

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

THIRD SECTION

DECISION

Application no. 4140/04
Aurelia ROMAN
against Romania

The European Court of Human Rights (Third Section), sitting on 3 April 2012 as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Egbert Myjer,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria,
Mihai Poalelungi, *judges,*

and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 15 December 2003,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mrs Aurelia Roman, is a Romanian national who was born in 1960 and lives in Alexandria. She was represented before the Court by Mr S. Roman, a lawyer practising in Alexandria.

A. The circumstances of the case

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

3. The applicant was involved in two sets of criminal proceedings with civil claims brought against her on unspecified dates in 2002 for the same offence (accessory to fraud) following the complaints of two separate groups of civil third parties. As an employee of a Romanian private bank the applicant had allegedly helped four criminal groups gain access to money embezzled by the members of the said groups from numerous third parties living in foreign countries.

1. The first set of proceedings brought against the applicant by the first group of civil third parties for accessory to fraud

4. On 29 October 2002 Teleorman police station heard the applicant in the presence of her lawyer and placed the applicant in police custody for twenty-four hours on suspicion of being an accomplice to fraud.

5. On 31 October 2002 the Bucharest Prosecutor's Office informed the applicant of the charges brought against her and heard her in the presence of her legal representative. By an order issued the same day by the Prosecutor's Office, the applicant was detained pending trial for thirty days for being an accomplice to fraud based on Article 148 (h) of the Romanian Code of Criminal Procedure. The Prosecutor's Order held that she was a danger to public order and that she had committed an offence punishable by more than two years' imprisonment.

6. Between 8 November 2002 and 8 July 2003 the applicant's pre-trial detention was extended repeatedly by final interlocutory judgments of the Teleorman County Court. The applicant was not brought before the County Court at the hearing held in May 2003 but was represented by her lawyer. Both the applicant and her legal representatives were present before the County Court at the hearings of 24 June and 8 July 2003. The court confirmed the lawfulness of the detention mainly on the ground that the initial reasons which had justified the applicant's initial detention remained valid and dismissed the applicant's repeated arguments that she was not a danger to public order and that her pre-trial detention could be replaced by alternative measures. The court did not provide any other explanation for the extension of the applicant's pre-trial detention.

7. On 24 February 2003 the applicant and several third parties were indicted and their case was sent to trial. The applicant was indicted for being an accomplice to fraud.

8. On 26 February and 21 March 2003 the applicant lodged a challenge against all the judges of the Alexandria County Court on the ground that they were directly or indirectly interested in the outcome of the case. By interlocutory judgments delivered on the same days the Teleorman County Court dismissed the applicant's challenge on the merits. There is no evidence in the file that the applicant appealed against the said interlocutory judgments together with the merits of the case as required by the applicable rules on criminal procedure.

9. On 28 March 2003 the applicant lodged a challenge against all the judges of the Teleorman County Court on the ground that they were directly or indirectly interested in the outcome of the case. By an interlocutory judgment delivered the same day the Bucharest Court of Appeal dismissed the challenge on the ground that the applicant had not submitted any proof in support of her allegations. There is no evidence in the file that the applicant appealed against the interlocutory judgment together with the merits of the case as required by the applicable rules on criminal procedure.

10. On 6 May 2003 the applicant lodged a challenge against all the judges of the Teleorman County Court on the ground that all of them had already examined the applicant's pre-trial detention several times. By a final interlocutory judgment delivered the same day the Teleorman County Court dismissed the applicant's challenge on the ground that the reason relied on by the applicant was not an incompatibility reason provided by the applicable rule on criminal procedure.

11. By an interlocutory judgment of 15 July 2003 the Teleorman County Court allowed the applicant's request and discontinued her pre-trial detention. At the same time, it ordered the applicant not to leave her home town. The applicant was released the following day.

12. On 14 October 2003 the applicant lodged a challenge against Judge M.V. on the ground that she was directly or indirectly interested in the outcome of the case. By an interlocutory judgment delivered the same day the Alexandria District Court dismissed the applicant's challenge as unsubstantiated. There is no evidence in the file that the applicant appealed against the interlocutory judgment together with the merits of the case as required by the applicable rules on criminal procedure.

