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

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ECHR 296 (2022)
29.09.2022

The Court declares inadmissible the applications of Daniela and Adrian Năstase concerning criminal proceedings against them for illegally importing goods for their own use between 2002 and 2004

In its decision in the case of Năstase v. Romania (applications nos. 46/15 and 744/15) the European Court of Human Rights has unanimously declared the applications inadmissible. The decision is final.

The case concerns criminal proceedings against Ms Daniela Năstase and Mr Adrian Năstase, who were accused of illegally importing goods to Romania for their own use, between 2002 and 2004, through the intermediary of companies run by high-ranking officials in the government at the time when Mr Năstase was leading it as Prime Minister.

The Court found as follows in respect of each complaint:

The five-judge chamber of the High Court of Cassation and Justice (the "High Court") had been constituted in conformity with domestic rules and their application had not had any consequences that might have been incompatible with the object and purpose of the right to "a tribunal established by law" within the meaning of the Convention.

The applicants' doubts as to the impartiality of the bench hearing their appeal were not justified on any subjective or objective grounds.

The requirements of a fair trial had not required a fresh examination of all the witnesses who had not been examined by the bench hearing the appeal, such that the principle of immediacy had not been undermined.

There was no appearance of a violation of Article 6 (right to a fair trial) of the Convention as regards the alleged use of police entrapment.

Lastly, the respondent State had not failed in its obligations under Article 34 (right of individual application) or 38 (adversarial examination of the case) of the Convention.

The Court concluded that the applicants' complaints were manifestly ill-founded and had to be rejected under Article 35 §§ 3 and 4 of the Convention.

Principal facts

The applicants, Ms Daniela Năstase and Mr Adrian Năstase are Romanian nationals who were born in 1955 and 1950 respectively and live in Bucharest.

Mr Năstase, a former professor at the Faculty of Law of Bucharest University and a former lawyer at the Bar of Bucharest, is a politician who has served as Minister of Foreign Affairs, Prime Minister, President of the Social Democrat Party and member of the Chamber of Deputies. Daniela Năstase is his wife.

On 7 February 2006, when Mr Năstase was President of the Chamber of Deputies, the National Anti-Corruption Directorate opened pre-trial proceedings against the two applicants, who were accused of various corruption-related offences. On 26 June 2006 the Directorate opened further proceedings in respect of Mr Năstase, who was accused of blackmailing I.P.

By an indictment of 13 November 2006 the applicants were committed for trial before the High Court. They were both charged with several counts of accepting bribes, and in addition Ms Năstase

was charged with forgery of documents and use of forged documents and Mr Năstase with blackmail.

Following an objection of unconstitutionality raised by Mr Năstase, the High Court of Cassation and Justice, in a judgment of 18 October 2007, annulled the opening of the pre-trial proceedings and set aside the preliminary criminal investigation. It remitted the case to the public prosecutor's office. In the course of a fresh investigation, the public prosecutor's office decided to separate the preliminary investigation concerning the applicants into three different cases: the first case against Mr Năstase related to the financing of his 2004 election campaign and, having resulted in his conviction in a final judgment of 20 June 2012, was brought before the Court: see *Năstase v. Romania* (dec.), no. 80563/12, 18 November 2014; the second case ended with his acquittal; and the third was the subject of the present applications before the Court.

In that third set of proceedings, the applicants were accused in particular of having unlawfully brought into Romania, between 2002 and 2004, goods acquired abroad for their own use. The relevant transactions had been arranged through companies run by high-ranking officials in the government led by Mr Năstase at the relevant time, including I.P.J., and with the assistance, among others, of I.P., an official of the Ministry of Foreign Affairs. On 7 May 2009 the Anti-Corruption Directorate opened a pre-trial investigation into these facts as referred to it.

By an indictment of 3 May 2010 the Directorate committed the applicants to stand trial.

On 30 March 2012 the High Court delivered its judgment. It unanimously acquitted Mr Năstase of the charge of accepting bribes, convicted him of blackmail and sentenced him to a suspended term of three years' imprisonment with six years' probation. It acquitted Ms Năstase of being an accessory to the acceptance of bribes and of money laundering, while convicting her of participating in the use of forged documents in dealings with the customs authorities and sentenced her to a suspended term of three years' imprisonment, with five years' probation.

