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

FOURTH SECTION

DECISION

Application no. 47600/10
Nicolae Dan ŢIGLAR
against Romania

The European Court of Human Rights (Fourth Section), sitting on 28 November 2017 as a Committee composed of:

Paulo Pinto de Albuquerque, *President,*
Egidijus Kūris,
Iulia Motoc, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having regard to the above application lodged on 5 August 2010,

Having regard to the decision of 17 June 2015 taken by the President under Rule 54 § 3 of the Rules of Court,

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, Mr Nicolae Dan Ţiglar, is a Romanian national who was born in 1966 and lives in Măgurele. He was represented before the Court by Mr T. Rădulescu, a lawyer practising in Bucharest.

2. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, of the Romanian 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.

4. On 4 February 2009 the applicant was stopped by the police because he was driving on public roads at night without wearing a seatbelt and using only sidelights instead of dimmed headlights.

5. The police report produced at the time of the incident noted that the applicant was fined by the police 120 Romanian lei (RON) (approximately 27 euros (EUR)). In addition, he received a warning and four points were deducted from his driving licence. The report also noted that the applicant had been present when the report was drafted, but that he had refused to sign the report or to state his objections in it. The report further noted that V.D.O. was a witness.

6. The police report was signed by the police officer who stopped the applicant and by V.D.O.

7. On 16 June 2009 the applicant challenged the police report before the domestic courts. Amongst other things, he stated that he had refused to sign the police report produced at the time of the incident. He argued that the report was unlawful and invalid because it contained false information about the witness and did not contain sufficient information about the incident. The witness had not been present when the report had been produced and the applicant had left the scene of the incident before any witness had appeared. Consequently, the report had not been signed by the witness in his presence. In addition, the report had not described the exact location of and circumstances in which the incident had happened. Furthermore, according to the European Court of Human Rights, the burden of proof in circumstances like those in the present case fell on the Vrancea Police Department, which had to prove that the applicant had committed the acts described in the report. The report itself could not have been considered as evidence, given that it had been produced unlawfully.

8. On 15 October 2009 the Vrancea District Court dismissed the applicant's challenge. The court noted that the applicant had supported his arguments by adducing several documents to the file. However, it held that the documentary evidence submitted by the applicant did not rebut the facts attested by the police report.

9. The applicant appealed on points of fact and on points of law against the judgment. He contended, amongst other things, that the first-instance court had failed to examine his arguments, including those concerning the absence of the witness, which were essential for his defence. Furthermore, although V.D.O. should have been questioned in order to determine if the applicant had acted unlawfully, the first-instance court had failed to do this and the case should therefore be referred back to it for the witness's evidence to be heard.

10. By a final judgment of 2 February 2010 the Vrancea County Court dismissed the applicant's appeal on points of fact and on points of law. The court acknowledged that Article 6 of the European Convention on Human Rights was applicable in the applicant's case and that the burden of proof in

circumstances like those in the present case fell on the Vrancea Police Department. The court held that the police report produced at the time of the incident was both lawful and valid and was supported by the necessary evidence. Consequently, it was up to the applicant to request that evidence be adduced to the file which could disprove the findings of the report. The court further held that the police officer had noted in V.D.O.'s presence that the applicant had refused to sign the report and to submit objections. In addition, the applicant had failed to submit evidence supporting his allegations. The court concluded that the Vrancea Police Department had proved the acts committed by the applicant.

B. Relevant domestic law

11. The relevant part of Government Ordinance no. 2/2001 concerning contraventions in force at the material time reads as follows:

Article 19

"1. The report shall be signed on every page by the agent who produces the report and by the perpetrator. In those circumstances where the perpetrator is not present, refuses or is unable to sign, the agent who produces the report shall state this in the report and his statement must be confirmed by at least one witness. In such a case the report shall include the witness's personal data ... and his signature.

2. Another agent may not be a witness.

..."

