



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

THIRD SECTION

**CASE OF ASSOCIATION OF VICTIMS OF ROMANIAN JUDGES
AND OTHERS v. ROMANIA**

(Application no. 47732/06)

JUDGMENT

STRASBOURG

14 January 2014

FINAL

14/04/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Association of Victims of Romanian Judges and Others v. Romania,

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

Josep Casadevall, *President*,

Alvina Gyulumyan,

Corneliu Bîrsan,

Ján Šikuta,

Nona Tsotsoria,

Kristina Pardalos,

Johannes Silvis, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 10 December 2013,

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

PROCEDURE

1. The case originated in an application (no. 47732/06) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by nine Romanian nationals, Ms Rodica Neagu, Mr Virgil Radu, Mr Valentin Turigioiu, Mr C. Gheorghe Lupan, Ms Viorica Alda, Mr Eugen Neagu, Ms Maria Nicolau, Ms Domnica Turigioiu and Ms Valerica Șugubete, and the Association of Victims of Romanian Judges, (*Asociația Victimelor Magistraților din România*) (“the applicants”), on 14 August 2006.

2. The applicants were represented by Ms R. Neagu, President of the Association. The Romanian Government (“the Government”) were represented by their Agent, Ms I. Cambrea, of the Ministry of Foreign Affairs.

3. The applicants alleged, in particular, that the refusal of the domestic courts to register the last applicant as an association was unjustified and breached their right to freedom of association.

4. On 10 April 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. On 28 June 2005 the applicant association lodged an application with the Bucharest District Court, seeking to be granted legal personality and to be registered as an association in the Register of Associations and Foundations kept by that court.

According to its Articles, the founders of the applicant association were the other nine applicants. The Board of the association had five members, while Ms Neagu was designated as the President of the Association.

In support of its application, the applicant association appended a document issued by the Ministry of Justice confirming that the name chosen for the association was available, as well as a copy of its Memorandum (*act constitutiv*) and Articles (*statut*), which, in their relevant parts, read:

“The goal of the association is to protect the rights and the legitimate interests of its members before all domestic authorities with the capacity to administer, supervise and/or enact justice.

The objectives of the association are:

- to support and promote the relationship between its members and those authorised by law to protect their rights and interests;
- to monitor the activity of the Romanian justice system with the aim of reporting to the relevant authorities any injustice, irregularities or illegalities committed by Romanian judges;
- to present in the media any cases of manifest unfairness or bias in the application of the law, in so far as the public has the right to be aware of any negative aspects of the activities of the Romanian justice system;
- to support its members in their undertakings before any international court;
- to organise any form of protest (marches, public gatherings, picketing), with prior authorisation from the authorities and in accordance with the law;
- to signal the gravity and the public danger represented by a non-impartial or an incompetent judicial system;
- to create a database of all cases involving its members that are pending before the authorities;
- to cooperate with the legislative bodies by providing them with ideas, projects, proposals, etc. with the aim of improving the functioning of the Romanian judicial system.”

6. On 30 November 2005 the court rejected the application, holding that the goal of the applicant association was in breach of Article 40 § 2 of the Romanian Constitution, which states that “an organisation which, by its aims or activity, militates against political pluralism, the principles of a State governed by the rule of law, or against the sovereignty, integrity or

independence of Romania shall be unconstitutional”. The court noted as follows:

“In its Articles, the applicant [association] starts from the premise that a group of individuals who consider themselves victims of judges – as a result of having had their own cases brought before the judicial authorities – want to form an association which would promote their interests, notably by using any legal means for publicising any alleged injustice, irregularity or illegality, and also by lawfully protesting against all of these aspects.

Such a premise, also implicit in the name of the association, is profoundly unconstitutional in that a group of individuals is stating *proprio motu* that a judgment can be unfair or irregular or an expression of illegality. All these aspects encourage non-compliance with courts’ judgments and represent a form of attack on one of the State’s powers, namely the judiciary.(...)

The infringement is prescribed by law ... in so far as the association is not constitutional because of its aims.

The measure aims to protect public order and the rights of others. (...)

The measure is necessary in so far as the image of the justice system is currently a matter of national interest, and any attack on the courts is therefore an issue of particular gravity which justifies the refusal to grant legal personality to an association that wants to promote an unfavourable image of justice, in the light of the fact that none of its members has the authority to note (*calitatea să constate*) any “injustice, irregularity or illegality committed by the judges” because it is only the State authorities appointed to make inquiries in that regard which have jurisdiction to pronounce a conclusion on such matters.”

The court did not consider it necessary to give the applicant association the opportunity to remedy the impugned irregularity by modifying its Articles, as prescribed by Article 9 of Government Ordinance no. 26/2000, in so far as it considered that any modification of the aims of the applicant association rendering it constitutional would alter the very essence of the association.