Both the prosecution and the applicants appealed against the High Court's judgment.

On 6 January 2014 the High Court, delivering its judgment at a public hearing, partly quashed the judgment of 30 March 2012 and, rehearing the case under Article 385 § 2 (d) of the Code of Criminal Procedure and having regard to the grounds of appeal submitted by the parties, held unanimously that Mr Năstase, who had been found guilty of accepting bribes and blackmail, was to be sentenced to four years' imprisonment, and to the loss of certain rights for five years as an ancillary penalty; and that Ms Năstase, who had been found guilty as an accessory to the acceptance of bribes and for participating in the use of forged customs documents, was to be sentenced to a suspended term of three years' imprisonment with eight years' probation, and to the loss of certain rights for four years as an ancillary penalty. However, she was found not guilty on the charge of money laundering.

On the same day as the delivery of the judgment, Mr Năstase was taken into custody. On 21 August 2014 he was released on licence.

In a judgment of 7 December 2021 the High Court ordered Mr Năstase's judicial rehabilitation. On 5 January 2022 his wife's probationary period following her criminal conviction came to an end.

Complaints, procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on 22 December 2014.

Relying on Article 6 § 1 (right to a fair trial), the applicants argued that the five-judge chamber of the High Court was not a "tribunal established by law". They claimed that the chamber, which had examined their appeal, had not been impartial. They then complained about a lack of fairness in the proceedings before the five-judge chamber of the High Court, arguing that the appellate court had sentenced them after they had been acquitted on the merits, without directly examining most of the

evidence that was relied upon in its decision. Mr Năstase also criticised the alleged recourse, in his view without specific safeguards, to an *agent provocateur* in the person of the witness O.C. He also submitted that the time taken for the drafting of the judgment of 6 January 2014 had been unreasonable.

The decision was given by a Chamber of seven judges, composed as follows:

Gabriele **Kucsko-Stadlmayer** (Austria), *President*,
Tim **Eicke** (the United Kingdom),
Faris **Vehabović** (Bosnia and Herzegovina),
Iulia Antoanella **Motoc** (Romania),
Armen **Harutyunyan** (Armenia),
Pere **Pastor Vilanova** (Andorra),
Jolien **Schukking** (the Netherlands),

and also Ilse **Freiwirth**, *Deputy Section Registrar.*

Decision of the Court

In view of the similarity of the applications as regards the facts and the complaints raised, the Court considered it appropriate to join them, pursuant to Rule 42 § 1 of the Rules of Court.

Article 6 § 1

The applicants' complaint concerning the concept of a "tribunal established by law" in respect of the five-judge chamber of the High Court

The Court noted that the appointment of Judge C.M.J., President of the Criminal Division, to sit as president of the chamber that would hear the applicants' case had been made in accordance with section 32(5) of Law no. 304/2004 and Rule 28 § 5 of the Rules of the High Court, and had been considered lawful by that court.

In the context of the case and on the basis of the relevant legal provisions, the Court took the view that the decision by the President of the High Court to appoint Judge C.M.J. to sit as president of the chamber hearing the applicants' case, as he considered that neither the President nor the Vice-President of the High Court could preside over the bench in question, could not be regarded as arbitrary or manifestly unreasonable.

As regards the applicants' observations concerning Judge C.T., who they said had presided over criminal trials, the Court observed that the decision by the President of the High Court of 17 September 2013 had not expressly prohibited Judge C.T. from hearing criminal cases. The Court noted, lastly, that I.M.M. had been appointed president of the bench following his election as Vice-President of the High Court and his appointment by decree of the President of Romania. In so far as Judge I.M.M. had been appointed president of the five-judge chamber in his capacity as the newly elected Vice-President of the High Court, he could not be considered to have lacked impartiality when examining the applicants' objection that the appointment of Judge C.M.J. was null and void.

