THIRD SECTION

**CASE OF IULIAN POPESCU v. ROMANIA**

*(Application no. 24999/04)*

JUDGMENT

STRASBOURG

4 June 2013

FINAL

04/09/2013

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

In the case of Iulian Popescu v. Romania,

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

Josep Casadevall, *President,* Alvina Gyulumyan, Ján Šikuta, Luis López Guerra, Nona Tsotsoria, Kristina Pardalos, Valeriu Griţco, *judges,*and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 14 May 2013,

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

PROCEDURE

1.  The case originated in an application (no. 24999/04) 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, Mr Iulian Popescu (“the applicant”), on 13 April 2004.

2.  The Romanian Government (“the Government”) were represented by their Agents, Mrs Beatrice Rămăşcanu and then Mrs Irina Cambrea, of the Ministry of Foreign Affairs.

3.  The applicant alleged, in particular, the lack of a fair trial in the criminal proceedings against him and an infringement of his right to respect for his privacy and of the right of individual petition.

4.  On 6 September 2005 the application was communicated to the Government. On 13 January 2011 it was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5.  As Mr Corneliu Bîrsan, the judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court), the President of the Chamber appointed Mrs Kristina Pardalos to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court).

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

6.  The applicant was born in 1953 and lives in Bucharest.

A.  The events of the night of 9/10 February 2004

7.  In the night of 9 February 2004 a police patrol surprised an ongoing theft from a store in Râmnicu-Sărat. They drove in the direction of the store and saw a man in front of it. When seeing the police car approaching, the man ran inside, supposedly to warn his accomplices that the police was coming and then ran away. Shortly after, two men came out from the store and fled in different directions. Inside, the police found two big bags with items from the store which proved to have been abandoned by the suspects when they had run away.

8.  The police agents went in pursuit. They saw one of the suspects getting into a white *Oltcit* car, whose driver started the car and roared off to the small adjacent streets. The police agents could not see the plate numbers or the driver’s face.

A police agent managed to apprehend another one of the suspects. After taking him to the police station, they returned to the premises to search for the white car in the neighbourhood. They found the applicant sitting in his car, a white *Olcit*, in a parking lot. They noticed that the car’s engine was warm. They arrested the applicant on suspicion of having participated in the theft.

B.  The criminal investigation

9.  The applicant was interrogated at the police station the same night. He denied any involvement in the theft, saying that he was on his way to Târgu Neamţ from his home in Bucharest, on business.

The other suspect who had been apprehended in the night of the events also denied the participation in the theft. Both he and the applicant denied knowing each other.

10.  The next morning, the police agents searched the rear boot of the applicant’s car. They found different tools which were deemed suitable to be used in breaking and entering. The applicant alleged that he was using them for repairing the car.

11.  The two men were placed in detention pending trial where they remained throughout the proceedings.

12.  On 4 March 2004, based on the evidence gathered on the spot, the technical expert reports and the statements made by the police agents who had participated in the events, the prosecutor committed the applicant and the other suspect to trial for participation in theft.

C.  The procedure before domestic courts

13.  On 6 April 2004 the Râmnicu‑Sărat District Court convicted the applicant for aiding and abetting in committing aggravated theft and sentenced him to four years’ imprisonment.

14.  The court based its decision on the evidence produced by the prosecutor as well as on the witness testimony given in open court. It heard evidence from the police agents present at the crime scene and from a member of the neighbourhood watch who in the night of the crime, had seen the applicant’s car with three persons wearing black clothes and hats in front of it. All witnesses were proposed by the prosecution and had previously given statements before the prosecutor during the investigation.

The applicant, who was defended by court-appointed counsel, did not ask for further evidence to be adduced before the court. He denied the commission of any crime and maintained the same position as during the criminal investigations.

15.  The defendants appealed against the District Court’s judgment, claiming their innocence. Their appeal was dismissed by the Buzău County Court 8 June 2004. Their subsequent appeal on points of law was also dismissed in a final decision of 19 July 2004 by the Ploiești Court of Appeal.

D.  The communications with the Court

16.  On 13 April 2004 while in detention pending trial, the applicant lodged with the Court a complaint about the alleged lack of fairness of the domestic proceedings. He joined to his application copies of the indictment and of the court decisions rendered in his case.

17.  On 2 August 2004, after receiving the general instructions from the Court concerning his application, he wrote a letter to the Râmnicu‑Sărat District Court requesting simple copies (not certified) of certain documents from his criminal file, notably witness testimonies and reports concerning the material evidence gathered by the prosecution and the technical expert reports. He mentioned that they were needed for his application with the Court.

18.  On 16 August 2004 the District Court’s Registry asked him to send proof of payment of a legal tax (*taxa judiciară*) of 7,000 Romanian lei (ROL) and a legal stamp (*timbru judiciar*) of ROL 1,500 for each page to be copied. They invoked Law no. 146/1997 on stamp duty (“Law no. 146/1997”).

