

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

FOURTH SECTION

DECISION

Application no. 24591/07
Dorinel Mihai MUCEA
against Romania

The European Court of Human Rights (Fourth Section), sitting on 24 May 2016 as a Chamber composed of:

András Sajó, *President,*
Boštjan M. Zupančič,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Egidijus Kūris,
Iulia Motoc,
Gabriele Kucsko-Stadlmayer, *judges,*

and Fatoş Aracı, *Deputy Section Registrar*,

Having regard to the above application lodged on 4 June 2007,

Having regard to the decision of 5 February 2013,

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 Dorinel Mihai Mucea, is a Romanian national, who was born in 1947 and lives in Bucharest. He was represented before the Court by Ms Diana-Elena Dragomir and Ms R. Chiric, lawyers practising in Bucharest.

2. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, of 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 against the applicant

4. The applicant was a high-level civil servant in the Ministry of Economy and Commerce, who at the time of the events was in charge of the privatisation of numerous State-owned strategic companies in the field of energy, oil and natural resources.

5. On 8 June 2006 Romanian Intelligence Service (*Serviciul Român de Informaţii* - "the SRI") informed the Department for the Investigation of Organised Crime and Terrorism from the prosecutor's office attached to the High Court of Cassation and Justice ("the High Court") that the applicant was part of an organised criminal group which included senior government officials and foreign citizens. The group's purpose was to help foreign companies to illegally acquire ownership of important Romanian State-owned companies which were in the process of privatisation. These accusations were based on information obtained through intercepting the telephone conversations of the members of the group, including the applicant.

6. The surveillance activity was carried out under Law no. 51/1991 (on the national security of Romania) and started in respect of the applicant on 30 May 2005. This activity had been authorised by a judge of the High Court.

7. On 21 November 2006 the applicant was charged with treason for the disclosure of State secrets and with creating an organised criminal group.

8. The criminal investigation and the surveillance of the applicant continued after the above date and on 18 April 2007 the applicant was indicted for the crimes charged, together with nine co-accused.

9. On 4 September 2007 the applicant's lawyer sent a letter to the president of the Bucharest Court of Appeal, where his prosecution file had initially been registered, requesting that the transcripts of the intercepted phone conversations for the period between 30 May 2005 and 21 November 2006 should not be accepted as evidence against him since they had been obtained unlawfully. He argued that this part of the surveillance had been conducted before he had been charged with a crime and therefore should not have been accepted as evidence in the proceedings.

10. At a hearing held on 31 January 2013 before the High Court, where the applicant's case had been sent for examination, the applicant contested the accuracy of the transcripts of the telephone conversations submitted as evidence in the proceedings. He alleged that there were discrepancies between the originals in English and their translated Romanian versions,

discrepancies which implied that he had divulged State secrets when in fact that had not been the case.

11. On this occasion, the applicant lodged a written request asking the court to order the prosecutor's office to submit as evidence the audio tapes of all his phone conversations recorded in the course of the investigation. The applicant explained that only a combined analysis of the entirety of his phone conversations in the period in question would prove his innocence. Relying on the provisions of Article 6 of the Convention the domestic court rejected the request considering that the tapes as well as the transcripts of all the phone conversations used as evidence in the case were already in the case file and no additional transcripts were necessary.

12. At the hearing of 31 October 2013 the High Court also held that the applicant's allegations concerning the existence of discrepancies in the translation of the phone conversations had been noted and would be taken into consideration in the deliberations.

13. On 3 December 2013 the High Court convicted the applicant of treason for disclosure of State secrets and of creating an organised criminal group, and sentenced him to six years' imprisonment.

14. The applicant appealed against the decision claiming in principal that the information he had indeed transmitted to the co-accused could not be considered a State secret. Quoting extensively from transcripts of his phone conversations submitted as evidence in his case file, the applicant explained that his actions had been in accordance with the law. As regards the interception of his phone conversations the applicant complained of the transcription and translation errors which had changed the true meaning of the discussions. He mentioned that the content of the intercepted phone conversations had not been sufficient to prove his guilt.

15. At two hearings held before the five-judge panel of the High Court on 17 and 19 December 2014, the applicant's representatives argued as regards the interception of the applicant's phone conversations that the transcripts submitted to the case file had discrepancies due to translation errors and that the court of first instance had not quoted them accurately in its judgment.

16. On 23 December 2014 one of the applicant's two representatives submitted final written pleadings at the registry of the High Court. They included no mention of the interception of the applicant's phone conversations.

17. On 27 January 2015 the High Court convicted the applicant of the crimes of disclosing secret information and creating an organised criminal group, and sentenced him to four years and six months' imprisonment. The judgment became final.

2. Media coverage of the case

18. In a letter to the Court dated 11 March 2008 the applicant complained of the fact that excerpts from his telephone conversations which had been obtained through telephone tapping during criminal surveillance operations had been disclosed to the media by the prosecutors investigating his case during the criminal proceedings against him.

