

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

THIRD SECTION

DECISION

Application no. 28713/05
Radu ŞTEFĂNUŢ
against Romania

The European Court of Human Rights (Third Section), sitting on 4 September 2012 as a Committee composed of:

Alvina Gyulumyan, *President,*
Ineta Ziemele,
Kristina Pardalos, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 28 July 2005,

Having regard to the observations submitted by the Romanian Government,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Radu Ştefănuţ, is a Romanian national, who was born in 1978 and lives in Brăila.

The Romanian Government ("the Government") were represented by their Agent, Mrs I. Cambrea from the Ministry of Foreign Affairs.

A. The circumstances of the case

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

1. Background information

3. The applicant graduated from the Faculty of Mechanics of the Lower Danube University ("the university") in 2001. Subsequently, he enrolled in two other faculties of the same university, as described below (Chapters 2 and 3).

4. In February 2002, the applicant had an altercation with another student of the faculty. In relation to this incident a criminal complaint was lodged against the applicant. By a first-instance judgment of 11 November 2002 a criminal fine was imposed on him for physical assault and verbal abuse. This judgment was upheld in a final decision of the Ialomiţa County Court of 16 December 2003.

2. Legal proceedings concerning the first expulsion

5. In the autumn of 2001 the applicant enrolled as a student in the Faculty of Economic Sciences of the same university.

6. On 28 February 2002, by a decision of the rector of the University, he was expelled from the university. The expulsion decision did not provide specific reasons, but it included a general comment that he had breached the academic disciplinary rules and the rules of acceptable behaviour in society. It appears that this expulsion measure was nevertheless ordered in connection with the altercation that he had had with a fellow student earlier in February 2002. Following his judicial complaint against the expulsion measure, by a final decision of the Alba Iulia Court of Appeal of 5 November 2004 the expulsion decision was annulled because it did not comply with formal requirements, as it had not been taken by the authority competent to issue such a decision.

7. The applicant, with the assistance of a bailiff, tried to enforce the said decision. Given the university's refusal to re-enrol him, he lodged an action for damages for non-enforcement of a final decision. The Galaţi County Court, by a final decision of 15 June 2006, dismissed his claim. The county court noted that the applicant had had his legal costs paid and he had been summoned to present himself at the university in order to complete the formalities for re-enrolment. It further noted that in any event the applicant was expelled a second time (see chapter 3 below) with no possibility of re-enrolment at that same university.

3. Legal proceedings concerning the second expulsion

8. While the proceedings concerning the first expulsion were pending, in the autumn of 2002 the applicant registered as a student in the Faculty of Law of the same university. During the second year of study, the Senate of the University, by a decision of 12 November 2003, expelled him once again, this time without the right to re-enrol. The expulsion measure was taken "on account of the applicant's behaviour within the university community and with reference to the Charter of the University and

Articles 7 §§ 3 a-c and 6 and Article 8 c of the Student Regulations", as stated in the preamble to the decision. The decision was communicated to the applicant by a public notice displayed at the university.

9. From the documents submitted by the Government, it appears that the expulsion measure was proposed on account of the fact that the applicant did not comply with the campus regulations, that he conducted, without a permit, commercial activities within the campus and that he insulted on many occasions the members of the Senate of University.

10. The applicant lodged a judicial complaint against the second expulsion measure. By a first-instance judgment of 11 March 2005, the Bacău County Court allowed his complaint. The county court considered that the expulsion decision did not spell out any factual reasons for the expulsion and the applicant was not given the opportunity to defend himself. It further held that the measure of expelling with no possibility of re-enrolment did not have a legal basis in the Students' Regulations of the university concerned and constituted a breach of the right to education guaranteed by the Romanian Constitution.

11. The university appealed. By a final decision of the Bacău Court of Appeal of 12 June 2005, the first-instance judgement was quashed and the applicant's action dismissed. The appellate court considered that the sanction was lawfully imposed by the Senate of university; that the applicant was given the opportunity to defend himself as he had been summoned to appear before the Senate, but he did not present himself on the dates he was notified of. It was further held that the applicant had committed very serious acts which were incompatible with the status of student, as proven by the first-instance judgement of 11 November 2002, by which he was ordered to pay a criminal fine for physical assault and verbal abuse.

