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

FOURTH SECTION

DECISION

Application no. 39435/08
Vladimir MUNTEANU
against Romania

The European Court of Human Rights (Fourth Section), sitting on 1 December 2015 as a Chamber composed of:

András Sajó, *President,*
Vincent A. De Gaetano,
Boštjan M. Zupančič,
Nona Tsotsoria,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Iulia Antoanella Motoc, *judges,*

and Fatoş Aracı, Deputy Section Registrar,

Having regard to the above application lodged on 17 July 2008,

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 Vladimir Munteanu, is a Moldovan national, who was born in 1965 and lives in Cahul. He was represented before the Court by Mr V. Iordachi, a lawyer practising in Chişinău.

2. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, of the Ministry of Foreign Affairs. The Moldovan Government, who had been informed of their right to intervene in the proceedings, under Article 36 § 1 of the Convention, gave no indication that they wished to do so.

A. The circumstances of the case

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

4. On 30 August 2006 the applicant was charged, together with two Romanian citizens, with fraud, initiating and belonging to an organised crime group, forgery and money laundering. The prosecutor's decision stated that the applicant had imported car tyres into Romania, and through several offshore companies and using falsified customs documents had avoided paying customs duties.

5. On 3 September 2006 the applicant was placed in pre-trial detention for thirty days. The prosecutor requested an extension, but this was rejected by the Bucharest County Court on 27 September 2006. The court held that after the applicant's placement in pre-trial detention, the prosecutor had not produced any new evidence to prove he was guilty of the crimes he had been charged with.

6. On 2 October 2006 the Prosecutor's Office of the High Court of Cassation and Justice imposed a preventive measure on the applicant, banning him from leaving Romania for thirty days so that the investigation into the above-mentioned crimes could continue. This preventive measure was extended on a monthly basis by decisions of the case prosecutor.

7. On 28 September 2007 the applicant complained to the Bucharest County Court about the prosecutor's decision to extend the ban on him leaving Romania from 27 September until 26 October 2007. He applied to have the measure revoked, arguing that no new investigative steps had been taken by the prosecutors in the meantime, and that the measure taken against him had been extended automatically without taking into consideration his specific situation, namely that he was not a Romanian citizen and that his wife, two young children and parents all resided in Moldova and needed a visa to travel to Romania. The applicant also argued that extending the measure for more than one year would be contrary to the Criminal Procedure Code.

8. In the meantime, before a decision was taken on his complaint, the applicant was allowed by the prosecutor to leave Romania for twelve days to visit his sick father in Moldova.

9. On 15 January 2008 the Bucharest County Court allowed the applicant's complaint and revoked the preventive measure taken against him. The court analysed the latest decision taken by the prosecutor in the meantime, dated 23 November 2007 and took note that the applicant was being investigated, among other crimes, for fraud provided for by Article 215 paragraphs 1, 2 and 5 of the Criminal Code. The court further held that extending the ban to leave the country for more than one year, in the circumstances of the case was no longer justified under the provisions of Article 145 combined with Article 145^1 of the Criminal Procedure Code.

The court held that the prosecutor's decision had not provided any new reasons to extend the preventive measure taken against the applicant. In addition, it held that the prosecutor had not proved there was a reasonable suspicion that he had committed the crimes he had been charged with. The judgment became final on 21 January 2008, when an appeal by the prosecutor on points of law (*recurs*) was rejected by the Bucharest Court of Appeal.

10. On that date the applicant was free to leave Romania and he returned to Moldova.

B. Relevant domestic law

11. The relevant provisions of the Criminal Procedure Code in force at the time are as follows:

Article 136

"(1) In cases concerning offences punishable with imprisonment, to ensure the proper conduct of the criminal trial or to prevent the suspect or defendant from fleeing during the criminal investigation, trial or ... execution of the sentence, one of the following preventive measures may be imposed: ...

(b) a ban on leaving town;

(c) a ban on leaving the country; ...

(8) The measure to be taken shall be chosen taking into account its purpose, the severity of the crime, the health, age, [and any] previous convictions or other circumstances [of] the person on whom the measure is to be imposed."

Article 140^2

"A person charged with an offence or a defendant may complain about a ... ban on leaving town or the country within three days of its adoption by the prosecutor ...