7. The applicant association appealed against the judgment before the Bucharest County Court. It stressed that, according to its Articles, all the association’s activities had to be conducted in compliance with the law and its aim could therefore not be regarded as unconstitutional.

8. On 16 February 2006 the Bucharest County Court dismissed the appeal, upholding the reasoning given by the first-instance court. The court referred also to the provisions in the applicant association’s Articles, according to which the Board of the association was competent to accept or reject a membership request on the basis of its own assessment of whether or not the aspiring member was a victim of a breach of his or her rights in a trial before a judge. Such competence was unlawful in so far as the Board thus exercised a form of discretion in assessing whether there were breaches of rights, legitimate interests and/or law by the judges. In claiming to have such competence, the Board was attempting to usurp the domestic and

international institutions empowered to make such assessments, which was unconstitutional, illegitimate and unlawful.

Furthermore, the court held that the Articles did not comply with legal requirements concerning the disposal of the association's assets in the event of its dissolution. The Articles prescribed that "in event of dissolution, the disposal of the assets would be decided by the General Meeting, in compliance with the provisions of Article 60", while the law, namely article 6 § 3 g) of the Ordinance "required that the procedure should be set down in the Articles itself".

II. RELEVANT DOMESTIC LAW

9. Article 40 § 2 of the Romanian Constitution provides:

"an organisation which, by its aims or activity, militates against political pluralism, the principles of a State governed by the rule of law, or against the sovereignty, integrity or independence of Romania shall be unconstitutional."

10. The relevant legal texts concerning the registration of an association in the Romanian Register for Associations and Foundations, as cited in the judgments of *The Argeş College of Legal Advisers v. Romania*, (no. 2162/05, §§ 18-19, 8 March 2011), and *Bozgan v. Romania*, (no. 35097/02, § 11, 11 October 2007), prescribe as follows:

Article 6 § 3 g) provides that the Articles must refer to the manner in which the association's assets are disposed of in the event of dissolution, in compliance with the provisions of Article 60; the latter article states the general requirements relating to the disposal of such assets.

Article 9 of Government Ordinance no. 26/2000 on associations and foundations provides that the judge in charge of reviewing the legality of a request for registration and its supporting documents must scrutinise the request within three days of the date it was lodged. If within this deadline the judge concludes that the documents submitted do not comply with the legal requirements, the representative of the association must be summoned for a hearing held in private and will be granted one week during which these irregularities must be remedied. When the deadline is reached, if the judge concludes that the irregularities have been remedied, he must note this in an interlocutory judgment and order the registration of the association in the Register of Associations and Foundations. If the irregularities have not been remedied, the request for registration is dismissed (Article 10).

Article 12 provides that an association is to be registered in the Register of Associations and Foundations only when the judgment allowing the request for registration becomes final. Article 33 of the same Act provides that any changes to the Articles of an association which has acquired legal personality and been registered must be recorded in the Register of

Associations and Foundations according to a procedure that is similar to the one for registering an association.

The same Ordinance provides that an association may be dissolved by a judicial decision if its goals prove to be contrary to law or public order, or if they are achieved by unlawful means or means contrary to public order (Article 56).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

11. The applicants complained that their right to freedom of association was infringed by the authorities' refusal to register the applicant association in accordance with the relevant domestic law. Article 11 of the Convention reads:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state.”

12. The Government contested that argument.

A. Admissibility

13. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

14. The applicants submitted that the declared aim of the applicant association was to promote and protect the rights and the legitimate interests of its members, and not to usurp the power of the judiciary. All the objectives enumerated in the association's Articles were aimed at creating

close cooperation between the association's members and the authorities responsible for protecting their rights and interests.

The applicant association was therefore not designed with the aim of functioning outside the legal framework. On the contrary, its aim was to make use of all available legal means so that potential abuses were avoided or remedied. Likewise, the association sought to contribute to the proper functioning of the judicial system by drawing public attention to potential abuse or judicial errors. No parallel judicial system was either created or intended.

In view of the applicant association's goals and strategy, the interference with the rights protected by Article 11 appeared unnecessary and at all events disproportionate.

15. The Government admitted that the refusal to register the applicant association as an association amounted to interference with the rights protected by Article 11; however, they submitted that the interference was prescribed by law, pursued a legitimate aim and was necessary in a democratic society.

In this connection, the Government argued that the legal provisions regulating the registration of associations, namely Government Ordinance no. 26/2000 and Article 40 of the Constitution, were accessible and foreseeable in their application and the interference complained of was therefore prescribed by law.

