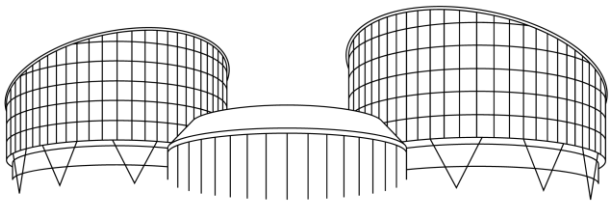

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

THIRD SECTION

CASE OF STOICAN v. ROMANIA

(Application no. 3097/02)

JUDGMENT

STRASBOURG

6 October 2009

FINAL

06/01/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Stoican v. Romania**,**

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President*,
Elisabet Fura,
Corneliu Bîrsan,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Luis López Guerra,
Ann Power, *judges*,
and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 15 September 2009,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 3097/02) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mrs Georgeta Stoican ("the applicant"), on 22 December 2001.

2. The applicant was represented by Dumitrescu and Dinu, a firm of lawyers based in Bucharest. The Romanian Government ("the Government") were represented by their Agent, Mr Răzvan-Horaţiu Radu, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that her arrest and pre-trial detention had not met the requirements of Article 5 § 3, as she had not been brought promptly before a judge and had been kept too long in detention, in the absence of concrete grounds.

4. On 28 February 2008 the President of the Third Section decided to give notice of the complaints above to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1963 and lives in Bucharest.

6. At the material time she was a judge in a first-instance court in Bucharest. Two sets of criminal investigations were started against her, on suspicion of having repeatedly falsified official documents in the exercise of her duties, as part of an organised group, with the aim of illegally obtaining title to various properties in the centre of Bucharest.

7. Under the provisions of Law no. 92/1992 on the Organisation of Justice, the applicant was automatically suspended from her post during the criminal trial.

8. On 18 September 2001 she was dismissed from her post by an order of the Supreme Council of the Judiciary (*Consiliul Superior al Magistraturii*) for manifest professional unfitness. On 15 July 2003 the decision was endorsed by the President of the Republic and on 3 November 2003 it was upheld by the High Court of Cassation and Justice (former Supreme Court of Justice), upon an appeal by the applicant.

A. The first set of proceedings

9. On 9 October 2001 the prosecutor at the Supreme Court of Justice started the criminal investigations against the applicant.

10. On 27 November 2001 the applicant was arrested for thirty days, on the orders of the prosecutor, in connection with the criminal investigations against her.

The applicant appealed against the arrest order on the grounds that it did not satisfy the domestic-law requirements or those set forth in Article 5 § 3 of the Convention.

11. On 5 December 2001 the Bucharest Court of Appeal upheld the arrest order. It found that the evidence in the file disclosed a reasonable suspicion that she had committed the offences she was accused of. It considered that her actions, which were contrary to public policy, had been aggravated by the fact that the applicant had been a judge at the time.

On 14 December 2001 the Supreme Court of Justice upheld the order by two votes to one. The third judge expressed his separate opinion that there were no grounds for arresting the applicant.

12. On 19 December 2001 the Court of Appeal extended the applicant's pre-trial detention by thirty days, upon a request by the prosecutor. It found that:

> "the reasons invoked – in the light of the complexity of the case which requires that the prosecutor take the investigative measures indicated in his request – constitute sufficient justification under Articles 155 et seq. of the Code of Criminal Procedure."

On 28 December 2001 the Supreme Court of Justice upheld the above-mentioned interlocutory judgment.

13. On 24 January 2002 the Court of Appeal extended the applicant's detention on the ground that the applicant's release would be contrary to

public policy, given the seriousness of the offences she was accused of and the risk of generating society's mistrust in the judicial system.

On 6 February 2002 the Supreme Court reduced the new term of detention to fifteen days.

14. On 7 February 2002 the Court of Appeal extended the detention for a further thirty days on the ground that the reasons invoked for the arrest still existed.

On 15 February 2002 the Supreme Court reduced the duration of detention to fifteen days again.

15. On 21 February 2002 the Court of Appeal extended the detention by nineteen days on the same grounds, in order to allow the prosecutor to finalise the investigations. On 5 March 2002 the Supreme Court upheld the interlocutory judgment.

