



Sanctions for minor offences (*sanctiuni contravenționale*) imposed under Romanian election financing law on a candidate who stood in the presidential elections of 2014 did not amount to a criminal charge

In its decision in the case of [Macovei v. Romania](#) (application no. 58004/17) the European Court of Human Rights has, by a majority, declared the application inadmissible *ratione materiae* on the grounds that the criminal aspect of Article 6 (right to a fair trial) – namely the procedural guarantees specific to a criminal trial – was not engaged and the sanctions for a minor offence and the confiscation measures that were imposed in the case did not constitute a “penalty” within the meaning of Article 7 (no punishment without law).

The case concerns proceedings brought by a politician, Ms Macovei, to challenge sanctions imposed on her for having violated the rules on election financing during her 2014 presidential campaign.

In two decisions of 12 February 2015, the Permanent Electoral Authority, the body responsible for supervising the organisation of elections in Romania, issued fines and confiscation orders against her for four alleged breaches of Law no. 334/2006 on financing the activities of political parties and electoral campaigns. Ms Macovei challenged those sanctions. On 30 June 2016 the administrative and fiscal section of the Bucharest County Court held that, in respect of two of the alleged breaches, the sanctions imposed were lawful.

In finding the complaint inadmissible, the Court held, in particular, that Ms Macovei’s actions and the sanctions imposed on her related to electoral misconduct. The actions were not classified as “criminal” under Romanian law since the domestic authorities did not consider them to be criminal offences, but only minor offences. Also, they were not criminal in nature. In addition, the nature and degree of severity of the sanctions did not engage the criminal aspect of Article 6. Thus, the proceedings did not concern a “criminal charge”.

Principal facts

The applicant, Monica-Luisa Macovei, is a Romanian national who was born in 1959 and lives in Bucharest. She is a well-known public figure, a former member of the European Parliament and a former Minister of Justice.

On 2 November 2014 Ms Macovei stood as an independent candidate in the first round of the country’s presidential elections. She did not receive enough votes to reach the second and final round.

Prior to the election, as required by Law no. 334/2006 on financing the activities of political parties and electoral campaigns, Ms Macovei had appointed a financial representative to manage the donations and financial support for her electoral campaign. After the election she had filed documents concerning the donations and the financial support that she had received for the campaign with the Permanent Electoral Authority (*Autoritatea Electorală Permanentă* – “the AEP”), an independent public administrative body with general powers in electoral matters which was responsible for supervising the organisation of elections.

In January 2015 the AEP identified four alleged violations by Ms Macovei of Law no. 334/2006, including an allegation that she had accepted donations consisting of electoral campaign material, and an allegation that she had used a loan to finance her campaign. In two decisions of 12 February 2015, the AEP issued fines and confiscation orders and informed Ms Macovei that it would bring enforcement proceedings against her if she did not pay the amounts due.

On 9 March 2015 Ms Macovei challenged the sanctions taken against her by the AEP, asking the domestic courts in essence to set them aside. In the alternative she asked the courts to substitute warnings for the fines and to set aside the confiscation orders because her actions had not represented a danger to society.

In a final decision of 30 June 2016, the administrative and fiscal section of the Bucharest County Court upheld the sanctions in respect of the donations consisting of campaign material and in respect of the loan used to finance the campaign. The County Court found that those sanctions were lawful and that Ms Macovei's actions had represented a significant danger to society, because society had higher expectations of candidates running in presidential elections than it did of ordinary citizens, and candidates' conduct therefore had to be transparent and lawful. The fines could not be replaced by warnings and the corresponding confiscation orders could not be set aside.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 28 July 2017.

