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

FOURTH SECTION

DECISION

Application no. 25605/18
Ana PADINEANȚ
against Romania

The European Court of Human Rights (Fourth Section), sitting on 28 September 2021 as a Committee composed of:

Gabriele Kucsko-Stadlmayer, *President,*
Iulia Antoanella Motoc,
Pere Pastor Vilanova, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to the above application lodged on 24 May 2018,

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, Ms Ana Padineanţ, is a Romanian national who was born in 1969 and lives in Lupac. She was represented before the Court by Mr A.I. Stan, a lawyer practising in Timișoara.

2. The Romanian Government ("the Government") were represented by their Agent, Ms O. Ezer, 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. The death of the applicant's father

4. On 3 September 2012 the applicant, her father and a third person, R.G.J., were travelling on a national road in a horse cart, when a car driven by A.M. collided with their cart. As a consequence of the collision, the

applicant's father died on 10 September 2012, while she and R.G.J. suffered bodily injuries which required twelve and sixty-five days of medical care respectively.

5. On the day of the accident the police department carried out an on-site investigation. They took photographs of the scene of the accident, identified the vehicles involved and made relevant measurements, noting all the information in a report.

6. On 12 September 2012 a forensic autopsy report noted that the applicant's father's death had been violent, possibly caused by a traffic accident.

7. Two toxicology reports were produced on 3 and 14 September 2012 respectively concerning A.M.'s and the victim's blood alcohol levels, concluding that there had been no presence of alcohol in their blood at the time of the accident.

2. Criminal proceedings concerning the death of the applicant's father

8. On 24 September and 10 October 2012 respectively the applicant and R.G.J. lodged criminal complaints against A.M. for manslaughter and for negligence leading to bodily harm. They joined their civil claims without specifying any amount. A criminal investigation concerning the accident was immediately opened by the investigative authorities.

9. A forensic report establishing the gravity of the bodily injuries suffered by R.G.J. was produced on 4 December 2012.

10. On 5 August 2013 the prosecutor decided to open a criminal investigation in respect of A.M. for manslaughter and negligence leading to bodily harm.

11. Between 12 November 2013 and 9 May 2014, the prosecutor interviewed A.M., the applicant and R.G.J.

12. On 14 October 2013 the prosecutor requested from the relevant office attached to the Caraș Severin County Court a list of experts so as to be able to appoint one to draw up a report establishing the circumstances in which the accident had occurred. A further similar request was sent on 30 August 2017, and the list was received on that day. An expert report was promptly ordered, and it was produced at a later date (see paragraph 17 below).

13. On 26 February 2014 the prosecutor reclassified the acts for which A.M. was being investigated following the entry into force of the new Criminal Code, which provided for a slightly more lenient range of penalties in respect of the offence of negligence leading to bodily harm (see paragraph 35 below).

14. On 30 April 2014 and again on 28 August 2015 the applicant brought civil claims against A.M., seeking an award of 200,000 euros (EUR) in compensation for the non-pecuniary damage she had suffered on account of her father's death.

15. According to the report submitted at the Government's request by the Chief Prosecutor of the prosecutor's office attached to the Caraș Severin County Court, which outlined the successive procedural steps undertaken in the criminal case, it appears that no procedural steps were undertaken by the prosecutor between 28 August 2015 and 17 October 2017; on the latter date the case was transferred to another prosecutor.

16. On 4 January 2018 the case was transferred again to a different prosecutor's office, on account of the heavy workload of the previous office (see paragraph 32 below).

17. On 3 June 2018 a technical expert report was produced (see paragraph 12 above) indicating the circumstances of the accident. It essentially concluded that the vision of the driver of the car might have been impaired by bright sunlight; that the driver had not observed the lawful distance between vehicles or the legal speed limit; and that the accident could have been avoided if the driver of the car had stopped the car after realising that his vision was impaired.

18. On 22 August 2018 A.M. was indicted, accused of having committed involuntary manslaughter; the charges of negligence leading to bodily harm were dropped in so far as the consequences of those injuries had not been serious enough to reach the threshold set by the criminal law, as in force since 1 February 2014 (see paragraph 33 below).

(a) Preliminary chamber

19. On 21 March 2019 the preliminary chamber found both the indictment against A.M. and the evidence taken throughout the criminal proceedings lawful and ordered that the applicant appear before the court.

20. That judgment was appealed against by a car insurance company, which had been called by A.M. to appear before the court during the trial in its capacity as a party liable to pay damages. On 16 May 2019 the appeal was dismissed as ill-founded by the Caraș Severin County Court.

(b) First-instance court

21. Before the court, A.M. acknowledged his guilt in relation to the charges set out in the indictment and consequently asked to be tried under the expedited procedure.

22. The applicant revised her civil claims and sought an award of EUR 100,000 in respect of non-pecuniary damage and EUR 10,000 in respect of pecuniary damage.

23. On 2 July 2020 the Reșița District Court convicted A.M. for the acts for which he had been indicted (see paragraph 18 above) and sentenced him to two years' imprisonment, suspended.