16. On 14 March 2002 the Court of Appeal dismissed a new request by the prosecutor for another extension of the applicant's pre-trial detention, from 15 April to 14 May 2002. It found that the reasons that had justified the taking of the measure did no longer exist. It noted that the applicant had been suspended from her position and pointed out that the alleged danger in terms of public policy should not be assessed in abstract terms. It also noted that the prosecutor had not made progress with the investigations after the applicant's arrest and had not carried out the procedural measures for which he had repeatedly sought an extension of the detention.

On 15 March 2002 the Supreme Court of Justice reversed the decision on the ground that the documents in the file justified the extension.

17. On 10 April 2002 the Court of Appeal rejected, on the same grounds as before, another extension request.

On 12 April 2002 the Supreme Court reversed the interlocutory judgment again.

18. In the following interlocutory judgments in the case the Court of Appeal did not examine the applicant's detention, as she had been “arrested in connection to other criminal proceedings” (point B below).

19. On 13 June 2002 the applicant was committed to stand trial along with several other persons. The prosecution examined some forty witnesses, documents were transferred from various authorities and several expert reports submitted.

20. The Court of Appeal gave judgment on 31 October 2003, convicting the applicant of abuse of power and forgery and sentencing her to five years' imprisonment. The applicant's sentence was increased to seven years' imprisonment on appeal (decision of 28 February 2005 of the Supreme Court of Justice) and became final on 24 March 2006.

21. The applicant was released from prison on 13 November 2007.

B. The second set of proceedings

22. On 11 April 2002 the applicant was arrested by the prosecutor at the Bucharest Court of Appeal in connection with criminal investigations against her. The prosecutor justified his order on the grounds that the criminal offence that she had been accused of was punishable by a term of imprisonment of more than two years and that her continued freedom would run counter to public policy.

23. On 23 April 2002 the applicant was brought before the Court of Appeal for examination of her appeal against the arrest order.

On 24 April the Court of Appeal delivered its interlocutory judgment; it upheld the arrest order in the following terms:

> "Under the terms of the last paragraph of Article 140 of the Code of Criminal Procedure, the court may quash the arrest order ... only if it finds that the measure was illegal.
>
> However, in the case at hand, the [applicant's] arrest meets the conditions set forth in Article 148 of the Code of Criminal Procedure and the criteria in Article 136 § 3 of the Code of Criminal Procedure, to ensure the proper administration of criminal proceedings; therefore the [applicant's] complaint against the arrest order seems ill-founded and shall be dismissed.
>
> ...
>
> Concerning the request for conditional release from arrest, in accordance with Articles 160^4 and 160^6 § 5 of the Code of Criminal Procedure, the prosecutor decides on such a request during the prosecution phase and the court that examines the merits of the case deals with the request made during the criminal trial.
>
> Therefore, the court does not have the power to examine the request, in so far as the case is currently in the prosecution phase, under the prosecutor's exclusive supervision."

The court also found that the prosecutor had the power to issue the arrest order, and dismissed the applicant's complaint to the contrary.

On 7 May 2002 the Supreme Court of Justice upheld the interlocutory judgment, in particular on the ground that the reasons that had justified the imposition of the preventive measure still existed and thus the applicant's continued detention was legal.

24. On 29 April 2002 the Court of Appeal extended the detention for another thirty days, at the prosecutor's request. It found that:

> "the reasons invoked for taking the measure still exist, with regard to the nature of the offence, the circumstances of the facts and the consequences produced.
>
> Moreover, the extension of the pre-trial detention is necessary, given the complexity of the case, which requires an examination of several witnesses, various expert investigations, gathering of documents from the authorities and confrontations."

On 15 May 2002 the Supreme Court of Justice dismissed the applicant's appeal and upheld the above interlocutory judgment.

25. On 29 May 2002 the Court of Appeal dismissed another request by the prosecutor and refused to extend the applicant's detention for a month. It noted that the prosecutor had already gathered the evidence and could not justify the need for continuing the applicant's detention; it also found that as the applicant had been dismissed from her post, there was no longer a public-policy issue.

On 30 May 2002 the Supreme Court reversed the above decision and extended the detention by seven days to allow the prosecutor to gather more evidence, as he had requested.

26. On 5 June 2002 the applicant was committed for trial by the prosecutor, on charges of abuse of power and forgery, in respect of facts similar to those under investigation in the above-mentioned criminal file (described at A above).