The Court noted, lastly, that there were no circumstances which required it to examine further whether, despite the above finding of conformity with domestic standards, the application of the domestic rules nevertheless entailed consequences that might be incompatible with the object and purpose of the right to a "tribunal established by law" within the meaning of the Convention. The Court concluded that this complaint was manifestly ill-founded and had to be rejected.

The applicants' complaint concerning the concept of an "impartial tribunal" in respect of the five-judge chamber of the High Court

The doubts raised by the applicants as to the personal impartiality of Judge I.B. had stemmed from the fact that they had publicly contested her status as a judge. They had expressed doubts as to the impartiality of Judge I.M.M. on account of the statements by the President of Romania concerning his appointment to the High Court. Lastly, they had challenged before the High Court the participation of Judges I.B. and I.M.M. on the bench during the appeal proceedings, despite the fact that they had participated in other proceedings concerning Mr Năstase and that I.B. had been a member of the public prosecutor's office.

The Court noted that the challenge to I.B.'s status as a judge had been settled by the final judgment of the High Court of 20 June 2012 and that the Court itself had considered that the court which convicted Mr Năstase had been "established by law" (see *Năstase v. Romania* (dec.), cited above).

The Court further observed that the arguments about the President's statement concerning the appointment of I.M.M. as Vice-President of the High Court remained very general and had no connection with the applicants' case.

As to the applicant's submission about the wording of the High Court's judgment of 30 January 2012 given by a bench of which I.B. and I.M.M. had been members, the Court reiterated that it had previously considered, under Article 18 of the Convention, that by stating that corruption of the political class was "personified" by Mr Năstase, the High Court had been expressing the consequence of its finding as to the applicant's criminal liability, established following a criminal trial for acts of corruption committed at a high level (see *Năstase v. Romania* (dec.), cited above). Even though Mr Năstase's name had been mentioned, it could not be said that the impugned expression justified doubts about the impartiality of the judges who had delivered that judgment in respect of any other criminal act concerning him.

As to the objective aspect, the Court noted that Mr Năstase's fear of a lack of impartiality had stemmed from the fact that Judges I.B. and I.M.M., who sat on the bench hearing the appeal, had previously ruled in criminal proceedings which had resulted in his criminal conviction by a final judgment of 6 June 2012. Before the High Court the applicant had also mentioned fears stemming from the fact that Judge I.B. had been an adviser to the Anti-Corruption Directorate's Chief Prosecutor at the time of its indictment of 3 May 2010.

In the Court's view, the mere fact that a judge had already ruled on similar but separate offences could not, in itself, affect that judge's impartiality: it would be undermined, however, if the judgments previously delivered contained references or prejudgments as to the guilt of the accused in cases yet to be decided.

The facts of the case for which Mr Năstase had been convicted in the judgment of 20 June 2012 and on which I.B. and I.M.M. had adjudicated in the judgment of 30 January 2012 were quite different from those in the case which had ended with the judgment of 6 January 2014; moreover, he had not alleged that the judgment in the first case had contained references to his alleged role in the second.

The Court noted that at the time she served as an adviser to the Anti-Corruption Directorate's Chief Prosecutor, I.B. had in no way been involved in dealing with the applicants' case, as she had stated when questioned by the High Court.

Lastly, the High Court had examined the reasons given in the applications for abstention and withdrawal and had held that there were no grounds for a finding of incompatibility in respect of members of the appellate court.

The Court concluded that any doubts that the applicants might have had as to the impartiality of the appellate court were neither subjectively nor objectively justified. It considered that the complaint concerning the alleged lack of an impartial tribunal was manifestly ill-founded and had to be rejected.

The applicants' complaint alleging a failure by the High Court to directly examine all the evidence on which its decision was based and to observe the principle of immediacy

The appellate court had begun by noting that the fact that the applicants had received certain advantages had been established by the first-instance court, that this aspect of the case was no longer a matter of debate and that it had to focus its examination on the subjective aspect as regards the circumstances of the offence of accepting bribes. The High Court's conclusion that there had been a clear link between the development of the careers of I.P.J. and I.P. and their relations with the applicants had been based on documents included in the case file at first instance and in the appeal proceedings.