19.  On 21 September 2004 the applicant sent to the District Court 100 legal stamps of ROL 1,500 each and informed the registrar that he was unable to provide a legal tax.

20.  On 27 September 2004 the registrar returned to the applicant all the legal stamps he had sent and asked him to complete the stamp duties. He also advised the applicant to send a member of his family to the District Court’s Registry in order to obtain copies of the documents requested, because the cost of the photocopying would also be due.

21.  The applicant renewed his request for copies from the criminal file, but on 6 October 2004 the District Court’s Registry reiterated its previous answers.

22.  On 17 November 2004 the applicant informed the Court that he could not obtain copies of the documents. He also explained that he could not send a member of his family to the District Court’s Registry.

23.  Those documents were made available to the Court by the Government in the annex to their observations sent on 8 December 2005.

24.  The applicant was released from prison on 11 September 2006.

II.  RELEVANT DOMESTIC LAW

25.  The relevant provisions of Law no. 146/1997 and the subsequent legislation on stamp duties are explained in *Weissman and Others v. Romania*, no. 63945/00, §§ 21-22, ECHR 2006‑VII (extracts) and *Postolache v. Romania (no. 2)*, no. 48269/08, §§ 23-26, 6 July 2010.

26.  In addition, Article 3 ţ) of Law no. 146/1997 states that the requests for certified copies of documents from a court file are subject to a stamp duty of ROL 2,000 for each page. According to Article 13 of that Law all other requests and actions which may not be evaluated on a pecuniary basis are subject to a stamp duty of ROL 20,000.

27.  The relevant provisions of the Constitution and their applicability in the domestic law are described in *Varga v. Romania* (no. 73957/01, §§ 27 and 29, 1 April 2008).

THE LAW

I.  ALLEGED VIOLATION OF ARTICLES 8 AND 34 OF THE CONVENTION

28.  The applicant complained that he could not obtain documents from his criminal file which were relevant for his application with the Court. He relied, in substance on Articles 8 and 34 of the Convention.

29.  The Court notes, at the outset, that the complaint falls within the sphere of the second sentence of Article 34 of the Convention (see also *Gagiu v. Romania*, no. 63258/00, §§ 83 and 85, 24 February 2009). It will therefore examine the complaint exclusively under Article 34. Furthermore, the Court reiterates that a complaint under Article 34 of the Convention is of a procedural nature and therefore does not give rise to any issue of admissibility under the Convention (see *Vladimir Sokolov v. Russia*, no. 31242/05, § 75, 29 March 2011).

30.  Article 34 reads as follows:

“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

A.  The parties’ submissions

31.  The applicant argued that the domestic court had refused to release copies of documents that he needed in order to substantiate his complaints with the Court.

32.  The Government contended that the applicant suffered no interference with his right of petition, as no authority had refused to release the requested documents. Even assuming that such interference had occurred, they considered that it had been provided by law, namely Law no. 146/1997, had been aimed at recovering partially the costs of the public legal service, thus protecting the public order, and had been necessary in a democratic society. They also pointed out that the costs of this operation had been minimal for the applicant. They lastly considered that the applicant had already been in the possession of the most relevant documents of the criminal trial which he had submitted to the Court along with his initial application.

B.  The Court’s assessment

1.  General principles

33.  Although the object of Article 34 is essentially that of protecting an individual against any arbitrary interference by the authorities, it does not merely compel States to abstain from such interference. In addition to this primarily negative undertaking, there are positive obligations inherent in Article 34 requiring authorities to furnish all necessary facilities to make possible a proper and effective examination of applications. For instance, under certain circumstances authorities may be under obligation to provide applicants with copies of documents necessary for examination of their applications. Such an obligation will arise in the situations of particular vulnerability and dependence of applicants who are unable to obtain documents needed for their files (see *Iambor v. Romania (no. 1)*, no. 64536/01, § 216, 24 June 2008; and *Naydyon v. Ukraine*, no. 16474/03, § 63, 14 October 2010).

34.  In particular, persons held in detention, with limited contact with their family or the outside world, may find themselves in a vulnerable position when they are dependent, in their communication with the Court, on the authorities (see, *mutatis mutandis*, *Trosin v. Ukraine,* no. 39758/05, § 54, 23 February 2012 and *Vladimir Sokolov*, cited above, § 77).

35.  Furthermore, the fact that the Government submitted copies of the relevant documents thus enabling the Court to examine the applicant’s complaints does not preclude the Court from ruling on the issue arising under Article 34 (see *Naydyon*, cited above, § 68).