27. On 6 June 2002 the Court of Appeal dismissed a further extension request by the prosecutor and ordered the applicant's release as it considered that the reasons for her detention did no longer exist.

The same day the Supreme Court reversed the decision; it held that the Court of Appeal had not given reasons for its decision and that the applicant's release would still be contrary to public policy in that she had apparently committed several similar offences. It therefore extended the detention pending trial by thirty days.

28. On 24 June 2002 the Court of Appeal extended the applicant's detention by thirty days on the ground that:

> "as the reasons that justified the taking of this measure still exist, releasing her would be highly contrary to public policy and would harm the investigations."

On 5 July 2002 the Supreme Court declared inadmissible an appeal lodged by the applicant, on the ground that a decision extending detention was subject to appeal at the same time as the judgment on the merits of the case.

29. On 1 August, 2 and 27 September and 1 and 22 November 2002 the Court of Appeal extended the detention for further terms of thirty days, with the same justification. On 15 August, 9 October and 27 November 2002 the Supreme Court declared the applicant's respective appeals inadmissible. On two occasions – 13 September and 10 December 2002 – the Supreme Court upheld on the merits the interlocutory judgments delivered by the Court of Appeal.

A request by the applicant for conditional release was also dismissed by the Court of Appeal, on 22 November 2000.

30. On 20 December 2002 the Court of Appeal gave judgment in the case. It convicted the applicant of abuse of power and forgery and sentenced her to one year and six months' imprisonment. In a final decision of 4 June 2003 the Supreme Court of Justice upheld the conviction but reduced the sentence to one year and four months' imprisonment.

II. RELEVANT DOMESTIC LAW

31. The relevant provisions of the Code of Criminal Procedure concerning pre-trial detention and its extension are set forth in *Pantea v. Romania*, no. 33343/96, § 150, ECHR 2003-VI (extracts). The procedure for lodging complaints against preventive measures, including pre-trial detention, is described in *Tase v. Romania*, no. 29761/02, §§ 14-15, 10 June 2008.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

32. The applicant complained that she had been arrested on an order of the prosecutor that did not meet the requirements set forth in Article 5 § 3 of the Convention. Under the same Article, she complained that her pre-trial detention had been excessively long and extended repeatedly without relevant and sufficient reasons. Article 5 § 3 of the Convention reads as follows:

> "3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

33. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

34. The Government admitted that the arrest order of the Romanian prosecutor did not meet the requirements of Article 5 § 3 of the Convention as developed in the Court's case-law and that a delay of eight days to be brought before a judge was a period that exceeded those that the Court usually found acceptable. It pointed out, however, that the Code of Criminal Procedure currently gave the judge exclusive powers to order a person's pre-trial detention.

35. The Government also argued that the applicant's detention had not been excessively long. In their view, the two measures taken against the applicant should be examined separately by the Court. Furthermore, the Government averred that both investigations were extremely complex due to the gravity of the facts and the number of persons involved. They also pointed out that both the Court of Appeal and the Supreme Court had given reasons for their decisions and re-examined at short intervals the applicant's detention.

Lastly, they argued that the two periods of pre-trial detention had been necessary measures of public policy and complied with the Convention requirements.

36. The applicant disputed the Government's arguments. In particular, she argued that her pre-trial detention should be examined as a single period by the Court and that it had been excessively long.

2. The Court's assessment

(a) "Brought promptly before a judge or other officer..."

37. The Court reiterates that in the case of *Pantea*, cited above, it concluded that the prosecutor did not satisfy the requirement of independence from the executive as set out in Article 5 § 3 (see *Pantea*, cited above, § 238). It sees no reason to depart from that conclusion in the case at hand, given that the same legal provisions applied to both cases.

It further notes that the lapse of time before a judge examined the arrest order was eight days in the first set of proceedings and twelve days in the second set of proceedings.

38. The Court points out that in *Brogan and Others v. the United Kingdom* (29 November 1988, § 62, Series A no. 145-B), cited above, it held that a period of detention in police custody amounting to four days and six hours without judicial review fell outside the strict constraints permitted by Article 5 § 3, even though it was designed to protect the community as a whole from terrorism. *A fortiori*, the Court cannot therefore accept in the instant case that it was necessary to detain the applicant for at least eight days before bringing her before a judge.