24. The court further decided to award the applicant the sum of EUR 30,000 in respect of non-pecuniary damage; the sum of

1,012 Romanian lei (RON), representing the fee she had paid for a forensic report, was awarded in respect of pecuniary damage. The awards were to be paid by the insurance company.

(c) Appellate court

25. On 7 September 2020 the Timișoara Court of Appeal upheld in full the lower court's judgment, including in respect of the amount of compensation awarded to the applicant, which it considered to be reasonable and fair, as well as in respect of the party liable to pay the damages, namely the insurance company. That judgment was final.

3. Complaint by the applicant about the length of the criminal proceedings

26. On 8 December 2016 the applicant lodged a complaint with the domestic courts about the length of the criminal proceedings, relying on Article 488 of the Code of Criminal Procedure (hereinafter "the CCP"; see paragraph 33 below), and seeking an order for the prosecutor to give a decision on the case within a short time-limit.

27. On 19 December 2016 the complaint was dismissed as inadmissible by the preliminary chamber judge at the Reșița District Court. The court considered that the legal grounds relied on (see the previous paragraph) were not applicable to the applicant's case, because, pursuant to Article 105 of the Law implementing the new CCP, Article 488 of the CCP applied only to those investigations which had started after the latter's entry into force in 2014 (see paragraph 34 below).

28. By the same judgment, the court decided to send the Constitutional Court a request by the applicant to have the provisions of Article 105 of the Law implementing the new CCP declared unconstitutional and in breach of Articles 6 and 13 of the Convention.

29. On 27 June 2017 the Constitutional Court dismissed the applicant's request as ill-founded, holding, *inter alia*, that Articles 6 and 13 of the Convention had not been breached because even under the former CCP, as under the one in force, the investigative authorities were required to complete criminal investigations within a reasonable time-limit (the legality principle of the criminal trial).

30. On 30 June 2017 the applicant submitted a request to the Chief Prosecutor of the prosecutor's office attached to the Reșița District Court, asking him to order the prosecutor in charge of the criminal investigation into the death of her father to complete the proceedings within a short time-limit.

31. On 11 December 2017 the applicant requested that the criminal investigation be transferred to another prosecutor's office because the one in charge at the time was not diligent enough.

32. Notwithstanding the fact that the latter request was dismissed as ill-founded, the case was transferred to another prosecutor's office in view of the previous office's heavy workload (see paragraph 16 above).

B. Relevant domestic law and practice

33. Article 488 of the CCP, in force from 1 February 2014, sets out the possibility for a party to bring a complaint before the domestic court regarding the unreasonable length of a criminal investigation and to request that the investigation be expedited.

34. Article 105 of Law no. 255/2013 on implementing the new CCP stated that such a complaint could be submitted only in respect of those criminal investigations that had been initiated after the entry into force of the new CCP.

35. The offence of negligence leading to bodily harm was amended by the 2014 Criminal Code, being applicable under the new legislation only if, *inter alia*, the injuries were committed by a person who was under the influence of alcohol or drugs and if those injuries required up to ninety days of medical care for the victim.

COMPLAINTS

36. The applicant complained under Articles 2, 6 and 13 of the Convention that the criminal proceedings regarding the accidental death of her father had been ineffective, complaining in particular that their length had been unreasonable, and also that there was no remedy under domestic law capable of expediting the investigation.

THE LAW

37. The applicant complained that the investigation into the road traffic accident resulting in her father's death had not been effective because it had taken an unreasonably long time, and that she had had no possibility of bringing about an acceleration of the investigation.

38. The Court will examine those complaints under Articles 2 and 13 of the Convention, which read, in so far as relevant, as follows:

Article 2

"1. Everyone's right to life shall be protected by law."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Submissions by the parties

39. In their observations submitted on 28 August 2020, while the criminal proceedings were still pending before the domestic authorities, the Government argued that the applicant had failed to inform the Court of the fact that the criminal case file had been sent to the domestic courts, and that therefore her application was inadmissible as it was an abuse of the right of individual application under Article 35 § 3 (a) of the Convention. Furthermore, they submitted that the applicant had failed to bring a tort claim seeking compensation for the unreasonable length of the relevant criminal proceedings (they cited *Brudan v. Romania*, no. 75717/14, 10 April 2018).

40. On the merits of the application, the Government argued that the national authorities had taken all measures to establish the circumstances of her father's death, within the framework of a fully-fledged criminal investigation.

41. The applicant maintained her complaints. She contended that the inquiry conducted by the authorities had not been thorough, as the criminal investigation had taken too long. Furthermore, she argued that she had had no remedy available to ensure that the criminal proceedings were expedited.

B. The Court's assessment

42. The Court finds it unnecessary to address all of the Government's objections, as the complaints are in any event inadmissible for the following reasons.

1. Article 2 of the Convention

43. It is the Court's established case-law that, in the event of death or life-threatening physical injury, the State's duty to safeguard the right to life must be considered to also involve having in place an effective independent judicial system capable of promptly establishing the facts, holding accountable those at fault and providing appropriate redress to the victim (see the general principles recapitulated in *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, §§ 157-71, 25 June 2019).

