights (Third Section), sitting on 19 November 2013 as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Corneliu Bîrsan,
Luis López Guerra,
Nona Tsotsoria,
Johannes Silvis,
Valeriu Griţco, *judges,*

and Santiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 20 February 2006,

Having regard to the declaration submitted by the respondent Government on 27 June 2012 requesting the Court to strike part of the application out of the list of cases and the applicant's reply to that declaration,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Ovidiu Moldovan, is a Romanian national, who was born in 1965 and lives in Blaj. He was represented before the Court by Ms D. Solomon, a lawyer practising in Târgu-Mureş.

2. The Romanian Government ("the Government") were represented by their Co-Agent, Ms I. Cambrea, from the Ministry of Foreign Affairs.

A. The circumstances of the case

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

1. Criminal proceedings brought against the applicant for embezzlement

4. On 28 February 2001 the Braşov Police Department opened a criminal investigation against the applicant for embezzlement. The applicant had been caught in the act by police officers on 19 January 2001 while he was attempting to take fuel out of the tank of the locomotive he was operating in order to sell it to a third party. His arrest was filmed by a private Romanian television station with national coverage. Subsequently, the filmed footage was broadcast by the television station, accompanied by what the applicant claimed was insulting commentary. At the same time, an allegedly slanderous press article was published in a private Romanian newspaper about the applicant's purportedly unlawful actions.

5. By an order of 19 April 2001 the Odorheiu-Secuiesc Prosecutor's Office discontinued on merits the criminal investigation against the applicant and fined him 800,000 Romanian lei (ROL) (approximately thirty-two euros (EUR)) on the grounds that the unlawful act committed by him, although it had amounted to embezzlement, had not had any serious consequences and the embezzled fuel had been recovered. The applicant challenged the prosecutor's order of 19 April 2001 before the domestic courts.

6. By a judgment of 27 February 2003 the Odorheiu-Secuiesc District Court dismissed the applicant's challenge to the Prosecutor Office's order of 19 April 2001 as time-barred. The applicant appealed on points of law (*recurs*) against the judgment.

7. By a final judgment of 27 May 2003 the Harghita County Court allowed the applicant's appeal on points of law, quashed the judgment of 27 February 2003 and ordered the District Court to examine the merits of the case.

8. By a judgment of 16 February 2004 the Odorheiu-Secuiesc District Court allowed on merits the applicant's action, quashed the Prosecutor Office's order of 19 April 2001 in part and acquitted the applicant on the basis of witness statements, expert laboratory reports concerning the fuel allegedly taken by the applicant and the viewing by the court of the video of the applicant's arrest. The Odorheiu-Secuiesc Prosecutor's Office appealed on points of law against that judgment. They argued that the first-instance court had failed to observe the applicable rules of criminal procedure.

9. By a final judgment of 15 December 2004 the Târgu-Mureş Court of Appeal, sitting as a third-instance court, allowed the Odorheiu-Secuiesc Prosecutor Office's appeal on points of law against the judgment of

16 February 2004, quashed the said judgment and ordered a retrial. The court held that the first-instance court had failed to observe the applicable rules of criminal procedure.

10. By a judgment of 3 March 2005 the Odorheiu-Secuiesc District Court dismissed on merits the applicant's action against the Prosecutor's Office's order of 19 April 2001 and upheld the said order. It held that after it had examined the evidence in the file it had concluded that the applicant had committed the offence. The applicant appealed on points of law against the judgment.

11. By a final judgment of 13 May 2005 the Harghita County Court allowed the applicant's appeal on points of law, quashed the said judgment and ordered a retrial on the grounds that the applicant's defence rights had been breached by the first-instance court.

12. By a judgment of 13 September 2005 the Odorheiu-Secuiesc District Court dismissed on merits the applicant's action against the Prosecutor Office's order of 19 April 2001. It held that after it had examined all the evidence in the file it had concluded that the Prosecutor Office's order had been lawful. The applicant appealed on points of law against the judgment and submitted defence arguments in respect of the available evidence.

13. By a final judgment of 12 December 2005 the Harghita County Court dismissed the applicant's appeal on points of law. It held that after it had examined the first-instance court's judgment in all respects it had concluded that the applicant's appeal on points of law was without merit. The applicant's defence arguments concerning the evidence in the file had been examined by both the first-instance court and the prosecutor during the criminal investigation. In addition, the taking of the fuel from the locomotive had been proven.