4. Follow-up of the legal studies

12. On 28 September 2004 the applicant made a request with the Lower Danube University to approve his transfer to the University Danubius Galaţi, Faculty of Law.

13. In a decision of 11 October 2004, the dean of the Lower Danube University granted his request and ordered the transfer of all his university records to his new university.

14. From the information submitted by the Government, it appears that the new university to which the applicant enrolled recognised all his previous years of law study at the Lower Danube University and that the applicant eventually graduated the Faculty of Law of another university in 2007.

B. Relevant domestic law

15. The Student regulations no. 8/2003, in force when the second expulsion measure was taken against the applicant, provided in their Article 8 that a student could be expelled when he/she failed to comply with the obligations imposed on members of the academic community. Article 7 provided that students were obliged to refrain from aggressing another member of the academic community, from disseminating false information concerning the academic community and from obtaining gains without justification.

COMPLAINTS

16. The applicant complained under Article 2 of Protocol No. 1 to the Convention that his exclusion from the University with no possibility of re-enrolment constituted a breach of his right to education. He complained that the exclusion decision was not reasoned, was communicated to him only by public notice and was taken on the basis of the same facts which had led to his first exclusion from the University, contrary to the principle of *non bis in idem*.

17. By a letter of 5 January 2009, the applicant complained in substance under Article 6 § 1 of the Convention that the final decision of 5 November 2004 was not enforced.

THE LAW

18. The Government raised an exception of inadmissibility of the application, arguing that in their view the applicant could not be deemed to be a victim for the purposes of Article 34 of the Convention.

19. In this respect they indicated that the applicant was free to continue his legal studies in another university and therefore his right to education was not prejudiced.

20. The Government drew attention to the fact that the applicant failed to inform the Court of this development and of the fact that he eventually graduated the Faculty of Law in a different university.

21. In the alternative, the Government asked that the application be dismissed as manifestly ill-founded. They submitted that the domestic courts reviewed the applicant's complaint against the exclusion decision, carrying out a detailed analysis and adopted a final decision which appears devoid of arbitrariness.

22. The applicant did not submit any observations in reply, though he declared that he wished to maintain his application.

23. The Court points out that according to Rule 47 § 6 of the Rules of Court, applicants, acting in person or through their legal representatives, are under the obligation to keep the Court informed of all important circumstances regarding their applications. It recalls that an application may be rejected as abusive under Article 35 § 3 of the Convention if, among other reasons, it was knowingly based on untrue facts (see *Vasilevskiy v. Latvia* (dec.), no. 73485/01, 10 January 2012, *Keretchashvili v. Georgia* (dec.), no. 5667/02, 2 May 2006 and *Rehak v. Czech Republic* (dec.), no. 67208/01, 18 May 2004). Incomplete and therefore misleading information may also amount to an abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information (see *Khvichia v. Georgia* (dec.), no. 26446/06, 23 June 2009; *Bekauri v. Georgia* (preliminary objection), no. 14102/02, § 24, 10 April 2012 and *Alboreo v. France* (dec.), no. 56022/10, 15 May 2012).

24. Turning to the circumstances of the instant case, the Court notes that the applicant was excluded from the Faculty of Law of the Lower Danube University, after having completed several years of studies. Notwithstanding this exclusion measure, he was allowed to subsequently enrol to the faculty of law of a different university, in the same locality, and he obtained full recognition of the studies completed before his exclusion. Eventually, he graduated the Faculty of Law in 2007.

25. The Court notes that despite the fact that his transfer took place in 2004, the applicant did not mention it in his application submitted to the Court in July 2005. The Court also notes that the applicant did not inform about his graduation in 2007 in his subsequent letters.

26. The Court further observes that the applicant did not furnish any plausible explanation for the failure to submit this information, which in its opinion relates to the very core of the subject matter of the present application.

27. Having regard to the importance of the information at issue for the proper determination of the present case, the Court finds that the applicant' conduct was contrary to the purpose of the right of individual petition as provided for in Article 34 of the Convention. The application must accordingly be rejected as abusive, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Marialena Tsirli
Deputy Registrar

Alvina Gyulumyan
President