Article 145

"(2) ... A measure not to leave town may be extended in the course of the criminal investigation if necessary and only by a reasoned decision. The extension may be ordered by the prosecutor conducting or supervising the investigation, each not exceeding thirty days. The maximum duration of the measure provided for in paragraph (1) in the course of a criminal investigation is one year. Exceptionally, where the punishment is life imprisonment or detention of ten years or more, the maximum duration of the ban on leaving town may be two years."

Article 145^1

"(2) The provisions of Article 145 also apply to bans on leaving the country."

12. The relevant provisions of the Criminal Code in force at the relevant time are as follows:

Article 215

"(5) Fraud which had very serious consequences shall be punished with 10 to 20 years' imprisonment and the interdiction of certain rights."

COMPLAINT

13. The applicant complained under Article 2 of Protocol No. 4 to the Convention that the ban on leaving Romania imposed on him had been extended automatically and beyond the legal time-limit, in breach of his right to freedom of movement.

THE LAW

14. The applicant submitted that the ban on leaving the country imposed on him had been excessively long and disproportionate, given that his entire family was in Moldova. He relied on Article 2 of Protocol No. 4 to the Convention, which reads as follows in its relevant parts:

"... 2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of public order, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Arguments of the parties

15. The Government submitted that the ban on leaving Romania imposed on the applicant had been lawful having in mind that the applicant had been under investigation for a crime for which the punishment was imprisonment from ten to twenty years. The measure was also proportionate since it was a preventive measure applied to ensure the proper conduct of the criminal proceedings. They relied on the cases of *Antonenkov and Others v. Ukraine* (no. 14183/02, §§ 59-67, 22 November 2005) and *Fedorov and Fedorova v. Russia* (no. 31008/02, §§ 32-47, 13 October 2005), where restrictions on leaving a place of residence lasting four years and ten months and four years and three months respectively were considered proportionate by the Court. The Government concluded that the application should be found manifestly ill-founded or, alternatively, that in the circumstances of the present case there had been no breach of Article 2 of Protocol No. 4 to the Convention.

16. The applicant contested that the measure taken against him was lawful, arguing that it had been extended for a period which exceeded the one-year limit imposed by the Criminal Procedure Code. He further alleged that he had filed twelve requests for permission to leave the country and all but one of them had been refused. No documents were however submitted to the Court in support of this statement. The applicant concluded that application of the preventive measure for such a long period of time was a disproportionate interference with his right to freedom of movement, especially given the fact that he was a citizen of another State.

B. The Court's assessment

17. The Court notes that the parties did not dispute that there had been a restriction on the applicant's freedom of movement.

18. The Court reiterates that to comply with Article 2 of Protocol No. 4 such a restriction should be "in accordance with the law", pursue one or more of the legitimate aims contemplated in paragraph 3 of the same Article and be "necessary in a democratic society" (see *Miażdżyk v. Poland*, no. 23592/07, § 30, 24 January 2012).

19. The Court is satisfied that the interference was in accordance with the law. In particular, as regards the applicant's argument that the ban against him had been extended beyond the legal one year limit, the Court notes that the applicant was being investigated for a crime for which the law provided a punishment of ten to twenty years' imprisonment. Therefore, in accordance with Article 145 of the Criminal Procedure Code the measure against him could have been legally extended for maximum two years (see paragraphs 11 and 12 above). It also accepts the Government's submission that its purpose was to ensure the proper conduct of the criminal investigation. The Court, accordingly, finds that the restriction pursued the legitimate aims set out in Article 2 § 3 of Protocol No. 4, in particular, the prevention of crime and protection of the rights and freedoms of others.

20. It remains to be determined whether the measure was necessary in a democratic society. On that point, the Court observes that under Article 2 §§ 2 and 3 of Protocol No. 4 the authorities are under an obligation to ensure that any restriction of an individual's right to leave his or her country is, from the outset and throughout its duration, justified and proportionate. That assessment should normally be subject to review by the national courts, as they offer the best guarantee that the proceedings will be independent, impartial and lawful. The scope of their review should enable them to take account of all the factors involved (see *Gochev v. Bulgaria*, no. 34383/03, § 50, 26 November 2009, with further references).

