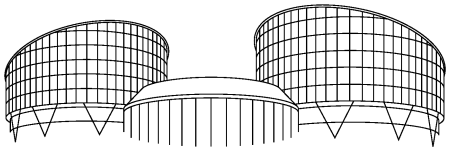

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF SZABO AND OTHERS v. ROMANIA

(Application no. 8193/06)

JUDGMENT

STRASBOURG

18 March 2014

FINAL

18/06/2014

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

In the case of Szabo and Others v. Romania,

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Ján Šikuta,
Dragoljub Popović,
Kristina Pardalos,
Johannes Silvis,
Iulia Antoanella Motoc, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 18 February 2014,

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

PROCEDURE

1. The case originated in an application (no. 8193/06) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Romanian nationals, Mr Ioan Szabo, Mr Marin Rusu and Mr Ştefan Şopterean ("the applicants"), on 31 January 2006.

2. The Romanian Government ("the Government") were represented by their Agent, Mr R.-H. Radu, from the Ministry of Foreign Affairs.

3. The applicants complained under Article 6 of the Convention of the excessive length of the criminal proceedings instituted against them as well as the breach of their rights of defence during the same proceedings.

4. On 31 August 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1962, 1964 and 1974 respectively and live in Târgu Mureş.

6. On 15 January 1997 a criminal investigation was opened against the applicants and two other persons and on 4 April 1997 they were indicted for trespassing, inflicting grievous bodily harm causing the death of the victim and making false statements to the police.

A. The first set of proceedings before the courts

7. Between 13 May 1997 and 21 April 1998, the Mureş County Court adjourned the proceedings nine times pending the summoning of several witnesses requested by the prosecutor and the summoning of witnesses and examination of other evidence requested on three occasions by the applicants.

8. On 29 May 1998 the Mureş County Court adjourned delivery of the judgment at the request of the applicants' representatives, who asked permission to submit written pleadings.

9. On 5 June 1998 the Mureş County Court convicted the applicants of inflicting grievous bodily harm causing the death of the victim as defined in Article 183 of the Criminal Code, and trespassing, and sentenced them each to three years' imprisonment. The applicant Ştefan Şopterean was also given a suspended sentence for insulting a police officer and causing a breach of the peace. All three applicants were ordered to pay civil damages jointly.

10. The applicants and the prosecutor appealed against the judgment of the Mureş County Court.

11. At the first hearing before the Târgu Mureş Court of Appeal on 23 December 1998 the prosecutor requested that the court change the legal classification of the acts committed by the applicants to aggravated murder as defined in Article 174 taken together with Article 176 of the Criminal Code. Under those circumstances, the applicants requested an adjournment of the proceedings in order to prepare their defence.

12. On 3 February 1999 the Court of Appeal heard all the parties in the trial and decided to adjourn delivery of the judgment to 18 February and subsequently to 4 March 1999.

13. On 4 March 1999 the Târgu Mureş Court of Appeal allowed the prosecutor's appeal and sent the case back to the first-instance court for a retrial on the merits.

B. The retrial of the case

14. Between 11 May and 19 October 1999, the Mureş County Court adjourned the proceedings seven times on account of the absence of the civil party and pending the summoning of several witnesses requested by the prosecutor.

15. At a hearing on 16 November 1999 the Mureş County Court heard the applicants' submissions on the prosecutor's request to change the classification of the crimes charged. The applicants' lawyers asked the court to reject that request and to adjourn delivery of the judgment in order for them to submit written observations. The court adjourned delivery of the judgment to 3 December and subsequently to 10 December 1999. Written

observations on behalf of the applicants were submitted to the case-file before the delivery of the judgment.

16. On 10 December 1999 the Mureş County Court, after a thorough analysis of all the evidence contained in the file, rejected the prosecutor's request for the reclassification of the acts committed by the applicants and upheld their previous conviction for inflicting grievous bodily harm causing the death of the victim as defined in Article 183 of the Criminal Code, and trespassing. The amount of the civil damages the applicants were ordered to pay jointly was increased.

17. Appeals by the prosecutor and the applicants against the above-mentioned judgment were allowed by the Târgu Mureş Court of Appeal, which, on 16 May 2001, decided to send the case back for a new retrial on the merits.