13. On 13 January 2004 the applicant asked the court to hear the witness M.I. on account of her expertise in respect of banking related activities. By a final interlocutory judgment delivered the same day the Alexandria District Court dismissed her request on the ground that the statement of the said witness was irrelevant to the applicant's case, considering the documentary and testimonial evidence available in the file.

14. By a judgment of 5 February 2004 the Alexandria District Court convicted the applicant of being an accessory to fraud and sentenced her to two years' imprisonment on the basis of expert, documentary and testimonial evidence. The court also severed the civil-claims head of the proceedings pending the outcome of the criminal trial. The applicant appealed against the judgment on the ground that the first-instance court had misinterpreted the evidence in the file and that she was entitled to a more lenient sentence.

15. By a judgment of 21 April 2004 the Teleorman County Court partly allowed the applicant's appeal on the ground that the first-instance court had not considered the particular situation of each of the accused and the damage caused by each of them as a result of the offence. Consequently, it

changed the applicant's sentence to one year's imprisonment, suspended. The applicant appealed on points of law (*recurat*) and requested that the court lower her sentence.

16. By a final judgment of 9 September 2004 the Bucharest Court of Appeal dismissed the applicant's appeal on points of law as ill-founded and upheld the judgment of 21 April 2004.

17. By a judgment of 24 March 2011 the Alexandria District Court partly allowed the civil claims brought by the third parties against the applicant and her co-accused on the merits. The proceedings are still pending before the domestic courts.

2. The second set of proceedings brought against the applicant by a second group of civil third parties for accessory to fraud

18. On 25 June 2003 the applicant and several third parties were indicted and their case was sent to trial. The applicant was indicted for being an accomplice to fraud.

19. By a judgment of 16 December 2003 the Alexandria District Court convicted the applicant of being an accessory to fraud on the basis of testimonial, documentary and expert evidence and sentenced her to three years' imprisonment. The court severed the civil-claims head of the proceedings pending the outcome of the criminal trial. The applicant appealed against the judgment and argued that the first-instance court had misinterpreted the evidence available in the file. Moreover, she submitted that the graphological expert report ordered by the court had not conclusively proved that she had written on the forged documents.

20. By a judgment of 17 March 2004 the Teleorman County Court dismissed the applicant's appeal and upheld the judgment of 16 December 2003. The court held that the evidence available in the file conclusively proved the applicant's guilt. The applicant appealed against the judgment on points of law (*recurat*). She argued that the domestic courts had incorrectly assessed the evidence and that her personal circumstances justified her acquittal.

21. By a final judgment of 28 July 2004 the Bucharest Court of Appeal dismissed the applicant's appeal on points of law as ill-founded.

22. On 29 July 2004 the applicant opened proceedings seeking the suspension of her prison sentence for three months on account of her family situation.

23. By a final judgment of 7 September 2004 the Alexandria District Court allowed the applicant's action on the ground that her underage children needed special medical care and ordered the suspension of her prison sentence for three months.

24. By a judgment of 14 March 2011 the Alexandria District Court partly allowed the civil claims brought by the third parties against the

applicant and her co-accused on the merits. The proceedings are still pending before the domestic courts.

3. The conditions of the applicant's detention pending trial and her access to medical treatment

25. On 15 December 2003 the applicant informed the Court that during her detention pending trial at Bucharest police station she had been subjected to inhuman and degrading treatment. In particular, she was not allowed to have contact with her family for the first thirty days of her detention. Moreover, between 29 and 31 October 2002 the authorities questioned her without giving her access to food or personal hygiene facilities. Furthermore, she was forced to share a 20 sq.m room with twenty other detainees and to sleep on the wet concrete floor because the room had only eight beds. The room was squalid, full of lice and bed bugs and the metal blinds, which did not allow enough air to enter the room, covered the window. Most of the other detainees were smokers and the applicant, a non-smoker, had breathing difficulties. She was allowed to leave the room for exercise for only thirty minutes a week, although she was allegedly entitled to thirty minutes of exercise every day. The police station courtyard was only 5 sq.m in size and was very crowded. She had access to bathroom facilities only twice every twenty-four hours and together with the other detainees she was forced to use plastic bags and containers to answer calls of nature. Consequently, the smell in the room was unbearable. In addition, although she had access to washing water once a week for ten minutes at a time, the water was constantly cold. The food was inappropriate and lacked any nutritious value.

