AS TO THE ADMISSIBILITY OF

Application No. 25496/94
by Marian ROMANESCU
against Romania

The European Commission of Human Rights (Second Chamber) sitting in private on 5 April 1995, the following members being present:

Mr. H. DANELIUS, President
Mrs. G.H. THUNE
MM. G. JÖRUNDSSON
S. TRECHSEL
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
C. BÎRSAN

Mr. K. ROGGE, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 12 October 1993 by Marian Romanescu against Romania and registered on 26 October 1994 under file No. 25496/94;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The facts, as submitted by the applicant, may be summarised as follows:

The applicant, a Romanian citizen born in 1948, is a retired officer, residing at Bucharest.

The applicant used to work for the special forces for the security of the State (Securitate). Together with his unit, a sub-unit of the special anti-terrorist unit (USLA), he took part in the events commencing in Bucharest on 21 December 1989 and leading to the fall of the Ceausescu dictatorship on 22 December 1989. During these events, lasting until the end of December, clashes took place between civil demonstrators, the army, and Securitate forces.

After his work in the unit, the applicant was arrested by army forces in the evening of 22 December 1989. In the morning of 23 December 1989 he was released. On 25 December 1989, he presented himself to his unit, where he was immediately put under arrest.

During his arrest, lasting 40 days, the applicant was questioned by his colleagues, who feared a betrayal, about his activities between 22 December and 25 December 1989. As a result of this inquiry, he suffered a depression. After his release, the applicant was confined to the Bucharest Military Hospital, where he was found to have "anxious

neurasthenia". As a result, his retirement was proposed on grounds of health.

The applicant, who contested this decision, was again confined to the Bucharest Military Hospital, where allegedly strong medicines were groundlessly administered to him. Although a special civil medical commission issued a certificate declaring the applicant sane, the Central Military Commission for Medical Expertise declared on 31 July 1990 that the applicant was suffering from "evolving paranoid psychosis". On 5 November 1990, the Director of the Romanian Service for Information (formerly Securitate) decided to place the applicant on a reserve list.

On 29 April 1990 the applicant filed a criminal report with the Military Prosecutor requesting punishment of various officials allegedly responsible for his trauma.

On 6 April 1993, as well as on 30 May 1994, the Bucharest Forensic Institute issued, at the Military Prosecutor's request, a certificate establishing the applicant's sanity.

As from July 1993 the applicant no longer received his retirement pension, as he refused to submit himself to a new examination by military doctors.

On 2 December 1993 the Military Prosecutor's Office, while accepting that the unit's commander was responsible for the applicant's deprivation of liberty and his injuries, discontinued the criminal proceedings against the commander as he had died in the meantime.

In December 1993 the applicant brought an action for compensation before the Bucharest District Court against the Romanian Service for Information and the Ministry for Defence. He also requested the revocation of the retirement decision and the junction of these proceedings with the criminal investigations carried out by the Military Prosecutor.

On 21 January 1994 the applicant complained to the Bucharest District Court about the certificate of 31 July 1990 which had declared him insane and therefore unable to continue his military activity. He also contested the retirement decision of 5 November 1990.

On 19 May 1994 the applicant inquired with the Military Prosecutor about the state of the proceedings.

On 23 June 1994 the Military Prosecutor informed the applicant that it transpired from the investigations that on 22 and 23 December 1989 the applicant himself had asked for protection by a military unit.

On 24 June 1994 the Bucharest District Court requested the applicant to submit himself to a new medical examination by military doctors, in order to determine the lawfulness of the retirement decision.

On 7 October 1994 the applicant requested the suspension of the proceedings concerning compensation and the annulment of the retirement decision, pending the investigations before the Military Prosecutor concerning detention and alleged inhuman treatment. He also informed the Bucharest District Court that he refused to submit himself to a medical examination by military doctors, as he contested their impartiality, and as criminal investigations concerning the previous examinations were still pending.

COMPLAINTS

The applicant complains :

- under Article 2 of the Convention that during his detention he was threatened with death by his unit's command;

- under Article 3 of the Convention of inhuman and degrading treatment and torture during his arrest and also during his stay in hospital;

- under Article 5 para. 1 of the Convention that during 40 days he was unlawfully detained by order of his unit's command;

- under Article 5 para. 5 of the Convention that the Ministry of Defence and the Romanian Service for Information did not award him compensation for his unlawful detention;

- under Article 6 of the Convention that the Bucharest District Court, in order to be able to decide on the lawfulness of the retirement decision, held on 24 June 1994 that the applicant should submit himself to a military medical commission, although criminal investigations were pending against those doctors who had issued an incapacity certificate;

- that "for four years he has been living a drama" resulting from "the lack of interest of the authorities" in elucidating his case.