COMPLAINT

12. The applicant complained under Articles 6 and 13 of the Convention and 2 of Protocol No. 7 to the Convention that the proceedings had been unfair, had breached his right to be presumed innocent, his right to defence and his right to equality of arms because the domestic courts had forced him to prove his innocence, had failed to examine his defence argument and had refused to hear evidence from V.D.O., who was an essential witness for both parties and whose presence at the scene he had contested. Moreover, the last-instance court had failed to examine all the arguments for his appeal on points of fact and on points of law.

THE LAW

13. The Court firstly reiterates that since it is master of the characterisation to be given in law to the facts of the case, it does not consider itself bound by the characterisation given by an applicant (see, amongst many other authorities, *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I). It notes that, although the applicant relied on several Articles of the Convention – in particular Articles 6 and 13 of the Convention and 2 of Protocol No. 7 to the Convention – his complaints should be examined solely under Article 6 of the Convention. In its relevant parts, this provision reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law ...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...;
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
>
> ..."

14. The Government acknowledged that Article 6 of the Convention, under its criminal head, was applicable in the instant case. However, they submitted, amongst other things, that the applicant had not suffered a significant disadvantage and argued that his application should be declared inadmissible pursuant to Article 35 § 3 (b) of the Convention, which reads:

> "3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
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> (b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal."

15. The applicant contested the preliminary objection raised by the Government. In his written submission following communication of the case to the Government, the applicant argued that during the domestic proceedings he had not had the opportunity to gain cognisance of and to comment on all the observations filed or evidence adduced by the other party.

16. The Court notes that the applicant's aforementioned argument was not raised in his application to the Court before the case was communicated to the Government. Consequently, in so far as the said argument might

amount to a complaint, the Court considers that it does not fall within the scope of this application, and therefore there is no need for the Court to examine it (see, *mutatis mutandis*, *Cazacliu and Others v. Romania* (dec.), no. 63945/09, § 102, 4 April 2017, and *Bebiș and Boboc v. Romania* (dec.) [Committee], nos. 63196/09 and 63204/09, § 63, 10 October 2017).

17. In respect of the applicant's remaining complaints, the Court notes that the main element contained in the admissibility criterion relied on by the Government is the question of whether the applicant suffered a "significant disadvantage". Inspired by the general principle of *de minimis non curat praetor*, this admissibility criterion hinges on the idea that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court (see *Ladygin v. Russia* (dec.), no. 35365/05, 30 August 2011). The assessment of this minimum level is relative and depends on all the circumstances of the case (see *Gagliano Giorgi v. Italy*, no. 23563/07, § 55, ECHR 2012 (extracts)). The severity of a violation should be assessed taking into account both the applicant's subjective perceptions and what is objectively at stake in a particular case (see *Korolev v. Russia* (dec.), no. 25551/05, ECHR 2010; *Finger v. Bulgaria*, no. 37346/05, § 70, 10 May 2011; and *Eon v. France*, no. 26118/10, § 34, 14 March 2013). However, the applicant's subjective perception alone cannot suffice to conclude that he/she has suffered a significant disadvantage. The subjective perception must be justified on objective grounds (see *Ladygin*, decision cited above). A violation of the Convention may concern important questions of principle and thus cause a significant disadvantage without affecting pecuniary interest (see *Korolev*, decision cited above).

18. In the present case the applicant was fined EUR 27 by the police for driving on public roads at night without wearing a seatbelt and using only sidelights instead of dimmed headlights. In addition he received a warning and four points were deducted from his driving licence (see paragraph 5 above).

19. With regard to the first element contained in Article 35 § 3 (b), the Court can accept that the penalties imposed on the applicant were of subjective importance to him. However, it notes that there is no indication that those penalties, including the deduction of the points from his driving licence, in any way affected his professional or private life, or that the amount of the fine represented a financial hardship for him, or that the subject matter of the complaint gives rise to an important matter of principle.