2. Proceedings brought by the applicant against his employer

14. On 24 January 2001 the Braşov Transport Authority, the applicant's employer, terminated the applicant's work contract because he had repeatedly failed to fulfil mandatory job requirements and on account of the criminal investigation that had been opened against him. The applicant contested his employer's decision before the domestic courts.

15. On an unspecified date in 2001 the proceedings brought by the applicant against the Braşov Transport Authority were suspended, pending the outcome of the criminal investigation that had been initiated against the applicant.

16. By a final judgment of 22 March 2010 the Alba-Iulia Court of Appeal, sitting as an ordinary court of appeal, dismissed the applicant's claim against the Braşov Transport Authority in which he contested the termination of his employment contract, on the grounds that he had repeatedly acted against the interests of his employer. It considered that even if the embezzlement charge had been dismissed, his prior actions had

constituted sufficient grounds for the termination of his employment contract.

3. Criminal proceedings brought by the applicant for insult and slander

17. On 21 March 2001 the applicant brought criminal proceedings, together with civil claims, for insult and slander against two journalists and the private Romanian television station and newspaper that had been involved in the broadcasting and the publishing, respectively, of the allegedly insulting and slanderous reports about him (see paragraph 6 above).

18. By a final judgment of 5 November 2003 the Târgu-Mureş County Court, on the merits, dismissed the criminal proceedings but allowed in part the civil proceedings brought by the applicant against the two journalists and the private television station and newspaper.

B. Relevant domestic law

19. Article 278/1 (1), (7) and (8) of the Romanian Code of Criminal Procedure provide that the victim or any other interested person whose legitimate interests have been affected can complain against a prosecutor's order to discontinue a criminal investigation before the court that would be lawfully competent to examine the case as a first-instance court. The court examining the complaint must review the challenged order on the basis of the evidence available in the file and any new written evidence submitted by the parties. The court has the power, among other things, to dismiss the complaint and uphold the challenged order.

COMPLAINTS

20. Relying on Article 6 of the Convention, the applicant complained that the sets of proceedings which ended with the final judgments of 12 December 2005 and 22 March 2010 respectively were unreasonably lengthy; that the domestic courts failed to consider the evidence which he submitted in his defence and to provide reasons for their dismissal of his challenge against the prosecutor's order of 19 April 2001; and that his right to be presumed innocent was breached as a result of the termination of his employment contract by his employer prior to a final criminal conviction.

21. Invoking Article 8 of the Convention, the applicant complained that his right to the protection of his reputation was breached, in so far as the television broadcast of his arrest and the newspaper article published on the subject were insulting and slanderous.

THE LAW

A. Alleged violations of Article 6 of the Convention

22. The applicant complained of the excessive length of the proceedings he brought against his former employer contesting the termination of his employment contract. In addition, he complained that the domestic courts had failed to consider the evidence which he had submitted in his defence and to provide reasons for dismissing his action during the criminal proceedings brought against him for embezzlement. He relied on Article 6 of the Convention which, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligation or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

1. Length of the proceedings brought by the applicant against his former employer

23. After the failure of an attempt to reach a friendly settlement, by letter of 27 June 2012 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by this part of the application. They further asked the Court to strike out the application in accordance with Article 37 of the Convention.

24. The declaration provided as follows:

> "The Government declare – by way of unilateral declaration – their acknowledgement of a violation of Article 6 § 1 of the Convention resulting from the excessive length of the proceedings.
>
> The Government declare that they are prepared to pay to the applicant as just satisfaction the sum of EUR 2,500 (two thousand five hundred euros), which they consider to be reasonable in the light of the Court's case law. This sum, which will cover all pecuniary and non-pecuniary damage as well as costs and expenses, will not be subject to any tax. It will be converted into Romanian lei at the rate applicable on the date of payment, and will be payable into a bank account indicated by the applicant, within three months from the date of notification of the decision 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 period plus three percentage points.
>
> The Government respectfully ask the Court to decide that the examination of the case is no longer justified and to strike it out of the Court's list of cases, according to Article 37 § 1 (c) of the Convention."

25. By letter of 21 August 2012 the applicant objected to the striking out of this part of the application. He argued that his complaints also concerned other breaches of Article 6 and of other provisions of the Convention.

26. 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".

27. The Court also recalls that in certain circumstances, it may strike out an application or part thereof 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.

28. To this end, the Court will carefully examine the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (see *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; and *Sulwińska v. Poland* (dec.) no. 28953/03, 18 September 2007).