THE LAW

1. The applicant raises various complaints under Articles 2, 3 and 5 para. 1 (Art. 2, 3, 5-1) of the Convention about inhuman treatment and torture, and unlawful deprivation of liberty.

However, the Commission notes that Romania ratified the Convention on 20 June 1994 and it recalls that the Convention only governs, for each Contracting Party, facts subsequent to its entry into force with respect to that Party. The Commission therefore finds that the above complaints relating to a period before 20 June 1994 are incompatible with the provisions of the Convention ratione temporis and must be rejected according to Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant complains under Article 5 para. 5 (Art. 5-5) of the Convention that the Ministry of Defence and the Romanian Service for Information refuse to award him compensation for his unlawful detention. He also complains under Article 6 (Art. 6) of the Convention that the Bucharest District Court has asked him to submit to a medical examination carried out by military doctors, although criminal proceedings are pending against these military doctors.

However, the Commission notes that the proceedings before the Bucharest District Court which the applicant instituted in order to obtain compensation are still pending. The complaint is therefore premature.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant complains that "for four years" he has been living "a drama resulting from the lack of interest of the authorities" in elucidating his case.

The Commission interprets the applicant's complaints as relating to the length of the proceedings before the Bucharest District Court concerning compensation for his confinement and the annulment of his retirement decision as well as his allegations of torture and illegal deprivation of liberty.

The Commission recalls that Article 6 (Art. 6) does not apply to proceedings instituted against third parties unless the determination of civil rights and obligations is at stake (cf. Eur. Court H.R., the Moreira de Azevedo judgment of 23 October 1990, Series A no. 189, p. 17, para. 67).

In the present case, the solution in the proceedings before the Bucharest District Court concerning compensation will depend on the investigations carried out by the Military Prosecutor in the proceedings concerning the applicant's detention and inhuman treatment.

The Commission is therefore competent to examine under Article 6 para. 1 (Art. 6-1) the reasonableness of the length of the compensation proceedings before the Bucharest District Court as well as the proceedings instituted against various officials.

The Commission further notes that the applicant instituted criminal proceedings against third persons on 29 April 1990. However, these proceedings only become relevant under Article 6 para. 1 (Art. 6-1) of the Convention as from December 1993, i.e. the date when the applicant instituted proceedings for compensation before the Bucharest District Court. In each case, however, these proceedings commenced before 20 June 1994, which is the date when Romania ratified the Convention and recognised the competence of the Commission to receive individual applications. The Commission is therefore not competent ratione temporis to consider the length of the proceedings prior to this date.

Thus, the period to be examined under Article 6 para. 1 (Art. 6-1) of the Convention commenced on the date of ratification of the Convention by Romania, which is 20 June 1994. They have, therefore, currently lasted approximately 10 months.

Nevertheless, where the Commission by reason of its competence ratione temporis can only examine part of the proceedings, it can still take into account, in order to assess the length, the stage reached in the proceedings at the beginning of the period under consideration (see No. 7984/77, dec. 11.7.79, D.R. 16, p. 92; Eur. Court H.R., Foti judgment of 10 December 1982, Series A no. 56, p. 18, para. 53). In the present case, however, upon ratification of the Convention by Romania on 20 June 1994, the proceedings were still at an early stage, as the action for compensation had only been instituted in December 1993.

When examining the reasonableness of the length of the proceedings, the Commission will consider the circumstances of the case in the light of the criteria laid down by the Convention organs' case-law. In this respect, the complexity of the case, the attitude of the applicant and the conduct of the case by the judicial authorities must be taken into account (see, inter alia, Eur. Court H.R., Scopelliti judgment of 23 November 1993, Series A no. 278, p. 8, para. 19).

As regards the proceedings before the Bucharest District Court concerning compensation, the Commission considers that these proceedings are of a certain complexity as they may raise difficulties when establishing the facts. On the other hand, hearings were already held on 24 June 1994 and 7 October 1994. Moreover, the applicant himself requested the suspension of the proceedings.

The proceedings instituted against the senior officers of the Ministry of Defence and of the Romanian Service for Information are in the Commission's opinion also of a certain complexity as they concern various officials in different governmental departments. Moreover, on 23 June 1994 the Military Prosecutor informed the applicant about the state of the proceedings.

The Commission considers that, in the circumstances, neither the

compensation proceedings before the Bucharest District Court nor the criminal proceedings instituted against government officials have so far exceeded the "reasonable time" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

It follows that the remainder of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber — President of the Second Chamber

(K. ROGGE) — (H. DANELIUS)