

FOURTH SECTION

**CASE OF DUMITRU GHEORGHE v. ROMANIA**

*(Application no. 33883/06)*

JUDGMENT

STRASBOURG

12 April 2016

*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 Dumitru Gheorghe v. Romania,**

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

András Sajó, *President*,  
Vincent A. De Gaetano,  
Nona Tsotsoria,  
Krzysztof Wojtyczek,  
Egidijus Kūris,  
Iulia Antoanella Motoc,  
Gabriele Kucsko-Stadlmayer, *judges*,  
and Françoise Elens-Passos, *Section Registrar*,

Having deliberated in private on 8 March 2016,  
Delivers the following judgment, which was adopted on that date:

## PROCEDURE

1. The case originated in an application (no. 33883/06) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian national, Mr Dumitru Gheorghe (“the applicant”), on 8 August 2006.

2. The applicant was represented by Mr I. Oprea Popa, a lawyer practising in Bucharest. The Romanian Government (“the Government”) were represented by their Agent, Mrs I. Cambrea, from the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that he had been denied access to court.

4. On 27 January 2011 the application was communicated to the Government.

## THE FACTS

### Article I. I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1944 and lives in Bucharest.

6. In 1984, the applicant, a professional photographer, took a number of photographs of landscapes in Călărași County that had been commissioned for commercial publication in an album. The album was not, in the event, published, but the photographs were retained by F.G., who was in charge of the album project.

7. In 2004, the applicant discovered by chance that an album named “Călărași County” had been published by a company run by F.G. in 1999. He noticed that of the 143 photographs of landscapes from Călărași County contained in the album, 135 were photographs taken by him and left in the possession of F.G. in 1984. However, F.G. was credited as the photographer, and not the applicant.

8. The applicant lodged a criminal complaint against F.G. with the Romanian Copyright Office (“the RCO”) on 25 February 2004, claiming that F.G. had committed one of the offences provided for by Articles 140-142 of Law 8/1996 on copyright and neighbouring rights

("Law 8/1996"). He joined a civil action to the criminal complaint, seeking compensation amounting to EUR 50,000 for pecuniary and non-pecuniary damage.

9. On 29 June 2004, a report was drawn up by the RCO following an investigation carried out at the headquarters of the company that had published the album.

10. After finalising its investigation and concluding that the provisions of Article 140 § 1 let. a) of Law 8/1996 had been infringed, the RCO forwarded the applicant's complaint, together with the accompanying documents, to the Călărași Police Department on 5 November 2004.

11. On 8 November 2004, an expert report was ordered by the Călărași Police Department. The report, dated 24 December 2004, confirmed that the photographs had been taken by the applicant.

12. On 21 April 2005, the prosecutor's office attached to Călărași County Court decided not to open a criminal investigation on the ground that the limitation period for the punishment of F.G. had expired.

13. The applicant lodged a complaint against that decision with the Chief Prosecutor. The latter confirmed the decision not to open an investigation.

14. A complaint lodged by the applicant with the Călărași County Court was allowed on 24 November 2005. The court held that the period between 27 April 1999 (the date of publication of the album) and 25 February 2004 (the date on which the applicant lodged his complaint with the RCO) was less than five years – the term of limitation provided by law. It added that the procedure stipulated by Law 8/1996 was a special procedure for the punishment of offences related to copyright, which was justified by the complexity and exceptional nature of such cases. Therefore, the court held that in the light of the special provisions applicable to the file, the date from which the term of limitation of five years should have been calculated was not the date on which the RCO forwarded the file to the police (5 November 2004) but the date on which the applicant lodged his complaint with the RCO (25 February 2004).

15. Accordingly, the Călărași County Court remitted the file to the prosecutor's office in order for it to initiate criminal proceedings.

16. On 17 February 2006, the Bucharest Court of Appeal allowed an appeal by the prosecutor against the judgment of 24 November 2005 and held that the case had become time-barred, given that the police had received the criminal complaint only on 5 November 2004 – more than five years after the offence had been committed. No reference was made to the civil complaint lodged by the applicant.

## Article II. II. RELEVANT DOMESTIC LAW

17. The relevant provisions of Law 8/1996 read as follows:

**Article 138**

“The duties and powers of the Romanian Copyright Office shall be:

...

d) to observe and monitor, at the request and expense of the holders of protected rights, activities that might give rise to infringements of the legislation on authors’ rights and neighbouring rights;

...

f) to issue statements of their findings on infringements of the law, under the terms provided by the Code of Criminal Procedure, or, in the case of certain offences, to notify the bodies competent to initiate criminal proceedings.”