C. The second retrial of the case

18. Between 23 October 2001 and 17 September 2002, the Mureş County Court adjourned the proceedings eleven times on account of the absence of the applicants' lawyers on three occasions, pending the summoning of several witnesses requested by the applicants on one occasion and by the prosecutor during the rest of the hearings.

19. On 15 October 2002 the County Court heard submissions by the parties on the prosecutor's request for a change of the legal classification from a crime defined in Article 183 into a crime defined in Articles 174-176 (a) of the Criminal Code. The court further decided to adjourn the proceedings in order to allow the applicants to submit written observations on the issue.

20. At an additional hearing on 12 November 2002 the applicants' representatives again submitted their defence orally, and subsequently made submissions in writing, on the issue of the change of the legal classification of the crimes. The County Court decided to adjourn delivery of the judgment to 22 and subsequently to 29 November 2002.

21. By an interlocutory judgment of 29 November 2002 the County Court decided to change the legal classification of the crimes allegedly committed by the applicants to aggravated murder as defined in Articles 174-176 (a) of the Criminal Code and ordered psychiatric assessments of the applicants, as defined by law for persons charged with murder. Three more adjournments were subsequently ordered by the court in the absence of those psychiatric assessments.

22. At a hearing on 15 April 2003 the change of legal classification of the charges against the applicants was again discussed in the presence of all the parties before the court. Delivery of the judgment was adjourned to 22 April 2003.

23. On 22 April 2003 the Mureş County Court decided to change back the legal classification of the crimes and convicted the applicants of inflicting grievous bodily harm causing the death of the victim, as defined in Article 183 of the Criminal Code, and trespassing. The three-year sentence was upheld. The amount of the civil damages was increased. The rest of the provisions of the judgment of the Mureş County Court of 10 December 1999 remained unchanged.

24. The prosecutor appealed against that decision.

25. On 23 October 2003, after two adjournments of the case, the Târgu Mureş Court of Appeal upheld the judgment of 22 April 2003 delivered by the Mureş County Court.

26. On 17 June 2004 the High Court of Cassation and Justice allowed an appeal by the prosecutor on points of law and remitted the case to the Court of Appeal.

D. The third retrial

27. On 19 November and 17 December 2004 the Târgu Mureş Court of Appeal adjourned the proceedings on account of the absence and lack of preparation of the applicants' lawyers.

28. At a hearing on 14 January 2005 before the Court of Appeal the parties made submissions on the prosecutor's reasons for appeal, namely the request for a reclassification of the crimes committed by the applicants. The applicants' lawyers requested the court reject the request as it was not supported by evidence and it was obvious from the body of evidence collected that the applicants had not intended to take the life of the victim. The Court of Appeal decided to adjourn the delivery of the judgment first to 26 January and subsequently to 28 January 2005, in order for the applicants' lawyers to submit written observations.

29. On 28 January 2005 the Târgu Mureş Court of Appeal decided to reopen the proceedings on the merits of the appeal since no consensus could be reached between the three judges sitting on the case.

30. On 8 April 2005 the Court of Appeal again heard the parties' submissions on the issue of changing the legal classification of the acts committed by the applicants and adjourned delivery of the judgment for ten days.

31. On 19 April 2005 the Târgu Mureş Court of Appeal convicted the applicants of the crime of aggravated murder as defined in Articles 174 and 176 (a) of the Criminal Code and sentenced them to sixteen years' imprisonment. The other provisions of the judgment delivered on 22 April 2003 by the Mureş County Court were upheld.

32. The applicants lodged an appeal on points of law against that judgment.

33. On 30 June and 15 September 2005 the High Court of Cassation and Justice adjourned the proceedings on account of the absence and lack of preparation of the applicants' lawyers.

34. On 27 October 2005, in the presence of the applicants, their lawyers submitted their defence before the court with respect to the change of the legal classification of the crimes charged. The applicants were also heard by the court. They stated that they agreed with their lawyers and that they regretted committing the crime. Delivery of the judgment was adjourned to 9 November 2005.

35. On 9 November 2005 the High Court of Justice and Cassation allowed the applicants' appeals on points of law and convicted them of the crime of murder as defined in Article 174 of the Criminal Code. The applicants were sentenced to twelve years' imprisonment. The rest of the provisions of the judgment delivered on 22 April 2003 by the Mureş County Court were upheld.