Relying on Article 6 (right to a fair trial) of the European Convention and on arguments essentially referring to its criminal aspect, Ms Macovei complained that the proceedings about her claim against the AEP had been conducted unfairly and argued that the national court had given reasons that were arbitrary and manifestly unreasonable. She complained that, by upholding the sanctions imposed on her, the County Court had violated the principle that punishments had to be provided for by law (Article 7 of the Convention). Law no. 334/2006 lacked clarity and foreseeability given that it did not prohibit independent candidates from accepting donations in the form of electoral campaign material or from using loans for the financing of their campaigns. In addition, the County Court had violated the principle of retrospective application of later more lenient law, because it had not applied that principle when it had issued the sanctions against her for the loan.

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

Lado **Chanturia** (Georgia), *President*,
Jolien **Schukking** (the Netherlands),
Faris **Vehabović** (Bosnia and Herzegovina),
Anja **Seibert-Fohr** (Germany),
Ana Maria **Guerra Martins** (Portugal),
Sebastian **Rădulețu** (Romania),
András **Jakab** (Austria),

and also Simeon **Petrovski**, *Deputy Section Registrar*.

Decision of the Court

Ms Macovei's case was the first in which the Court had considered whether sanctions imposed under Law no. 334/2006 could fall within the scope of the criminal aspect of Article 6. Its assessment was based on three criteria, the legal classification of the offence under national law, the nature of the offence and the degree of severity of the penalty that the person concerned risked incurring.

First, the national law classified the unlawful actions of which Ms Macovei had been found responsible as belonging to the sphere of electoral law, in particular, the financing of electoral campaigns. The domestic authorities considered those actions to be minor offences and not criminal offences. Proceedings were not conducted by the public prosecutor's office and the criminal courts but by an independent administrative authority under the supervision of the civil and administrative courts and under the Code of Civil Procedure.

Second, as to the nature of the offences, the Court observed that the fines and confiscation orders had been imposed on Ms Macovei for violations of rules relating to a specific defined activity that would, generally speaking, take place only every few years, namely the financing of an electoral campaign for holding an elected public office such as that of President, and which would concern only a very specific category of people or organisations, namely independent candidates or political parties and their financial representatives who were not merely considering participating in an electoral campaign but actually did so. Where legal provisions applied only to a group with a special status, there would be serious doubts as to the criminal nature of the actions in question. Those doubts would be even more serious when those provisions could only be applied to a specifically defined activity.

While the aims of Law no. 334/2006, such as aligning national standards on the financing of political parties and electoral campaigns with international standards and ensuring equal opportunities in political competition and transparency, were in society's general interest, like those protected by the Criminal Code, that was insufficient in itself to bring the breaches in question within the scope of the criminal aspect of Article 6. The sanctions in question therefore fell within a framework of measures whose purpose fell outside the scope of the criminal aspect of Article 6.

Third, as to the nature and degree of severity of the penalty, none of the sanctions imposed on Ms Macovei, including the confiscation orders, could be applied in combination, or converted to imprisonment. The amount of each individual fine imposed on Ms Macovei was less than half the maximum statutory limit in each case. Those fines would not go on her criminal record and could not be converted into a sentence of imprisonment in the event of non-payment.

Law no. 334/2006 provided an upper limit for the fines that could be imposed for the actions of Ms Macovei. The size of the potential fines was such that they might have a dissuasive effect. Nevertheless, although substantial, their size did not suffice to deem the severity and nature of those sanctions as "criminal" within the meaning of Article 6.

The confiscation orders did not stem from a criminal conviction or sentencing proceedings and thus did not qualify as a penalty, but rather represented a way to control the use of property within the meaning of the Convention.

Those considerations were sufficient for the Court to conclude that the nature and degree of severity of the sanctions that Ms Macovei risked incurring, or those imposed on her, did not engage the criminal aspect of Article 6.

Ms Macovei's complaint under Article 6 was therefore inadmissible.

In light of its conclusions in respect of Article 6 and for reasons of consistency in the interpretation of the Convention taken as a whole, the Court held that the fines and confiscation orders complained about under Article 7 could not be considered a "penalty".

Ms Macovei's complaint under Article 7 was therefore inadmissible.

The decision is available only in English.

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