

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

THIRD SECTION

DECISION

Application no. 27945/07
by Ioan Nicolet POTCOAVĂ
against Romania

The European Court of Human Rights (Third Section), sitting on 3 November 2011 as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Egbert Myjer,
Ján Šikuta,
Ineta Ziemele,
Nona Tsotsoria,
Kristina Pardalos, *judges,*

and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 20 June 2007,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Ioan Nicolet Potcoavă, is a Romanian national who was born in 1969 and lives in Ungheni.

A. The circumstances of the case

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

1. Criminal proceedings against the applicant

3. In the evening of 4 July 2002, at approximately 11 p.m., the applicant was apprehended by two police officers, R.C. and O.F., who were searching for the perpetrator of several rapes committed in that area over the previous few months. As the applicant fitted the description given by the victims, he was body-searched and arrested by the police officers.

4. The applicant claimed that he had been beaten up both on the way to the police headquarters and then all through the night, and forced to confess to crimes he had not committed.

5. On 5 July 2002 he gave three handwritten statements at the police headquarters. He was not assisted by counsel.

In the first statement, given in the presence of officer R.C., he denied having committed the crimes. In the second and third statements he confessed to having committed three rapes, on 8 November 2001, in February 2002 and in April 2002, and two attempted rapes in May and June 2002, and that he had been planning similar deeds on 4 July 2002. He gave details of how he had approached, immobilised and abused the victims on each occasion.

On the same day he was taken to the Prosecutor's Office attached to the Mureş County Court where, in the presence of counsel, he reiterated his confession. According to the applicant, the police officers who accompanied him to the Prosecutor's Office threatened him with violence if he changed his statements before the prosecutor. A police officer was present during the questioning of the applicant in the prosecutor's office.

6. The applicant was examined by a commission of psychiatrists and forensic doctors who concluded that, at the time of the offences he was accused of, the applicant had been aware that what he was doing was wrong. They also concluded that he had a personality disorder with antisocial behaviour, being unable to control his instinctual impulses. On 5 August 2002 they submitted their report to the prosecutor.

7. On 18 December 2002 the prosecutor lodged the indictment with the Târgu Mureş District Court. Before the court, the applicant was represented by counsel. He retracted his previous confessions and reiterated that he had been beaten and threatened by police during the early questioning sessions. On 11 August 2003 the court convicted the applicant.

However, in a final decision of 17 October 2003 the Târgu Mureş Court of Appeal quashed the applicant's conviction and sent the case back to the Prosecutor's Office for further investigation. The court noted that the rights of the defence had been breached in that the applicant had not been assisted by counsel during the first questioning sessions and that the prosecutor had not ordered an expert examination of the material evidence.

8. On 29 January 2004 the applicant was released from detention pending trial under an order by the prosecutor not to leave town.

9. On 16 March 2004 the prosecutor indicted the applicant again.

10. On 9 October 2006 the Târgu Mureş District Court acquitted the applicant, as it considered that the evidence in the file was not sufficient to allow a conclusion beyond doubt that he had committed the crimes of which he was accused. It noted that some of the material evidence gathered had turned out to be inconclusive and that the applicant had presented an alibi for the time when two of the rapes had occurred.

11. In a final decision of 27 September 2007 the Mureş County Court reversed the judgment and convicted the applicant of three counts of rape and one attempted rape and sentenced him to one year, six months and twenty-six days in prison. The court considered that the applicant's confessions were consistent with the evidence in the file, in particular the victims' statements, the expert medical report and the statements made by witnesses who had attended the reconstruction of the events in the first set of investigations. The court attached weight to the fact that the confessions had been handwritten by the applicant himself and offered a detailed description of his *modus operandi*; it also argued that more often than not the first declarations made in a case reflected the truth, as the person had not yet had the time to think over and prepare a defence. The court also pointed out that the applicant had repeated his confession before the prosecutor in the presence of a lawyer and that at that time he had made no mention of abuse by the investigators. It noted that the applicant had refused to provide biological samples for testing and that the polygraph test he had taken had showed "simulated behaviour". Lastly, the court noted that no other similar rapes had been reported in the area after the applicant's arrest.

2. Criminal complaints against the investigators

12. On 14 August 2002 the applicant complained to the Military Prosecutor's Office attached to the Târgu Mureş Court that police officers R.C. and O.F. had punched him in the face and broken one of his teeth when they had apprehended him and that later at the police headquarters they had coerced him into a confession.