26. The applicant further stated that because of the poor food her stomach and thyroid condition had worsened. Moreover, because of the dampness in the cell, her joints started to hurt and the lack of air caused her to become sick with bronchitis. Although her medical condition was serious she did not have access to medical assistance and expensive medicines were taken away by the prison guards. Furthermore, her family's visits were short and were monitored by the prison guards.

27. On 27 November 2002 one of the police officers questioning the applicant allegedly hit her across her upper body and head. Although she fell unconscious, twice, the investigation continued and she was allegedly forced to sign a written statement in the absence of her lawyer.

28. Lastly, the applicant submitted that she had been subjected to degrading treatment because she had appeared before the Alexandria District Court wearing handcuffs and was kept in handcuffs for the entire hearing session every time the court reviewed her pre-trial detention. Moreover, on three occasions she appeared before the court handcuffed to other male detainees.

29. On 29 July 2004 the applicant informed the Court that she had been detained pending trial at Bucharest police station from 29 October 2002 to 23 March 2003 and from 21 April to 4 July 2003.

4. The alleged statement of public officials and the media campaign initiated against the applicant

30. On 15 December 2003 the applicant informed the Court that on 31 October 2002 the press officer for Bucharest police station had declared the applicant guilty of being an accessory to fraud in a press conference held the same day.

31. Moreover, a video cassette allegedly filmed without the applicant's consent containing images of her was leaked to the press and was broadcast on 31 October 2002 by several television stations.

32. On the following two days a virulent press campaign was allegedly initiated against the applicant based on the information imparted by the authorities.

33. The applicant submitted approximately thirteen newspaper articles published between 2 November 2002 and 24 April 2004 in local and national newspapers such as *Ziua*, *Azi*, *Evenimentul Zilei*, *Cotidianul*, *Curierul Naţional*, *Adevărul*, *Gazeta de Teleorman* and *Gardianul* describing the facts of the applicant's case, updating the public in respect of new measures taken against the applicant and her co-accused and reiterating her lawyer's concerns in respect of the trial. Some of the titles read as follows: "The Federal Bureau of Investigation and the Organised Crime Unit uncovered Romania's largest network of Internet crooks" (*Curierul National*); "A group of criminals from Teleorman rob Americans on the Internet" (*Adevărul*); and "A network of Internet crooks arrested" (*Azi*).

B. Relevant domestic law

34. Excerpts of the relevant provisions of Law no. 23/1969 on the execution of sentences are given in *Năstase-Silivestru v. Romania*, (no. 74785/01, §§ 22-25, 4 October 2007).

35. Excerpts from the relevant provisions concerning the rights of detainees, namely Government Ordinance no. 56/2003, are given in *Petrea v. Romania* (no. 4792/03, §§ 22-23, 29 April 2008).

36. Excerpts from the relevant parts of the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), as well as reports of the Romanian Helsinki Committee, are given in *Bragadireanu v. Romania* (no. 22088/04, §§ 73-75, 6 December 2007).

COMPLAINTS

37. The applicant complained expressly under Article 3 of the Convention that she had not been allowed any contact with her family for the first thirty days of her detention. Moreover, between 29 and 31 October 2002 she did not have access to food or personal hygiene facilities. Furthermore, she had to share a 20 sq.m room with twenty other detainees and to sleep on the wet concrete floor because the room had only eight beds. The room was squalid, full of lice and bed bugs and the metal blinds, which did not allow enough air to enter the room, covered the window. Most of the other detainees were smokers and the applicant, a non-smoker, had breathing difficulties. She could leave the room for exercise for only thirty minutes a week. The prison's courtyard was only 5 sq.m in size and was very crowded. She had access to bathroom facilities only twice every twenty-four hours and she had to use plastic bags and containers to answer calls of nature. Consequently, the smell in the room was unbearable. In addition, although she had access to washing water once a week for ten minutes at a time, the water was constantly cold. The food was inappropriate and lacked any nutritious value. Because of the poor food her stomach and thyroid condition worsened. Moreover, because of the dampness in the cell, her joints started to hurt and the lack of air caused her to become sick with bronchitis. Although her medical condition was serious she did not have access to medical assistance and expensive medicines were taken away by the prison guards. Her family's visits were short and were monitored by the prison guards. On 27 November 2002 one of the police officers hit her across her upper body and head and allegedly forced her to sign a written statement in the absence of her lawyer, even though she had fallen unconscious twice. She appeared before the Alexandria District Court wearing handcuffs and was kept in handcuffs for the entire hearing session every time the court reviewed her pre-trial detention. Moreover, on three occasions she appeared before the court handcuffed to other, male detainees.