20. Consequently, the Court cannot discern objective grounds for holding that the applicant suffered important adverse consequences as a result of the police report and of the judgments delivered by the domestic courts (see, *mutatis mutandis*, *Rinck v. France* (dec.), no. 18774/09,

19 October 2010, and *Sylka v Poland* (dec), § 34, no. 19219/07, 26 June 2014).

21. In the light of the above, the Court considers that in the circumstances of the case the applicant did not suffer a significant disadvantage as a result of the alleged violation of the Convention.

22. With regard to the second element contained in Article 35 § 3 (b) the Court notes that it is obliged to examine the case in any event if respect for human rights so requires. This would apply where a case raises questions of a general character affecting the observance of the Convention, for instance whether there is a need to clarify the State's obligation under the Convention or to induce the respondent State to resolve a structural deficiency (see *Korolev*, decision cited above).

23. Considering the present case in this way and taking into account the numerous cases in which it has already examined the compatibility with Article 6 of the Convention of the duty imposed on applicants by the national courts to rebut the presumption of fact and law of a police report produced after an alleged breach of the national regulations concerning traffic on public roads and of the fairness of the said proceedings (see, amongst many other authorities, *Anghel v. Romania,* no. 28183/03, 4 October 2007; *Ioan Pop v. Romania* (dec.) [Committee], no. 40301/04, 28 June 2011; *Haiducu and Others v. Romania* (dec.) [Committee], no. 7034/07, 13 March 2012; *Stevens v. Belgium* (dec.), no. 56936/00, 9 December 2004; and, *mutatis mutandis*, *Bosoni v. France* (dec.), no. 34595/97, 7 September 1999), the Court does not discern any compelling reason to warrant its examination on the merits. Thus, the Court finds that respect for human rights does not require an examination of this case.

24. With regard to the third element contained in Article 35 § 3 (b), the Court notes that it does not allow the rejection of an application under the new admissibility criterion if the case has not been duly considered by a domestic tribunal. The purpose of that rule is to ensure that every case receives a judicial examination, either at the national or at the European level, so as to avoid a denial of justice. The clause is also consistent with the principle of subsidiarity, as reflected in particular in Article 13 of the Convention, which requires that an effective remedy against violations be available at the national level (see *Korolev*, decision cited above). It is not to be interpreted, however, as strictly as the requirement of a fair hearing, otherwise it would be difficult to understand why the wording of Article 35 § 3 (b) does not use the term "examined fairly" (see *Mitric v. Romania* (dec.) [Committee], no. 47991/07, § 16, 4 September 2012).

25. The Court notes that the applicant's challenge against the police report was examined by the first and the second-instance courts and that both domestic courts delivered reasoned judgments concerning the proceedings initiated by the applicant. Even assuming that the domestic

courts did not hear evidence from V.D.O. and that the last-instance court's statement that it was up to the applicant to request that evidence to be adduced to the file did not implicitly dismiss his argument concerning the lower court's failure to hear that witness, these aspects cannot by themselves raise doubts as regards the nature of the examination carried out by the domestic courts. In this connection, the Court notes that according to the relevant domestic legislation (see paragraph 11 above) and the finding of the last-instance court (see paragraph 10 above), the presence of V.D.O. was relevant as regards confirmation of the applicant's refusal to sign the police report rather than providing testimony concerning the actual offences committed by the applicant. However, in his challenge lodged before the first-instance court, the applicant acknowledged that he had refused to sign the report (see paragraph 7 above).

26. In these circumstances, the Court is satisfied that the domestic courts "duly considered" the applicant's case within the meaning of Article 35 § 3 (b) of the Convention. Therefore, the third element for rejection of an application under the above admissibility criterion has been satisfied.

27. It follows that the applicant's complaints under Article 6 of the Convention must be declared inadmissible in accordance with Article 35 §§ 3 (b) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 21 December 2017.

Andrea Tamietti
Deputy Registrar

Paulo Pinto de Albuquerque
President