**Article 139**

“(1) Violations of the rights set forth and guaranteed by the present law shall entail civil or criminal responsibility, or responsibility for committing a contravention, as the case may be, under the law. The procedural provisions shall be those provided under the present law, in conjunction with those of the ordinary law.”

**Article 140**

“An offence punishable by imprisonment of between one month and two years, or a fine of between two hundred thousand and three million lei, with the exception of more serious offences, shall be found to have been committed if a person who does not have the authorisation or consent, as the case may be, of the holder of the rights acknowledged by the present law:

- a) makes a work publicly known ...

**Article 144**

“The criminal procedure shall be set in motion in the case of the offences listed under Articles 140, 141, and 142 paragraphs a), c), j), l), n), and o) by a preliminary complaint [being lodged] by the injured party within the meaning of the present law.”

18. The provisions of the Criminal Code setting out the method of calculating the periods of limitation, as in force at the relevant time, read as follows:

**Art. 122**

“(1) Limitation periods for criminal responsibility are as follows:

...

- d) five years, when the law provides for imprisonment of more than one year, but no

more than five years, for the offence committed;

...

(2) The terms mentioned in the present article are calculated from the date on which the offence was committed”.

#### **Art. 123**

“(1) The limitation periods provided for in Article 122 shall be interrupted by any procedural action that has been initiated and has been communicated to the defendant during the criminal trial.

(2) The limitation periods shall be renewed following any interruption.”

19. The relevant provisions of the CCP in force at the time of the relevant facts read as follows:

#### **Article 14**

“The aim of a civil action is to establish the civil liability of the accused and the liability for the payment of damages of any other person who may be held legally responsible.

A civil action can be brought together with a criminal action in a criminal trial, by way of joining the proceedings.”

#### **Article 22**

“The findings contained in a final judgment of the criminal court concerning the issue whether the act in question was committed and the identification of the perpetrator and establishment of his guilt are binding on the civil court when it examines the civil consequences of the criminal act.”

#### **Article 346**

“(1) In the event of a conviction or an acquittal, or the termination of the criminal trial, the court shall deliver a judgment in which it also decides on the civil action.”

## **THE LAW**

### **Article III. I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION**

20. The applicant complained that by dismissing his criminal complaint and joined civil action without an examination on the merits, the domestic court of last resort deprived him of his right of access to a court. He relied

on Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

### **Section 3.01            A. Admissibility**

21. The Court notes that the application 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.

### **Section 3.02            B. Merits**

#### *(a) 1. The parties' submissions*

22. The applicant submitted that a direct consequence of the domestic decisions by which his claim was dismissed as time-barred was his loss of copyright over his photographs and slides. Subsequently, in August 2005 F.G. had republished a book containing his photographs.

23. The applicant argued that the domestic courts' restrictive interpretation of the starting point for calculating the time-limit for lodging his claims had, in breach of Article 6 § 1 of the Convention, deprived him of access to a remedy that would have enabled him to obtain the compensation claimed.

24. The Government submitted that the domestic courts' interpretation of the applicable domestic law was not unreasonable and that there had been no violation of Article 6 § 1 of the Convention. Referring to the reasoning of the Bucharest Court of Appeal, they argued that the applicant should have lodged his complaint within the time-limit stipulated in the Criminal Procedure Code – namely within five years of the publication by F.G. of the book on 27 April 1999.

#### *(b) 2. The Court's assessment*

25. The Court reiterates that the right of access to the courts, as secured by Article 6 § 1, is not absolute but may be subject to limitations; these are permitted by implication, since the right of access by its very nature calls for regulation by the State, which may vary in time and in place according to the needs and resources of the community and of individuals. In laying down such regulation, the Contracting States enjoy a certain margin of appreciation, but the final decision as to observance of the Convention's requirements rests with the Court. Limitations on the right to court are compatible with Article 6 only if they do not restrict or reduce the access

left to the litigant in such a way or to such an extent that the very essence of the right is impaired; lastly, such limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Freitag v. Germany*, no. 71440/01, § 35, 19 July 2007; and *Stanev v. Bulgaria* [GC], no. 36760/06, § 230, ECHR 2012).

26. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see *Edificaciones March Gallego S.A. v. Spain*, 19 February 1998, § 33, Reports 1998-I). This applies in particular to the interpretation by courts of rules of a procedural nature, such as time-limits governing the submission of documents or lodging of appeals (see, among other authorities, *Pérez de Rada Cavanilles v. Spain*, 28 October 1998, § 43, Reports 1998-VIII).