19. The applicant enclosed with the above letter several copies of newspaper articles which had been published in the national media in May, November and December 2006.

20. The transcript of a discussion that one of the co-defendants in the applicant's case had had with journalists during a television news programme on 29 November 2007 on Realitatea TV, a national channel, was also attached. The transcript read as follows:

> "[S.]'s network of economic espionage.
>
> The network of [S.S.] severely distorted the Romanian market, damaged Romania's image abroad and even endangered its accession to the European Union ... In the privatisations case, DIICOT [the Department for the Investigation of Organised Crime and Terrorism] opened an investigation against eight people, all accused of blackmail, treason and complicity in these crimes. ...The Bulgarian citizen [S.S.], an international consultant, was considered the key person in the privatisations case. He is accused of espionage and of organising an espionage network."
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> Half an hour later, on the same channel, [M.S.] [one of the co-suspects in the applicant's case at the time] stated:
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> "I have not received anything official; I have only heard of the accusations from the media and from you. I am ready to come back to Romania and to contribute to the clarification of the situation, even if these privatisations have been, in my opinion, a success.
>
> [M.S.]'s agenda included the minister of economy, Dorinel Mucea, [M.O.] and [S.S.], the other accused in the case."

21. On 21 July 2008 the applicant also sent to the Court excerpts from a television programme broadcast on 17 July 2008 on Antena 3, a national channel. According to the transcript of the discussions as published on the channel's internet page, several journalists and political analysts presented their opinions on the case in which the applicant was standing trial at the time. The transcript of the programme reads as follows in its relevant parts:

> "Daily brief [*Sinteza zilei*]: The 'Treason and espionage' scandal. Is the DNA [the National Anticorruption Department] betraying the President?
>
> The DNA's decision not to open an investigation into the "treason and espionage" scandal, two and a half years after making announcements about the fight against corruption, was the main topic of the programme Daily Brief on Antena 3. In the mentioned investigation, former ministers [Z.N.] and [C.S.], former ministry advisers Dorinel Mucea and [R.D.] and the Bulgarian consultant [S.S.], had been accused of bribe taking.

> The latter was even imprisoned as a result of the mentioned scandal. The political expert Bogdan Teodorescu stated that it had been proved one more time that 'human rights are carelessly breached in Romania'. 'These people have their lives in pieces. Who will repair it for them? If the system wants to destroy you it will ...' said Teodorescu.
>
> Military expert Radu Tudor underlined: 'DNA prosecutors woke up and understood that they have been used as political lure. There is a report adopted by CSM [the Superior Council of Magistracy] which mentions incredible things. It states that the manner in which investigations are carried out by the DNA is dangerous for the Romanian justice system. DNA prosecutors have brought in some cases charges which could not be found in the criminal code. So, either you are dumb, or you received a political order.' explained Radu Tudor. ...
>
> Referring to the 'treason and espionage' scandal, Radu Tudor mentioned that it was all a lie, because 'one cannot commit political treason to the advantage of a consultancy company engaged by the Romanian State, for which [S]. also worked.' The analyst Ion Cristoiu ... also condemned the approach adopted by the media who ran with these stories without verifying all the 'leaks of information' from the DNA and used them deliberately to mislead the public ..."

22. On 10 January 2014, together with his observations on the admissibility and merits of his application, the applicant submitted additional copies of newspaper articles published between November 2006 and January 2007.

B. Relevant domestic law

23. The legislation in force at the relevant time concerning telephone tapping and the changes to the law brought into force on 1 January 2004 are described in *Dumitru Popescu v. Romania (no. 2)* (no. 71525/01, §§ 39-46, 26 April 2007).

COMPLAINTS

24. The applicant complained that the authorities had breached his right to private life under Article 8 of the Convention.

THE LAW

25. The applicant alleged that the authorities had unlawfully intercepted his phone conversations and had leaked excerpts from the file concerning his criminal investigation to the press. He maintained that the authorities had thereby breached his right to private life. He relied on Article 8 of the Convention which 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."

A. Complaint concerning the unlawful interception of the applicant's phone conversations

26. The Government contended that the applicant had not exhausted the domestic remedies in respect of this complaint. More specifically, the applicant had had at his disposal a civil action for damages provided by Articles 998-99 of the Civil Code. They relied in this respect on the Court 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 applicant had failed to raise any complaints concerning the lawfulness of the phone taps or any alleged breach of his right to private life in his appeal against the decision of the High Court of 3 December 2013.

27. The applicant replied that he had raised these complaints in the context of the criminal proceedings but the domestic courts had failed to analyse them.

28. 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).