There has accordingly been a violation of Article 5 § 3 of the Convention on this point.

(b) Length of the pre-trial detention

39. The Court reiterates its constant case-law on the length of pre-trial detention, in particular concerning the presumption in favour of release, the calculation of the detention period and the obligation for the authorities to provide "relevant and sufficient grounds" for continued detention (see *Wemhoff v. Germany*, 27 June 1968, § 9, Series A no. 7; *Negoescu*

v. Romania (dec.), no. 55450/00, 17 March 2005; and *Bykov v. Russia* [GC] no. 4378/02, §§ 61-64, 10 March 2009 and the cases cited therein).

40. In the case at hand, it notes that the parties have opposing views on whether the two periods of detention should be examined together or separately. However, the Court does not consider it necessary to settle the matter as, in the circumstances of the case, even assuming that the two periods are to be examined separately, each one of them contravenes the requirements of Article 5 § 3 of the Convention for the following reasons.

41. The Court notes that the applicant was detained from 27 November 2001 to 14 May 2002 in accordance with the first arrest order, and from 11 April 2002 until 20 December 2002, in accordance with the second arrest order.

The courts extended the detention six times and nine times respectively, finding that the prosecutor needed the extension in order to gather more evidence (examine witnesses and produce expert reports), and that the gravity of the offence and the applicant's status as a judge raised a serious public-policy issue.

42. However, the courts did not give concrete reasons based on the facts of the case to explain in what way the applicant's release would damage the collection of evidence or run counter to public policy. The Court further notes that the domestic courts found on a number of occasions that the investigations had not progressed after the applicant's arrest and that the prosecutor had failed to carry out the measures envisaged in his requests for extension of the applicant's detention.

43. The Court also notes that with the passage of time the domestic courts' reasoning did not evolve to reflect the developing situation and that they did not verify in the light of the circumstances of the case whether the grounds initially invoked remained valid at the advanced stage of the proceedings; on the contrary, the courts' reasoning became more elliptic over time. The Court reiterates that it is only by giving a reasoned decision that there can be public scrutiny of the administration of justice (see *Bykov*, cited above, §§ 65-66, and *Suominen v. Finland*, no. 37801/97, § 37, 1 July 2003).

44. The foregoing considerations are sufficient to enable the Court to conclude that, given the lack of concrete reasons in the domestic courts' decisions, the repeated extension of the applicant's detention pending trial also infringed Article 5 § 3 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

45. Lastly, the applicant complained, under Article 5 § 1 that there were no concrete grounds for her arrest on 27 November 2001 and that she had been illegally detained from 2 to 4 August 2002.

46. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of any other violation of the rights and freedoms set out in the Convention or its Protocols. In particular, the Court notes that while the arrest order of 27 November 2001 did not give concrete reasons for the applicant's arrest, the court decisions rendered following the appeal against that order supplemented this absence (see paragraph 10 above and, by contrast, *Tase*, cited above, § 29). As for the alleged illegality of the detention, the documents in the file indicate that the applicant was detained from 2 to 4 August 2002 in accordance with the interlocutory judgment of 1 August 2002 (see paragraph 29 above).

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

48. The applicant claimed 18,000 Romanian lei (RON) in respect of pecuniary damage for the salaries that she had not received during her pre-trial detention. She also claimed 5,350 US dollars (USD), representing the difference between the price of her former apartment, which she had had to sell after being released from prison, and that of the smaller apartment that she had bought afterwards. She further claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

49. The Government argued that the applicant could not prove the existence of a causal link between the violation alleged and the damages sought. In addition, they averred that the amount claimed as non-pecuniary damages was exaggerated.

50. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it accepts that the applicant suffered distress and frustration because the State failed to respect her Article 5 § 3 rights. Making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

51. The applicant also claimed RON 1,374.7 for the costs and expenses incurred before the domestic courts and the Court. She sent invoices justifying RON 585 in payments of court fees and fines and RON 187.9 for the payment of a letter to the Court.

52. The Government contested the amounts.

53. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 250 under all heads.

C. Default interest

54. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning Article 5 § 3 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

3. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage and EUR 250 (two hundred and fifty euros), plus any tax that may be chargeable, for costs and expenses;
(b) that these amounts are to be converted into the respondent State's national currency at the rate applicable at the date of settlement;
(c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President