38. Relying expressly or in substance on Article 5 §§ 3 and 4 of the Convention, the applicant complained that the domestic courts had extended her pre-trial detention for an excessively long time, always providing the same reasons; that her pre-trial detention had been unlawful, that the authorities had failed to bring the applicant promptly before a judge following her detention pending trial on 29 October 2002, and that the authorities had failed to bring the applicant in person before the last-instance court examining the extension of her pre-trial detention.

39. Invoking Article 6 § 1, 2 and 3 of the Convention the applicant complained of the length of the two sets of civil proceedings brought against her by third parties; of the unfairness of the two sets of criminal proceedings brought against her in so far as the domestic courts had incorrectly assessed the evidence and misinterpreted the applicable legal provisions; of the fact that she had allegedly been unable to question the other co-accused; of the fact that Judges M.V. and M.C. were not impartial as they had previously extended the applicant's pre-trial detention before deciding on the merits of the case; of the fact that she had been unable to defend herself in so far as she had not had effective legal representation on 26 November 2002 and 28 March 2003; that she had not had legal representation when giving her first statements to the police officers; of a breach of her right to presumption of innocence because of the alleged statement of the press officer for Bucharest police station declaring her guilty of the offence she had allegedly committed, the leaking to the press of filmed footage of the applicant which was allegedly broadcast by national television stations on 31 October 2002 and by a virulent press campaign initiated against her.

40. Citing Article 7 of the Convention, the applicant alleged that the act that she allegedly committed had not constituted a criminal offence under domestic law.

41. Relying expressly or in substance on Article 8 of the Convention, the applicant complained of an interference with her private and family life in so far as she was unable to contact her family for the first month of her pre-trial detention (29 October – 29 November 2002) and afterwards in so far as she could see her family only once a month and could not attend to her children's medical and personal needs.

42. Citing Article 13 of the Convention, the applicant complained of a lack of an effective remedy in so far as the appellate courts upheld the judgment of the lower courts.

43. Relying on Article 4 of Protocol No. 7 to the Convention the applicant complained that the domestic courts had failed to join the two sets of criminal proceedings brought against her by third parties and that she had consequently been convicted twice for the same offence.

THE LAW

A. Complaints under Article 3 of the Convention

44. The applicant complained that she had been subjected to inhuman and degrading treatment at Bucharest police station because of the material

conditions of detention and the lack of access to adequate medical assistance (see paragraphs 25 and 26 above). She relied on Article 3 of the Convention which, in so far as relevant, reads as follows:

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

45. The Court considers that it cannot, on the basis of the case file, determine the admissibility of this part of the applicant's complaints under Article 3 of the Convention insofar as they relate to the material conditions of her detention between 21 April and 4 July 2003 and the lack of adequate medical care between 21 April and 27 June 2003 and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

B. Complaints under Article 6 § 1 of the Convention

46. The applicant complained of the excessive length of the two sets of civil proceedings brought against her by third parties which are pending before the domestic courts (see paragraph 3 above). She relied on Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by [a] ... tribunal ..."

47. The Court considers that it cannot, on the basis of the case file, determine the admissibility of this part of the applicant's complaints under Article 6 § 1 of the Convention and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

C. Remainder of the applicant's complaints

48. The Court has examined the remaining complaints as submitted by the applicant (see paragraphs 37-43, above). However, having regard to all the material in its possession, and in so far as they fall within its jurisdiction, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the parts of the applicant's complaints under Articles 3 and 6 § 1 of the Convention concerning, in particular, the material conditions of detention and the lack of access to

adequate medical care at Bucharest police station from 21 April to 4 July 2003 and from 21 April to 27 June 2003 respectively; and the length of the two sets of civil proceedings brought against her by third parties;

Declares the remainder of the application inadmissible.

Marialena Tsirli
Deputy Registrar

Josep Casadevall
President