29. The Court notes that in the above cited case of *Patriciu*, the applicant was awarded damages by the domestic courts in the context of a civil action based on the provisions of Articles 998-99 of the Civil Code for a breach of his right to private life because of the unlawful phone taps by the SRI. The Court therefore considered that the applicant had lost his victim status in respect of his complaint under Article 8 of the Convention (see *Patriciu*, cited above, § 86).

30. In a subsequent case again involving interceptions of phone calls based on Law no. 51/1991 the Court considered that the applicant should have tried the civil action for damages remedy as in the case of *Patriciu* (see *Tender*, cited above, § 21). However, the Court also held that, where the applicant had chosen to contest the lawfulness of the phone tap during the criminal proceedings against him, such a remedy could also be considered effective (see *Tender*, cited above, § 22, and *Bălteanu v. Romania*, no. 142/04, § 37, 16 July 2013).

31. In the current case, the Court observes that the applicant had failed to seek compensation under the provisions of general tort law, specifically the provisions of Articles 998-99 of the Civil Code.

32. To the extent that the applicant maintained that he had raised his Article 8 complaints in the context of the criminal proceedings against him, the Court admits that the applicant contested the accuracy of the transcripts of his phone conversations as well as the lawfulness of their acceptance as evidence in the criminal trial against him (see paragraphs 9 and 10 above). However, the Court had already held that this type of complaints concern the fair trial guarantees under Article 6 § 1 of the Convention (see *Kruitbosch v. Romania* (dec.), no. 25812/03, § 26, 19 March 2013, and *Fesiuc v. Romania*, no. 25497/04, § 50, 29 March 2004). Moreover, these complaints had already been analysed and declared inadmissible by the Court in its decision of 5 February 2013 on the admissibility of the current case.

33. In addition, the Court notes that the applicant did not raise any complaint concerning the lawfulness of the phone interceptions or a breach of his right to private life in his appeal against the first-instance court judgment of 3 December 2013 (see paragraphs 14 and 15 above).

34. The Court therefore concludes that it does not appear from the evidence in the case file that the applicant raised his complaints concerning a breach of his right to private life as guaranteed by Article 8 of the Convention before the domestic authorities (contrast for example *Tender*, cited above, § 14, and *Uzun v. Germany*, no. 35623/05, § 38, 2 September 2010).

35. 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.

B. Complaint concerning the leaks to the media

36. The applicant complained that information from his criminal file, including transcripts of his intercepted phone conversations had been leaked by the authorities to the media. He submitted copies of articles published between May 2006 and January 2007 as well as partial transcripts of two television programmes from 29 November 2007 and 17 July 2008.

37. The Government stressed that the complaint concerning the articles published before January 2007 should be declared inadmissible for failure to comply with the six-month rule. As regards the two television programmes of 29 November 2007 and 17 July 2008, the Government submitted that they contained only general information regarding the course of the criminal proceedings and made only passing reference to the applicant, which does not substantiate in any way his allegation of supposed leaks from the prosecution file.

1. Articles published between May 2006 and January 2007

38. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset however that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant (see *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, § 259, ECHR 2014 (extracts)).

39. The Court further notes that it had previously held that there was no domestic remedy available in Romanian legislation and practice for complaints about leaks of information from the criminal file to the media (see *Căşuneanu v. Romania*, no. 22018/10, § 72, 16 April 2013).

40. Therefore, the Court notes that, in the absence of any effective domestic remedies, the six-month period started to run in the instant case from the publication of the impugned articles in the media. However, the applicant first raised his complaint concerning the articles published between May 2006 and January 2007 in a letter of 11 March 2008. Consequently, he failed to comply with the six-month rule in this respect.

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

2. Television programmes of 29 November 2007 and 17 July 2008

42. The Court observes that the two television programmes in question were broadcast after the applicant's indictment, at a time when public hearings were being held in his case before the domestic courts (contrast *Căşuneanu*, cited above, § 83).

43. The Court further notes that during the programme of 29 November 2007 it was one of the co-accused who was giving an interview in which the applicant's name was mentioned only in passing (see paragraph 20 above). Furthermore, from the transcript of the programme of 17 July 2008 as submitted to the Court, it is obvious that the journalists expressed their opinion as to the applicant's innocence without discussing any information relating directly to the applicant or his particular situation in relation to the other co-accused (see paragraph 21 above).

44. The Court therefore considers that the excerpts submitted by the applicant do not contain any leaks of confidential information from the file concerning his criminal investigation. They also do not refer to any information from the applicant's telephone conversations intercepted during the criminal investigation and exposed to the public by the prosecutors.

45. 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 this complaint does not disclose any appearance of a violation of the applicant's

rights protected under Article 8 of the Convention. 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.

For these reasons, the Court, unanimously,

Declares inadmissible the remainder of the application.

Done in English and notified in writing on 16 June 2016.

Fatoş Aracı	András Sajó
Deputy Registrar	President