

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES



Contact: John Darcy
Tel: 03 88 41 31 56

Date: 12/04/2018

DH-DD(2018)390

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1318th meeting (June 2018) (DH)

Item reference: Action report (10/04/2018)

Communication from Romania concerning the case of Patrascu v. Romania (Application No. 7600/09)

* * * * *

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1318^e réunion (juin 2018) (DH)

Référence du point : Bilan d'action

Communication de la Roumanie concernant l'affaire Patrascu c. Roumanie (requête n° 7600/09)
(anglais uniquement)

DGI

10 AVR. 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Action report

Pătrașcu v. Romania

(Application no. 7600/09, judgment of 14 February 2017, final on 14 May 2017)

I. Introductory summary of the case

This case concerns the unfairness of criminal proceedings which ended with the applicant's conviction for drug trafficking (violation of Article 6, paragraph 1).

The Court found that the domestic courts had not properly examined the applicant's plea of entrapment and had not analysed the absence of evidence concerning the prior involvement of the applicant in drug trafficking.

The police operations were carried out starting from 23 February 2007 and the final decision of condemnation was given on 22 October 2008.

II. Individual measures

A. Just satisfaction

In the instant case, the European Court awarded 2.400 EUR in respect of non-pecuniary damage. The just satisfaction was duly paid to the applicant within the legal deadline.

B. Reopening of the impugned proceedings

Based on the European Court's judgment, the applicant requested the reopening of the impugned proceedings under Article 465 of the Code of Criminal Procedure (CCP). The case file was registered before the Buzau County Court and has the first hearing on 26 October 2017.

At the same time, the Government put forward that, until present, the applicant did not request the publication of the judgment at issue in the Official Gazette, as states Article 11 point 2 of the Ordinance no. 94/1999 regarding the participation of Romania at the proceedings before ECHR and the Committee of Ministers.

B. Reopening of the impugned proceedings

At the time the judgment of the European Court was delivered, the applicant was no longer serving the prison sentence imposed on him in the context of the criminal proceedings at issue, as he was released on probation on 23 August 2011.

Based on Article 465 of the Code of Criminal Procedure, the applicant requested the reopening of the impugned proceedings, following the European Court's judgment. On 2 March 2018, the Buzau County Court allowed the applicant's request and ordered a re-trial. According to the information on its website, on the same date, the Buzau County Court decided to take new evidence in the

case, by hearing the undercover agents involved, the applicant and a witness and by requesting the relevant prosecutors' office to disclose the information concerning the applicant's alleged involvement in drug trafficking based on which the undercover operation had been set up and whether that information had been received from a private individual or from police sources (http://portal.just.ro/114/SitePages/Dosar.aspx?id_dosar=1140000000065221&id_inst=114).

In the light of the above, the Government consider that that no further individual measures are required in the present case

III. General measures

The Government note that the origins of the violation of Article 6 of the Convention in the present case are the absence of any indication of the applicant being involved in drug-related crimes at the time of authorization of the undercover operation and the absence of an appropriate analysis of the applicant's plea of entrapment.

The Government insist that the acknowledgment of violation of Article 6 does not stem out of the normative framework, but from the inconsistency of the reasoning given in relation to existent legal prescriptions.

In this context, the Government consider that these findings are similar to those identified in the cases *Constantin and Stoian v. Romania*, application no. 23782/06, and *Bulfinisky v. Romania*, application no. 28823/04.

In the light of the above, the Government refer to the action report submitted in the cases *Constantin and Stoian* and *Bulfinisky* and also to the final resolution CM/ResDH(2013)40 adopted by the Committee of Ministers on March the 7th 2013.

Having regard to the modification of the relevant national legislation that occurred on February the 1st 2014, the Government submit that the new Code of Criminal Procedure follows and reinforces the guarantees instituted by the ancient Code of Criminal Procedure and by the Law No. 143/2000 on the prevention and control of illicit drug traffic and use, guarantees regarding the use of undercover agents and the obligation of the courts to analyse all the relevant elements brought before them. Also, the Government consider that in none of the aforementioned judgments the Court did not call into question the legal framework on the investigation of drug-trafficking and related offences.

IV. Conclusions

Considering the aforementioned arguments, the Government point out that, at this moment, no other individual or general measures are to be taken in the present case and that Romania complied with the obligations imposed under Article 46, paragraph 1 of the Convention. The Government therefore invite the Committee of Ministers to close the examination of the present case.

Red.: CM