16. They further contended that the impugned measure had been taken not only in the interests of the protection of public order, of the supremacy of the law and of the separation of powers, but also for safeguarding the rights of others.

17. In view of the fact that the declared purpose of the aspiring association was to assume powers given exclusively to the judiciary and to make assessments of domestic judgments, the interference was necessary for maintaining the proper functioning of the judicial system. The domestic courts had presented exhaustive reasoning demonstrating why the aim of the applicant association was contrary to public order: its aspiration to evaluate judgments delivered by judges, and to hold to account those responsible for the "victims" thus created, compromised the notion of justice and was an offence to the judicial system itself. Furthermore, the impugned evaluation and the establishment of responsibility were to be done *extra legem*, based exclusively on the members' own assessments.

In this context, the Government pointed out that judges' professional activities were regulated by Law no. 303/2004, which included particular provisions concerning their disciplinary and criminal responsibility and the specific authorities empowered to initiate such proceedings. Article 52, paragraph 3, of the Constitution referred to specific mechanisms for the rectification of judicial errors.

The applicant association's essential purpose, namely to erode public trust in the judicial process, was contrary to public order and to Article 40 § 2 of the Constitution and the possibility of accepting its registration with the proviso that it amended only some of the provisions of its Articles was therefore precluded (the Government contrasted the position with *The Argeş College of Legal Advisers*, cited above, § 40).

18. The circumstances of the present application were also different from those examined by the Court in the case of *Bozgan v. Romania* (cited above) because in the latter case, the courts' decision was based on a mere suspicion that the aspiring association wanted to create a parallel judicial system, whereas in the present case, the association's Articles referred explicitly to the creation of such a parallel system.

19. The Government maintained that freedom of expression could not entail the liberty to promote behaviours hostile to justice or to incite to non-compliance with final judgments.

The refusal to register the applicant association was therefore proportionate, considering that its essential aim was contrary to the rule of law; the preventive role of the impugned measure was a fundamental consideration in the present case, the reason being that any sanction post-registration would potentially be too late, having regard to the need to protect the prestige and the quality of the judicial process.

2. *The Court's assessment*

(a) **Whether there was interference**

20. The Court observes that it is not disputed between the parties that there was an interference with the applicants' right to freedom of assembly, and it has no reason to hold otherwise.

(b) **Whether the interference was justified**

21. The Court reiterates that such interference breaches Article 11 of the Convention unless it is "prescribed by law", pursues one or more of the legitimate aims under paragraph 2 of that Article, and is "necessary in a democratic society" in order to fulfil those aims.

(i) *Prescribed by law*

22. The Court is satisfied that the impugned interference was prescribed by law, namely by Ordinance no. 26/2000 and by Article 40 § 2 of the Romanian Constitution.

(ii) *Legitimate aim*

23. In the Court's opinion, the impugned interference pursued a number of legitimate aims, namely the preservation of public order and of the rights and freedoms of others.

(iii) *Necessary in a democratic society*

24. As the Court has already held in its relevant case-law in matters of freedom of association, the right enshrined in Article 11 includes the right to form an association in order to act collectively in a field of mutual interest (see *Gorzelik and Others v. Poland* [GC], no. 44158/98, §§ 88-93, ECHR 2004-I, and *Sidiropoulos and Others v. Greece*, 10 July 1998, § 40, *Reports of Judgments and Decisions* 1998-IV).

25. The Court further reiterates that the way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned. The Court has repeatedly referred to the direct relationship that exists between democracy, pluralism and freedom of association, and it has established the principle that only convincing and compelling reasons can justify restrictions on freedom of association. All such restrictions are subject to rigorous supervision (see, among many other authorities, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, §§ 86-89, ECHR 2003-II).

Consequently, in determining whether a necessity within the meaning of Article 11 § 2 exists, the States have only a limited margin of appreciation, which goes hand in hand with rigorous European supervision, embracing both the law and the decisions applying it, including those given by independent courts (see *Eğitim ve Bilim Emekçileri Sendikası v. Turkey*, no. 20641/05, § 49, ECHR 2012).

26. In its scrutiny, the Court's task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 11 the decisions they delivered in the exercise of their discretion; it must therefore look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see *Sidiropoulos and Others*, cited above, § 40 and *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, no. 46626/99, § 49, ECHR 2005-I).

27. In the instant case the Court must assess whether the interference at issue, namely the refusal by the domestic courts to register the association, met a "pressing social need" and was "proportionate to the legitimate aims pursued".