The Court observed, firstly, that the statements of the witnesses who had not been heard on appeal had not been relied on as decisive evidence in convicting the applicants of accepting bribes and of complicity in that offence. Furthermore, the applicants had not challenged before the appellate court the reliability or credibility of those witnesses, nor had they explained to the Court why they considered that those witnesses should be questioned again.

Mr Năstase had criticised the fact that Judge I.M.M., who had joined the trial bench on 2 December 2013, had not examined all the witnesses or all the defendants. It found, however, that the change in one of the five judges making up the chamber of the High Court had not deprived Mr Năstase of his right to examine the witnesses who had been questioned during the appeal proceedings, as they had been examined at public hearings in the presence of the applicants and their lawyers.

The Court further noted that the appellate court had given a reasoned judgment, which did not appear arbitrary or manifestly unreasonable, in which it had explained why it had decided to depart from the findings of the lower court and to quash its judgment and, more importantly, why it had found that the subjective element of the offences was made out in the present case, this having weighed heavily in the lower court's decision to acquit the applicants of accepting bribes and complicity in accepting bribes, respectively. The parties had been given the opportunity to discuss all the evidence in the appellate court, including the evidence that had been examined only in the trial court. The appellate court had explained that it had had to limit its examination to the grounds of appeal put forward by the parties.

The Court considered that in the present case the requirements of a fair trial had not required a fresh examination of all the witnesses who were not heard on appeal and that the principle of immediacy had not been undermined. It thus found that this complaint was manifestly ill-founded and had to be rejected.

Mr Năstase's complaint alleging police entrapment

The Court noted that it was not O.C. who had taken the initiative of contacting Mr Năstase, but that it was the latter who had invited him to his parliamentary office on two occasions. In addition, O.C. had remained passive during those conversations.

In the Court's view the applicant could not validly allege that he had been subjected to entrapment by State agents or by O.C. with a view to committing the acts for which he had subsequently been prosecuted and convicted. The investigators had looked into existing criminal activity and had not provoked it, and O.C. had played the role of an undercover agent in the present case, not that of an agent provocateur.

For the Court it was possible to conclude that the prosecuting authorities had investigated Mr Năstase's activity in an essentially passive manner and had not induced him to commit an offence (blackmail) which he would not otherwise have committed.

The Court could not discern any appearance of a violation of Article 6 of the Convention in the present case that might have been caused by any police entrapment. It considered that this complaint was manifestly ill-founded and had to be rejected.

Mr Năstase's complaint concerning the time taken to draft the judgment of 6 January 2014

The Court noted that the present case concerned complex criminal proceedings in which the applicants had made use of the various procedural means available to them under domestic law to defend their rights and the domestic courts had consistently responded. The authorities had acted expeditiously and no period of inaction could be detected in the conduct of the proceedings. In the Court's view, the complexity of the case had contributed to the protracted length of the proceedings.

As regards the time taken to draft the reasoning of the judgment, the Court observed that Article 406 of the Code of Criminal Procedure provided that the text of the judgment had to be drafted within thirty days. The High Court had considered this period to be indicative. The Court also noted that Mr Năstase had been able to raise his complaint before the domestic authorities, which had given ample reasons for their conclusion that there had been an objective explanation for the delay in the proceedings. Lastly, the Court considered that the task of drafting the judgment had been particularly arduous and substantial.

The Court took the view that the length of the proceedings in the present case, seen as a whole, did not disclose any appearance of a violation of the "reasonable time" principle enshrined in Article 6 of the Convention. This complaint thus had to be rejected as manifestly ill-founded.

The applicants' complaints under Articles 34 and 38 of the Convention

On 25 July 2019, in their observations in reply to those of the Government, the applicants had stated that some of the information submitted by the Government in their observations was deliberately untrue and had sought to mislead the Court. They asked the Court to find, on that basis, a violation of Articles 34 and 38 of the Convention.

The Court considered that the information referred to by the applicants had not constituted an unlawful or unacceptable form of pressure such as to hinder their right of individual application and thus to breach Article 34 of the Convention. That information had not prevented the Court from examining the applicants' complaints. The Court concluded that the respondent State had not failed to fulfil its obligations under Article 38 of the Convention.

The decision is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.