29. The Court has established in a number of cases, including those brought against Romania, its practice concerning complaints about the violation of Article 6 § 1 of the Convention on account of length of proceedings (see, for example, *Cerăceanu v. Romania*, no. 31250/02, 4 March 2008).

30. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed the Court considers that it is no longer justified to continue the examination of the part of the application concerning the length of the proceedings brought by the applicant against his former employer (Article 37 § 1(c)).

31. 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*).

32. In any event, the Court's decision is without prejudice to any decision it might take to restore, pursuant to Article 37 § 2 of the Convention, this part of the application to its list of cases, should the Government fail to comply with the terms of their unilateral declaration (see *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008, and *Aleksentseva and 28 Others v. Russia* (dec.), nos. 75025/01 et al., 23 March 2006).

33. In view of the above, it is appropriate to strike the case out of the list in respect of the applicant's complaint concerning the length of the proceedings brought by him against his former employer.

2. The failure of the domestic courts to consider evidence and to provide reasons for their decisions

(a) Submissions of the parties

34. The Government submitted that the impugned proceedings had been of a special nature and had differed from those in which the prosecutor would issue an indictment and the courts would be called on to examine the merits of the case. In respect of the type of proceedings concerned in the present case, the courts are called to examine only a complaint raised by a defendant against a prosecutor's order or decision. Consequently, the domestic courts had assessed the soundness of the materials in the investigation file and had dismissed the applicant's claims because the applicant's arguments had been unconvincing and contradicted by other evidence admitted during the investigation stage.

35. They also argued that the domestic courts had examined all the arguments put forth by the parties and had provided sufficient reasons for their judgments – particularly since they had not been tasked with conducting an in-depth analysis of the said evidence, but rather with reviewing the lawfulness of the prosecutor's decision. The courts had been prevented from admitting additional evidence with the exception of written documents and could only have done so if the applicant's complaint had been allowed.

36. The applicant contended that with the exception of the judgment delivered by the first-instance court in the first round of the criminal proceedings brought against him, all the other judgments had lacked any reasoning and had failed to take into consideration the evidence relied on by him to prove his innocence.

(b) The Court's assessment

37. The Court reiterates that the effect of Article 6 § 1 is, amongst others, to place a "tribunal" under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties, without prejudice to its assessment of whether they are relevant for its decision, given that the Court is not called upon to examine whether arguments are adequately met (see *Perez v. France* [GC], no. 47287/99, § 80, ECHR 2004-I, and *Buzescu v. Romania*, no. 61302/00, § 63, 24 May 2005). Nevertheless, although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument (see *Van de Hurk v. the Netherlands*, 19 April 1994, §§ 59 and 61, Series A no. 288, and *Burg v. France* (dec.), no. 34763/02, ECHR 2003-II). The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *Ruiz Torija v. Spain*, 9 December 1994, § 29, Series A nos. 303-A; *Hiro Balani v. Spain*, 9 December 1994, § 27,

Series A 303-B; and *Helle v. Finland*, 19 December 1997, § 55, *Reports* 1997-VIII).

38. In the present case, the Court notes that the first-instance court, after its judgments were repeatedly quashed by the appellate courts, dismissed the applicant's complaint against the Prosecutor Office's order. In doing so it held that after it had examined all the evidence in the file it had concluded that the Prosecutor Office's order had been lawful.

39. The Court observes that the applicant stated his defence arguments before the court of final appeal. It also notes that the said defence arguments were based on the evidence in the case file submitted by both the applicant and the Prosecutor's Office. In addition, the court of final appeal acknowledged all the defence arguments raised by the applicant and proceeded to examine them.

40. Against this background the Court is not convinced that the domestic courts failed to consider the evidence which he submitted in his defence.

41. In addition, in dismissing the applicant's defence arguments concerning the evidence in the file, the court of final appeal held that the said evidence had been examined by both the lower court and the prosecutor during the criminal investigation and that the taking of the fuel had been proved.

42. Consequently, the Court considers that the court of final appeal gave reasons, albeit succinct, for its decision to dismiss his arguments. The reasons given were not arbitrary and were sufficient for the applicant to infer that the domestic courts had dismissed them.

43. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Remaining complaints

44. Insofar as the applicant's remaining complaints are concerned (see paragraphs 20-21, above), the Court considers that there is nothing in the file to suggest that the provisions invoked by the applicant have been violated. Accordingly, this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration in respect of the part of the complaints under Article 6 of the Convention concerning the length of the proceedings the applicant opened against his former employer;

Decides to strike this part of the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President