CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

## SECOND SECTION

## DECISION

Application no. 70806/01
by Alexandrina NITU
against Romania

The European Court of Human Rights (Second Section), sitting on 12 October 2004 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged on 1 October 2000,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together.

Having regard to the formal declarations accepting a friendly settlement of the case.

Having deliberated, decides as follows:

## THE FACTS

The applicant, Mrs Alexandrina Niţu, is a Romanian national, who was born in 1933 and lives in Vlaici. She was represented before the Court by Mrs N. Vişan, a lawyer practising in Bucharest. The respondent Government were represented by Mr B. Aurescu and subsequently by Mrs R. Rizoiu, Agents.

### A. The circumstances of the case

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

On December 1999, E.N. lodged a criminal complaint with the Slatina District Court against the applicant, accusing the latter of trespassing on her land. In a judgment of 17 March 2000, the District Court acquitted the applicant on the ground that she had been exercising possession over the plot of land since 1991 and that she had held a valid ownership title for it since 1994.

E.N. appealed against this judgment. The Olt Regional Court registered the appeal and subpoenaed the applicant to appear for a hearing on 13 April 2000. The hour of the hearing was indicated as "T2". The applicant arrived in court at 10:30. By that time, the hearing of her case had already been held. According to the applicant, the staff of the court informed her that the judges had held the hearing before the time indicated to the parties, as they had to leave town earlier that day. She was told that no other hearing would be held and that the judges would shortly deliver the final decision.

The applicant informed the Court that her lawyer had not been present at this hearing either.

Following the hearing of 13 April 2000, the Regional Court quashed the judgment of 17 March 2000, re-tried the case on the merits, found that E.N. held valid possession of the land and, in a final decision of the same day, it convicted the applicant of trespassing on E.N.'s land, fined her 2,000,000 Romanian lei (ROL) and ordered her to pay 300,000 ROL for the court fees.

The applicant requested the annulment of the final decision of 13 April 2000 (*contestaţie în anulare*), based on Article 386 of the Code of Criminal Procedure. The applicant claimed that the subpoena she had received for the appeal hearing was illegal, in so far as it did not indicate the real hour of the hearing, as requested by law. On 19 May 2000 the Olt Regional Court dismissed her request by simply stating that "it did not meet the requirements expressly provided for" by law.

The applicant did not appeal against the decision of 19 May 2000 which thus became final.

## COMPLAINTS

1. Under Article 6 §§ 1 and 3 (b) and (c) of the Convention, the applicant complained that she had not had a fair trial or the possibility to defend herself before the Olt Regional Court which had judged the appeal on the merits of the case and had convicted her in her absence, without

hearing her or her lawyer, and without her being lawfully subpoenaed to the hearing.

2. She claimed that the presumption of innocence in her favour had been infringed in the same proceedings before the Olt Regional Court, in violation of Article 6 § 2 of the Convention.

## PROCEDURE

On 20 February 2004 the case was communicated to the respondent Government.

Upon the Government's request, on 17 May 2004 the Registry made a proposal for a friendly settlement to both parties.

On 14 and 15 June 2004 the Government and the applicant respectively informed the Court that they had reached a friendly settlement and attached the declarations of acceptance.

In a letter of 19 June 2004 the Government asked the Court to sanction the agreement of the parties and to strike the application off its list of cases. A similar request was made by the applicant in a letter of 30 July 2004.

## THE LAW

On 14 June 2004, the Court received the following declaration from the respondent Government:

> "I declare that the Government of Romania offer to pay *ex gratia* 2,500 euros to Mrs Alexandrina Nițu with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.
>
> This sum which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be converted into Romanian lei at the rate applicable on the date of payment and free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken 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 payment will constitute the final resolution of the case."

On 15 June 2004, the representative of the applicant sent a declaration to the Court, which reads as follows:

> "I note that the Government of Romania are prepared to pay *ex gratia* the sum of 2,500 euros to Mrs Alexandrina Nițu with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.

This sum, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be converted into Romanian lei at the rate applicable on the date of payment and free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. From the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

I accept the proposal and waive any further claims against Romania in respect of the facts giving rise to this application. I declare that this constitutes a final resolution of the case."

The Court takes note of the friendly settlement reached between the parties. It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds no public policy reasons to justify a continued examination of the application (Article 37 § 1 *in fine* of the Convention).

Accordingly, Article 29 § 3 of the Convention should no longer apply to the case and it should be struck out of the list.

For these reasons, the Court unanimously

*Decides* to strike the application out of its list of cases.

S. DOLLÉ
Registrar

J.-P. COSTA
President