27. As regards the present case, the Court firstly notes that the requirement to lodge a judicial claim within a statutory time-limit is not, in itself, incompatible with Article 6 § 1 of the Convention. The Court has held on numerous occasions that such a requirement pursued a legitimate aim of proper administration of justice and of compliance, in particular, with the principle of legal certainty (see, for example, *Pérez de Rada Cavanilles*, cited above, § 45, and *Miragall Escolano and Others v. Spain*, no. 38366/97, § 33, ECHR 2000-I).

28. In accordance with those principles, while the right to bring an action is of course subject to statutory requirements, the courts are bound to apply the rules of procedure, avoiding both excessive formalism that would impair the fairness of the proceedings and excessive flexibility such as would render nugatory the procedural requirements laid down in statutes (see *Walchli v. France*, no. 35787/03, § 29, 26 July 2007). In fact, the right of access to court is impaired when the rules cease to serve the aims of legal certainty and the proper administration of justice and form a sort of barrier preventing the litigant from having his or her case determined on the merits by the competent court (see *Efstathiou and Others v. Greece*, no. 36998/02, § 24, 27 July 2006).

29. Turning to the facts of the present case, the Court notes that the ground cited by the domestic investigative bodies and the Bucharest Court of Appeal for dismissing the applicant's joint action was that his complaints were lodged outside the period of five years provided by law for the punishment of offences related to copyright. The limitation period of five years, calculated from the date on which the offence was committed, irrespective of the date on which the aggrieved party first acquired knowledge of the offence, may be perceived as rather short.

30. However, the Court notes that the applicant submitted a criminal complaint, to which he added a civil complaint, with the RCO before the expiry of the limitation period of five years applicable to copyright infringement. The applicant submitted that criminal complaint on 25 February 2004 – that is to say, two months before 27 April 2004, on which date the limitation period of five years was due to expire. Even though the RCO forwarded the complaint and the accompanying documents to the police only on 5 November 2004, the date that should have been taken into account by the court was 25 February 2004.

31. Moreover, the Court considers that the fact that the investigation conducted by the RCO lasted for more than eight months should not be imputable to the applicant.

32. The Court notes that under the relevant domestic legislation applicable at the time in question, the applicant could not directly lodge a complaint with the ordinary judicial bodies. As the procedure applicable to copyright infringement was a special procedure necessitated by the complex nature of this kind of offence, only the RCO was competent, under the applicable law, to conduct a preliminary investigation into an alleged copyright infringement and to notify those bodies competent to initiate criminal proceedings for copyright infringement. The domestic court of first instance arrived at a similar conclusion in its judgment of 24 November 2004 (see paragraph 14 above).

33. The Bucharest Court of Appeal, which allowed the appeal lodged by the prosecutor and dismissed the applicant's criminal complaint, interpreted the applicable provisions in a different manner. Moreover, the domestic court did not examine the civil claim joined to the criminal complaint. In this connection, the Court notes that pursuant to Article 346 § 1 of the CCP a criminal court did have to settle a civil action if it decided to discontinue the criminal proceedings.

34. In the light of the above, the Court concludes that the interpretation of the time-limit by the court of last resort, followed by the non-examination of the joined civil claim, precluded a full examination of the merits of the case and impaired the very essence of the applicant's right of access to a court for the purpose of the determination of his civil rights and obligations.

35. It follows that the applicant's right of access to court has been breached and that there has therefore been a violation of Article 6 § 1 of the Convention.

#### Article IV. II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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.”

#### **Section 4.01            A. Damage**

37. Without making a separate request in respect of pecuniary and non-pecuniary damage the applicant claimed EUR 50,000 euros in respect of both. His claim in respect of pecuniary damage arose from the copyright infringement.

38. The Government submitted that there was no causal link between the alleged infringement of the right of access to a court and the pecuniary damage claimed by the applicant.

39. 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 awards the applicant EUR 3,600 in respect of non-pecuniary damage.

#### **Section 4.02            B. Costs and expenses**

40. The applicant also claimed EUR 1,300 in respect of the costs and expenses incurred before the domestic courts and EUR 900 in respect of those incurred before the Court. He submitted receipts for translation amounting to a total of EUR 70.

41. The Government argued that the applicant’s claim relating to costs and expenses was excessive, unfounded and unsubstantiated.

42. 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 are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 70 covering costs under all heads.

#### **Section 4.03            C. Default interest**

43. 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 application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the applicant's lack of access to a court;
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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
    - (i) EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 70 (seventy euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
  - (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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 April 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos  
Registrar

András Sajó  
President