On 4 February 2003 the Bucharest Military Prosecutor dismissed the complaint as ill-founded and that decision was upheld on 31 May 2004 by the Military Prosecutor attached to the High Court of Cassation and Justice.

13. On 30 June 2004 the applicant lodged a new criminal complaint against the two police officers, R.C. and O.F., alleging that they had hit him and used abusive investigation methods and torture. He averred that his previous attempts to complain about the investigations had not been recorded or responded to by the authorities.

14. Following the demilitarisation of the police, the complaint was examined by the prosecutor attached to the Târgu Mureş Court of Appeal, who, in a decision issued on 8 June 2005, dismissed the complaint. He noted that when taken into police custody the applicant had not been recorded as having any traces of violence on his body. His medical

examination however, had revealed traces of a fractured rib that could have dated from that time, but the prosecutor considered that that fact alone was not enough to prove the abuse, particularly as the rest of the evidence in the file did not support the applicant's allegations.

15. On 5 July 2005 the chief prosecutor of the Prosecutor's Office attached to the Court of Appeal dismissed the applicant's objection and upheld that decision.

16. On 18 October 2006 the Târgu Mureş Court of Appeal dismissed another objection by the applicant and upheld the prosecutors' decisions. It considered that the evidence in the file, in particular the witness statements and the medical record of his detention, invalidated the applicant's allegations. Moreover, the court noted that the applicant had only accused the investigators of violence after the medical expert report had concluded that he had been aware that his deeds were wrong and thus he could be held criminally responsible for them. Based on an interpretation of the applicant's various statements, the court concluded that he had been trying initially to use the defence of diminished capacity, but when the expert report had ruled that defence out, he had alleged violence by police in order to have his confessions discarded for being made under duress. It also noted that the applicant had given conflicting descriptions of the alleged beating and that he had not shown any sign of suffering while in detention, and nothing had come up during the several medical investigations that he had had. It lastly noted that nobody had seen or heard the applicant being beaten up when he had been apprehended or later, during the investigations.

17. The applicant appealed, and on 30 January 2007 the High Court of Cassation and Justice dismissed his appeal. The decision thus became final.

B. Relevant domestic law

18. The relevant provisions of the Code of Criminal Procedure concerning the demilitarisation of the police are described in *Begu v. Romania*, no. 20448/02, § 62, 15 March 2011.

COMPLAINTS

19. Under Article 3 of the Convention, the applicant complained that he had been ill-treated by police during the investigations and that the investigations into the incident had not been effective, as it had taken the authorities two years to start interviewing witnesses.

20. The applicant complained under Article 6 of the Convention that the criminal proceedings against him had not been fair and that his defence rights had been breached. In particular, he complained that he had not been

afforded access to a lawyer during police questioning, that he had not been allowed time to prepare his defence but had been questioned immediately upon his arrest, and that he had not been given an expert examination as he and his family had requested. He also complained that he had been unable to contact his family for a month after the arrest.

THE LAW

A. Article 3 of the Convention

21. The applicant complained of ill-treatment by police and ineffectiveness in the ensuing investigations. He relied on Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

22. However, 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 they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

23. In particular, the Court notes that both the prosecutor (decision of 8 June 2005 of the prosecutor attached to the Târgu Mureş Court of Appeal) and the courts (ruling of 18 October 2006 by the Târgu Mureş Court of Appeal) examined the applicant's allegations on the basis of the evidence in the file and gave exhaustively reasoned decisions. Nothing in the file indicates arbitrariness or protraction in the way the authorities examined the allegations. The Court also notes that as the police was demilitarised, there are no doubts about the prosecutor's independence and impartiality as far as the second complaint lodged by the applicant is concerned (contrast *Barbu Anghelescu v. Romania*, no. 46430/99, §§ 64-70, 5 October 2004).

In addition, the applicant failed to present any evidence of ill-treatment both before the domestic authorities and before the Court.

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

B. Article 6 of the Convention

25. The applicant considered that the criminal proceedings against him had not been fair and that the authorities had breached the rights of the defence.

26. The Court considers that this complaint falls to be examined under Article 6 §§ 1 and 3 (b) and (c) of the Convention, which reads as follows:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; ..."

27. The Court considers that it cannot determine the admissibility of this complaint on the basis of the case file and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning Article 6 §§ 1 and 3;

Declares the remainder of the application inadmissible.

Marialena Tsirli
Deputy Registrar

Josep Casadevall
President