44. The Court has also held that in circumstances of life-threatening injuries inflicted unintentionally, the procedural obligation imposed by Article 2 only requires that the legal system afford the applicant a remedy in the civil courts, not that a criminal investigation be opened into the circumstances of the accident. This, however, does not prevent domestic law from providing recourse to a criminal investigation in such circumstances (ibid., § 172).

45. Turning to the present case, the Court notes that promptly after the applicant's father died as a result of the traffic accident of 3 September

2012, the authorities reacted by inspecting the scene and conducting a fully-fledged criminal investigation into the events. They took photographs of the scene of the accident and made notes about it, collected evidence and commissioned two toxicology reports concerning the driver's and the victim's blood alcohol levels (see paragraphs 5-7 above).

46. Criminal proceedings against A.M. were initiated within a relatively short time thereafter (see paragraph 10 above). The prosecutor also interviewed those involved in the incident and asked for a list of technical experts so as to have a report drawn up in order to establish the circumstances of the accident (see paragraphs 11-12 above).

47. The applicant did not complain about not having been actively involved in the proceedings; her complaints referred rather to the fact that she had been unable to expedite the proceedings in spite of her attempts to do so (see paragraphs 26, 30 and 31 above), those attempts having been dismissed on the grounds that she had not relied on the relevant legal provisions in support of her complaint, while also noting that prosecutors were bound to complete any criminal investigation within a reasonable time (see paragraphs 27 and 29 above).

48. The Court reiterates that the requirement that the proceedings be completed within a reasonable time is one of the essential parameters for assessing compliance with the procedural requirement of Article 2; these elements are inter-related and each of them, taken separately, does not amount to an end in itself. They are criteria which, taken jointly, enable the degree of effectiveness of the investigation to be assessed. It is in relation to this purpose of an effective investigation that any issues, including that of promptness and reasonable expediency, must be assessed (*Nicolae Virgiliu Tănase,* cited above, § 171). In that connection, the Court observes that the proceedings have lasted approximately eight years, six of which involved the criminal investigation, including the six months during which the file was with the Constitutional Court (see paragraphs 27-29 above).

49. While noting that during the period until mid-2015 the prosecutor actively collected evidence, including attempting to commission a technical report that was essential to the case, the Court considers it regrettable that, as was also acknowledged by the domestic authorities, there was a period of more than two years when no procedural steps were taken in the case (see paragraph 15 above).

50. Nevertheless, the Court notes that the proceedings complained of resulted in the criminal conviction of A.M. and an award of more than EUR 30,000 to the applicant in respect of pecuniary and non-pecuniary damage (see paragraphs 23-25 above). In this connection, the Court observes that that amount is reasonably in line with, if not clearly higher than, the awards it has made itself in cases concerning similar matters (see, *mutatis mutandis*, *Dâmbean v. Romania*, no. 42009/04, § 56, 23 July 2013; *Marius Alexandru*

and Marinela Ștefan v. Romania, no. 78643/11, § 116, 24 March 2020; and *Danciu and Others v. Romania*, no. 48395/16, § 101, 12 May 2020).

51. Therefore, in view of the general outcome of the proceedings at issue, the Court cannot but conclude that in the circumstances of the present case, the overall length of the proceedings has not undermined their effectiveness (see, for instance, *Mileusnić and Mileusnić-Espenheim v. Croatia*, no. 66953/09, § 71, 19 February 2015, and, by way of contrast, *Fernandes de Oliveira v. Portugal* [GC], no. 78103/14, § 139, 31 January 2019).

52. In that context, and with particular regard to the length of the proceedings, the Court also refers to its conclusions in *Brudan* (cited above, § 88), where it found, albeit in the context of Article 6 of the Convention, that for all proceedings completed after 22 March 2015, applicants had an effective remedy capable of offering them compensation for the excessive duration of proceedings by bringing tort claims before the domestic courts. Noting that the proceedings in the present case were completed after the above-mentioned date (see paragraph 25 above), the Court considers that the applicant was entitled to use the remedy provided for by the domestic law in respect of the allegedly unreasonable length of the criminal proceedings.

53. Having regard to the above combination of criminal and civil remedies available to the applicant in the present case, the Court is satisfied that the respondent State has complied with its positive obligation to set up an effective judicial system to determine the cause of death and bring those responsible to account for it (see, by contrast, *Tikhomirova v. Russia*, no. 49626/07, §§ 29-31, 3 October 2017).

54. It follows that this complaint is inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected, pursuant to Article 35 § 4 of the Convention.

2. Article 13 taken in conjunction with Article 2 of the Convention

55. The applicant complained that there had been no remedy in domestic law allowing her to request that the proceedings be expedited.

56. The Court reiterates that Article 13 applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see among many other authorities *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). The Court has found above that the applicant's complaint under Article 2 is manifestly ill-founded (see paragraphs 53-54 above).

57. For similar reasons, the applicant does not have an "arguable claim" and Article 13 is therefore inapplicable to her case (see, for instance, *Waresiak v. Poland* (dec.), no. 58558/13, § 97, 10 March 2020).

58. It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 4 November 2021.

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Ilse Freiwirth Deputy Registrar	Gabriele Kucsko-Stadlmayer President