II. RELEVANT DOMESTIC LAW

36. The relevant parts of the Criminal Code in force at the material time read as follows:

Article 174
(Murder)

"Murder of a person shall be punished by imprisonment of ten to twenty years and the prohibition of certain rights ..."

Article 176
(Aggravated Murder)

"Murder committed in one of the following circumstances:

with cruelty ..., shall be punished by life imprisonment or imprisonment of fifteen to twenty-five years and the prohibition of certain rights."

Article 183
(Assault or injury causing death)

"Should one of the offences defined in Articles 180-182 [Assault and other forms of violence, bodily harm and grievous bodily harm] result in the victim's death, the penalty shall be immediate imprisonment of between five and fifteen years and the prohibition of certain rights."

Article 334
(Judicial reclassification)

"If during the course of the proceedings it is considered that the legal classification given to the acts committed needs to be changed, the court has a duty to allow the parties to make submissions on the new legal classification and to inform the defendant that he or she has the right to ask for an adjournment of the proceedings in order for him or her to prepare his or her defense."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

37. The applicants complained that the criminal proceedings brought against them had been unreasonably lengthy. They relied on Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. Admissibility

38. The Court notes that the 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

39. The Government submitted that the duration of the proceedings had been reasonable, taking into account that the case had been particularly complex owing to the seriousness of the crime charged and the large number of accused and witnesses. They further contended that the applicants themselves had caused some delays in the proceedings by requesting a series of adjournments of the hearings.

40. The applicants contested those arguments.

41. The Court reiterates that the period to be taken into consideration under Article 6 § 1 of the Convention must be determined autonomously. It begins at the time when formal charges are brought against a person or when that person has otherwise been substantially affected by actions taken by the authorities as a result of a suspicion against him (see, among other authorities, *Eckle v. Germany*, 15 July 1982, § 73, Series A no. 51).

42. The Court observes that the start date of the criminal proceedings against the applicants is not in dispute between the parties. Thus, for the purposes of Article 6 § 1, the period to be taken into consideration began on 15 January 1997 and ended on 9 November 2005, after eight years, nine months and twenty-five days.

43. The Court further reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities, and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

44. The Court notes in the current case that there were repeated procedural delays over the entire course of the proceedings. It can accept that the case against the applicants and the other two co-accused can be seen as being to some degree complex, and that the applicants were also responsible for some of the delays. That being said, it cannot but note that the proceedings lasted over eight years for three levels of jurisdiction. The length of that period cannot be justified by the complexity of the case and the adjournments requested by the applicants alone. In the Court's opinion, the length of the proceedings can only be explained by the failure of the domestic courts to deal with the case diligently (see *Gümüşten v. Turkey*, no. 47116/99, §§ 24-26, 30 November 2004, and *Sereny v. Romania*, no. 13071/06, §§ 114-16, 18 June 2013).

45. Having regard to all the evidence before it, the Court finds that the length of the proceedings at issue does not satisfy the "reasonable time" requirement.

46. There has accordingly been a breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (a) AND (b) OF THE CONVENTION

47. The applicants complained of a violation of their right of defence following the judicial reclassification of the crimes they were charged with. They relied in substance on Article 6 §§ 1 and 3 (a) and (b) of the Convention which read as follows in the relevant parts:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ....
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> ..."

Admissibility

48. The Government contested the applicants' arguments.

49. The Court reiterates that the provisions of paragraph 3 (a) of Article 6 point to the need for special attention to be paid to the notification of the "accusation" to the defendant. Particulars of the offence play a crucial role in the criminal process, in that it is from the moment of their service that the suspect is formally put on notice of the factual and legal basis of the charges against him. Article 6 § 3 (a) of the Convention affords the defendant the right to be informed not only of the cause of the accusation,

that is to say the acts he is alleged to have committed and on which the accusation is based, but also the legal characterisation given to those acts (see *Pélissier and Sassi v. France* [GC], no. 25444/94, § 51, ECHR 1999-II; *Dallos v. Hungary*, no. 29082/95, § 47, 1 March 2001; and V*arela Geis v. Spain*, no. 61005/09, §§ 41 and 42, 5 March 2013).