28. The Court notes at the outset that, in so far as the applicant association had not been active before applying for registration, the national courts based their refusal of the applicants' request solely on an assessment of whether the Memorandum and Articles submitted to them complied with

the generally broad provisions of Article 40 § 2 of the Constitution. The Court will therefore take these documents alone as their basis for assessing whether the interference in question was necessary (see, among other authorities, *Refah Partisi (the Welfare Party) and Others*, cited above, § 116, and *The Argeş College of Legal Advisers v. Romania*, cited above, § 37).

29. The Court observes that the domestic courts in their reasoning repeatedly referred to the association's aims as essentially unconstitutional and illegal (see paragraphs 6-8 above).

Furthermore, the domestic courts considered it unnecessary to allow the applicant association an opportunity to change its Articles; in their view, any change would have altered the very essence of the association, which was to encourage non-compliance with final judgments, to erode the image of the justice system, in brief, to oppose the judiciary, while arrogating to itself powers which only the national authorities had (see paragraph 6 above).

30. While strongly agreeing that public trust in the judiciary was a very valuable consideration, the Court however is not convinced that the aims incriminated in the national judgments emanated from the Articles of the aspiring association; moreover, the Court considers that the domestic courts' statements were based on mere suspicions regarding the true intentions of the association's founders and the activities it might have engaged in once it had begun to function (see, *mutatis mutandis*, *Sidiropoulos and Others*, cited above, § 46, and *Bozgan*, cited above, § 23).

31. The factual situation in the instant case is different from that in the case of *Bota v. Romania* ((dec.), no. 24057/03, 12 October 2004), where the Court found that the dissolution of an association which had among its stated aims the "setting up of bar associations" and whose members effectively performed activities which were within the exclusive competence of the Romanian bar association was proportionate.

In the present case it does not appear that the Articles of the applicant association contained any indication that it had the aim of setting up similar organisations or parallel structures designed to encroach on existing State institutions. On the contrary, the relevant clauses refer to the objective of promoting cooperation between the association's members and those "authorised by law to protect their rights and interests" or with "the legislative bodies" (see paragraph 8 above).

32. Furthermore, the Court notes that the domestic law provides for the possibility of dissolving an association should it be demonstrated that it has goals which are contrary to public order or that it acts contrary to the provisions of its Articles (see, *mutatis mutandis*, *Bozgan*, cited above, § 36).

33. With respect to the county court's reference to the manner in which the disposal of the association's assets was regulated in the Articles, the Court firstly notes that this issue was raised for the first time in the appellate

proceedings; furthermore, no deadline was allowed to the applicant association to remedy the alleged irregularity, as required by Article 9 of the Ordinance (*ibid.*, § 28).

34. Taking into account all the above, the Court considers that the reasons invoked by the authorities for refusing registration of the applicant association were not determined by any “pressing social need”, nor were they convincing and compelling. Moreover, such a radical measure as the refusal of registration, taken even before the association started operating, appears disproportionate to the aim pursued (see *Koretsky and Others v. Ukraine*, no. 40269/02, §§ 54- 55, 3 April 2008).

That being so, the interference cannot be deemed necessary in a democratic society.

35. There has accordingly been a violation of Article 11 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

36. Lastly, the applicants complained under Articles 6 and 14 of the Convention that the proceedings in their case had been unfair in so far as the domestic courts had been biased and had discriminated against them in comparison with other associations whose registration had been allowed.

37. The Court, having examined these complaints, considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

38. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicants claimed 6,000 euros (EUR) in respect of pecuniary damage, consisting of an award of EUR 1,000 for each year of delay in registering the association. They also claimed EUR 3,000 in respect of non-pecuniary damage taking into account the humiliation and frustration

suffered on account of the impossibility of achieving their goals as an association.

41. The Government argued that the amount claimed in respect of pecuniary damage was purely speculative and requested that this claim be dismissed. They further contended that the finding of a violation would constitute sufficient compensation for all the applicants.

42. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention found. The Court does not consider the alleged pecuniary damage to be fully substantiated, but it does not find it unreasonable to accept that the applicants certainly incurred costs that were directly due to the violation found. It also takes the view that, as a result of the violation found, the applicants undoubtedly suffered non-pecuniary damage that cannot be compensated for merely by the finding of a violation.

Consequently, having regard to the circumstances of the present case seen as a whole, and deciding on an equitable basis, the Court awards the applicants EUR 2,000 jointly in respect of the pecuniary and non-pecuniary damage sustained.

B. Costs and expenses

43. The applicants did not submit any claim for costs and expenses.

C. Default interest

44. The Court considers it appropriate that the default interest rate 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 complaint concerning Article 11 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 11 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicants jointly, 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 pecuniary and non-pecuniary damage, this amount to be converted into

the currency of the respondent State at the rate applicable at the date of settlement;

(b) 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 14 January 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President