21. In this context, the Court recalls that it had to rule on the compatibility with Article 2 of Protocol No. 4 of an obligation not to leave one's place of residence in a series of cases against Italy. In the case of

Luordo, the Court found such an obligation, imposed on the applicant for the duration of the bankruptcy proceedings, disproportionate because of the length of the proceedings, in that case fourteen years and eight months, even though there had been no indication that he had wished to leave his place of residence or that such permission had ever been refused (see *Luordo v. Italy,* no. 32190/96, § 96, 17 July 2003). This approach was followed in subsequent cases, where the duration of an obligation not to leave the territory of the respondent State varied between more than five years (see *Prescher v. Bulgaria*, no. 6767/04, § 47, 7 June 2011) and more than ten years (see *Riener v. Bulgaria*, no. 46343/99, § 106, 23 May 2006). In a more recent case involving a French citizen who was prohibited from leaving Poland, the Court held that the restriction on the applicant's freedom of movement for five years and two months was disproportionate, particularly given that he was forced to stay in a foreign country for all that time and was not allowed to leave even for a short period (see *Miażdżyk*, cited above, § 41).

22. The Court has previously found in another series of cases where this obligation was imposed for periods varying between four years and three months and four years and ten months, also having regard to the specific circumstances of each case, that the restriction of the applicants' freedom of movement was not disproportionate (see *Fedorov and Fedorova,* cited above, §§ 42-47, and *Antonenkov and Others,* cited above, §§ 62-67).

23. In the present case, the preventive measure was applied to the applicant for one year and three months. Prior to that preventive measure, he had been held in pre-trial detention for one month (see paragraphs 5 and 6 above). Hence, the period the applicant was subjected to the restriction at issue was significantly shorter than in the above-mentioned cases.

24. Therefore, taking into account its case-law cited above, the Court finds that in the circumstances of the present case the mere duration of the application of the preventive measure is insufficient to conclude that it was disproportionate. Furthermore, to decide whether a fair balance was struck between the general interest in the proper conduct of the criminal proceedings and the applicant's personal interest in enjoying freedom of movement, the Court must ascertain whether he had a genuine interest in leaving Romania and actually applied to leave and, if so, whether permission to do so was refused (see *Fedorov and Fedorova*, cited above, § 44).

25. The Court observes that the applicant is a Moldovan national, and that his life prior to his arrest in Romania was based in Moldova. His family, including his children, were also located in Moldova. Since such a situation cannot be compared to a restriction on an applicant's freedom of movement imposed in his or her own country, the Court accepts that the applicant had a genuine interest in leaving Romania.

26. The Court further notes that the preventive measure imposed on the applicant on 2 October 2006 was extended by the prosecutor on a monthly basis by decisions which were amenable to appeal before the courts (see paragraph 11 above). The file shows however that the applicant only decided to use this opportunity on 28 September 2007, almost one year after the start of the ban. The domestic courts thoroughly analysed his complaint and decided to allow it since there were no new reasons justifying the extension of the preventive measure taken against him. At the end of this procedure he had introduced before the courts, the applicant was free to leave Romania. The Court considers, in this connection, that it cannot be imputable to the authorities that he failed to contest the decisions restricting his freedom of movement any sooner (compare *Miażdżyk*, cited above, § 37, where the applicant made nine requests for the restriction imposed on him to be lifted).

27. The applicant alleged that he had requested permission to leave the country on twelve occasions but all his requests had been refused, with one exception. The Court notes however that he did not provide any evidence to show that he had actually applied to the domestic authorities for permission to leave Romania (see *Fedorov and Fedorova*, cited above, § 46). Only the Government submitted proof that during the restriction imposed on him, the applicant had been permitted to leave Romania on one occasion for twelve days to visit his sick father.

28. In the absence of any evidence that the applicant filed any other applications to leave Romania and, consequently, that these requests had been refused, the Court cannot reach the conclusion that a fair balance between the demands of the general interest and his rights was upset. Accordingly, it finds that in the present case the restriction on the applicant's freedom of movement was not disproportionate.

29. It follows that the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 17 December 2015.

Fatoş Aracı
Deputy Registrar

András Sajó
President