2.  Application of the principles to the present case

36.  The Court notes that the applicant brought a claim under Article 6 § 1 of the Convention based on the alleged unfairness of the criminal proceedings against him. He mainly argued that his conviction had not been founded on solid evidence. In this context, the documents that he sought from the criminal file were necessary to support his claims. The applicant duly informed the domestic court that he needed the documents in order to substantiate his application lodged with the Court (see paragraph 17 above).

37.  Under Article 20 of the Romanian Constitution, the authorities are bound to respect the international obligations assumed by the State in the field of human rights, which take precedence when they are more favourable than the internal regulations. Therefore, the District Court should have been aware of the State’s positive obligation to support the applicant in the exercise of his right to petition.

38.  The Court will therefore examine the domestic authorities’ response to the applicant’s request. At the outset, it is to be noted that the applicant was never fully informed of the total cost of the operation, as the District Court’s Registry did not communicate the exact number of pages that needed to be copied or the fee for photocopying a page. Therefore, even assuming that the amount involved had some relevance to the case, it is pure speculation whether the cost of the operation had been minimal for the applicant, as implied by the Government.

39.  The Court considers that the domestic authority did not take into consideration the applicant’s vulnerable position, being held in prison, away from his family (see paragraph 34 above and the case-law cited there). While it is true that it did not refuse as such the applicant’s request, the domestic court responded rigidly, making a general reference to the law on stamp duties but with no concrete explanations on how to pay them or to ask for an exemption, a reduction or payment by instalments (see also paragraph 26 above). The domestic court failed to offer such information even when informed by the applicant of the impossibility to pay the legal tax.

40.  Assuming that the domestic court considered itself under no obligation to offer the applicant such information, the Court notes that it nevertheless advised the applicant on how to proceed by asking him to seek help from the family. However, such an advice did no more than put him on a false route, as there is no legal obligation for the family to provide a prisoner with the money to pay stamp duties (see *Iordache v. Romania*, no. 6817/02, § 39, 14 October 2008).

41.  Furthermore, it is to be noted that, although aware of the applicant’s position, the domestic authority did not offer him the information in a stride. Indeed, in a first letter it asked him to pay the stamp duties and only in a second letter mentioned the obligation to pay the costs of the photocopying without even mentioning the price of that service. It thus failed to allow him to anticipate from the beginning the total costs of his request. Moreover, this approach, of adding costs and conditions by each new letter, could have had a dissuasive effect on the applicant, even if not meant so by the local court.

42.  It is to be noted that because of the manner in which the authorities dealt with the applicant’s request, the Court itself had to ask the Government to provide the relevant documents (see *Naydyon*, cited above, § 65).

43.  The foregoing considerations are sufficient to enable the Court to conclude that the respondent State has failed to comply with its obligations under Article 34 of the Convention with respect of the refusal to provide the applicant with copies of documents needed to substantiate his application to the Court.

II.  ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

44.  Invoking in substance Article 6 of the Convention, the applicant complained that the criminal proceedings before the national courts had lacked the necessary requirement of fairness, and in particular that he had been convicted in the absence of any solid proof of guilt.

45.  The Government contested the applicant’s allegations and averred that the criminal proceedings had been fair and the applicant’s rights of defence had been fully respected by the domestic courts.

46.  The Court notes that the applicant’s allegations are not substantiated by the evidence in the file. In particular, it observes that the domestic courts based their decisions on a significant body of evidence which was heard in open court and which the applicant had a fair chance to challenge. While it is true that the evidence produced before the courts was adduced exclusively by the prosecution, it is to be observed that the applicant’s counsel did not request that further evidence be presented on behalf of his client (see paragraph 14 above). Furthermore, the applicant did not contest before the domestic authorities the quality of the representation offered to him by the court-appointed lawyer. The Court also notes that the applicant maintained his initial declarations throughout the proceedings, denying systematically any implication in the theft.

47.  As for the manner in which the domestic courts interpreted the evidence, the Court reiterates that, in the absence of any indication of arbitrary, this matter falls exclusively within the jurisdiction of the domestic authorities which are better suited to examine the facts in the light of the evidence produced before them (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999‑I).

48.  For these reasons, 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 a violation of Article 6 of the Convention.

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

III.  OTHER ALLEGED VIOLATIONS OF THE CONVENTION

49.  In a letter which arrived at the Court on 21 February 2011, the applicant complained about the conditions of his detention.

50.  The Court notes, nevertheless, that he was released from prison on 11 September 2006, thus more than six months before the date when he lodged his complaint (see paragraph 24 above).

51.  It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

IV.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

52.  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.”

53.  The applicant made no claims for the alleged violations of Articles 8 and 34 of the Convention. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1.  *Holds* that Romania has failed to comply with its obligations under Article 34 of the Convention;

2.  *Declares* the remainder of the application inadmissible.

Done in English, and notified in writing on 4 June 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada Josep Casadevall  
 Registrar President