50. The scope of the above-mentioned provision must in particular be assessed in the light of the more general right to a fair hearing guaranteed by Article 6 § 1 of the Convention. The Court considers that in criminal matters the provision of full, detailed information concerning the charges against a defendant, and consequently the legal characterisation that the court might adopt in the matter, is an essential prerequisite for ensuring that the proceedings are fair. As regards the complaint under Article 6 § 3 (b) of the Convention, the Court reiterates that sub-paragraphs (a) and (b) of Article 6 § 3 are connected and that the right to be informed of the nature and the cause of the accusation must be considered in the light of the accused's right to prepare his defence (see *Pélissier and Sassi,* cited above, §§ 52-54).

51. The Court observes in the current case that the request to change the legal classification of the acts committed by the applicants was first submitted by the prosecutor before the domestic courts on 23 December 1998. Upon the applicants' request, the court adjourned the proceedings in order to allow them to prepare their defence, following which submissions were heard in public from all the parties in the course of the next hearing (see paragraphs 11 and 12). The same request was reiterated and discussed in public hearings before the domestic courts on several occasions throughout the proceedings. The applicants were present at all those hearings and were represented by lawyers of their own choice. They also had, and used, the opportunity to submit written observations on the request in question before all the courts (see, conversely, *Pélissier and Sassi*, cited above, § 62).

52. Having regard to the foregoing, the Court considers that the domestic courts afforded the applicants the possibility of exercising their defence rights on the issue of changing the legal classification of the charges against them in a practical and effective manner and in good time. As a result the case does not disclose any appearance of an infringement of the guarantees of Article 6 §§ 1 and 3 (a) and (b) of the Convention.

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. OTHER ALLEGED VIOLATION

53. The applicants further complained that the evidence had been wrongly assessed by the domestic courts in breach of their right to a fair trial guaranteed by Article 6 § 1 of the Convention.

54. The Court has examined the complaint as submitted by the applicants. However, having regard to all the material in its possession, and in so far as it falls within its jurisdiction, the Court finds that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be dismissed as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicants Ioan Szabo and Ștefan Șopterean each claimed 6,000 euros (EUR) in respect of pecuniary damage, namely the loss of their income due to their imprisonment. They further claimed EUR 50,000 each in respect of non-pecuniary damage.

57. The Government contended that there was no link between the alleged violation and the amount in respect of pecuniary damage requested by the applicants Ioan Szabo and Ștefan Șopterean. With respect to the sum claimed in respect of non-pecuniary damage, the Government submitted that this was excessive and that the finding of a violation would constitute sufficient just satisfaction for the applicants.

58. The Court reiterates that in the present case it has found a violation of Article 6 § 1 of the Convention on account of the excessive length of the criminal proceedings against the applicants. Therefore, it does not discern any causal link between the violation found and the pecuniary damage alleged by the applicants Ioan Szabo and Ștefan Șopterean; it therefore rejects those claims.

59. On the other hand, the Court considers that the applicants Ioan Szabo and Ștefan Șopterean must have sustained non-pecuniary damage – such as distress and frustration resulting from the protracted length of the proceedings before the domestic courts – which is not sufficiently compensated for by the finding of a violation of the Convention. Therefore,

ruling on an equitable basis, the Court awards them EUR 1,800 each in respect of non-pecuniary damage.

60. The wife of applicant Marin Rusu claimed EUR 250,000 in respect of non-pecuniary damage in a letter dated 3 May 2010 which she did not sign.

61. The Government requested the Court to reject that claim as Mr Rusu's wife was not formally authorised to represent the applicant in the proceedings before the Court.

62. The Court reiterates that, in accordance with Rule 45 of the Rules of Court, where applicants choose to be represented before the Court, a power of attorney or written authority to act on their behalf must be supplied by their representative. The Court has previously found it essential for representatives to demonstrate that they have received specific and explicit instructions from the alleged victims within the meaning of Article 34 of the Convention on whose behalf they purport to act (see *Post v. the Netherlands* (dec.), no. 21727/08, 20 January 2009, and *Çetin v. Turkey* (dec.), no. 10449/08, 13 September 2011). Therefore, in view of the failure to fulfil the formal requirements, the Court rejects the applicant Marin Rusu's claim in respect of non-pecuniary damage.

B. Default interest

63. 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 under Article 6 § 1 of the Convention concerning the length of the proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicants Ioan Szabo and Ştefan Şopterean, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,800 (one thousand eight hundred euros) each, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;

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 18 March 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President