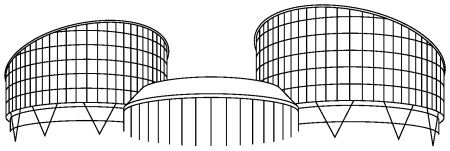

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF RUPA AND ŢOMPI v. ROMANIA

(Application no. 60272/09)

JUDGMENT

STRASBOURG

2 May 2017

This judgment is final but it may be subject to editorial revision.

In the case of Rupa and Țompi v. Romania,

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

Paulo Pinto de Albuquerque, *President,*
Iulia Motoc,
Marko Bošnjak, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 4 April 2017,

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

PROCEDURE

1. The case originated in an application (no. 60272/09) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Romanian nationals, Mr Iosif Gabriel Rupa ("the first applicant") and Mrs Rita Țompi ("the second applicant"), on 4 November 2009.

2. The applicants were represented by Mr I. Lazăr, a lawyer practising in Alba-Iulia. The Romanian Government ("the Government") were represented by their co-agent, Ms I. Cambrea, and their Agent, Ms C. Brumar, from the Ministry of Foreign Affairs.

3. On 23 January 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The first applicant was born in 1992 and is currently serving a prison sentence in Aiud Prison, while the second applicant is his mother and lives in Aiud.

5. The first applicant was arrested on 24 October 2008 on suspicion of multiple thefts, together with several other accused. He was 15 years old at the time. The prosecutor ordered that he be remanded in custody for ten hours and applied for him to be placed in pre-trial detention for fifteen days.

6. The Alba-Iulia District Court ("the District Court") allowed the prosecutor's office's application the same day. The reasons adduced by the court to justify the first applicant's detention were the strong suspicion that the offences had been committed, as well as the repeated nature and the gravity of the offences.

7. In assessing the impact on the public the first applicant's release from detention would have, the court stressed that the acts had allegedly been committed by a significant number of perpetrators over a long period of time. It noted that prior measures against the first applicant, such as a warning and two administrative fines, had been unable to prevent him from committing further thefts.

8. In an indictment dated 18 November 2008 the prosecutor's office attached to the District Court charged the first applicant and six other defendants with thirteen counts of theft allegedly committed between 25 April and 9 September 2008.

9. The first applicant's pre-trial detention was regularly extended by interlocutory judgments of the District Court.

10. The reasons adduced by the court were that, although he was a minor, there was a reasonable suspicion that he was guilty of the thefts and would pose a danger to public order, given that he had developed a habit of stealing. His age was not considered to be an argument in favour of his release pending trial. Furthermore, in one of the interlocutory judgments it was mentioned that he did not have an occupation or place of work and thus would be unable to support himself by honest means – there was therefore a risk that he would continue to commit theft.

11. The first applicant lodged appeals on points of law against the extension of his detention. He claimed, *inter alia*, that he was a minor, that he had committed the offences under the influence of his co-defendants, who were adults with a criminal record, and that his detention among adults without access to education had had a negative impact on him. He also stated that, under national law and the Court's case-law, detention of a minor should be a preventive measure of last resort.

12. The Alba County Court consistently dismissed the first applicant's appeals, endorsing the reasoning of the lower court for keeping him in detention.

13. The first applicant lodged a request for his pre-trial detention to be replaced with alternative measures, such as a ban on him leaving town. He said that he had already been detained for 180 days and therefore the initial reasons for extending his detention no longer applied. He also submitted that he had had time to understand the consequences of his criminal behaviour and had changed. The second applicant and the first applicant's uncle made written statements promising to take responsibility for supervising him if released, and presented to the court a job offer that he could take up if released.

14. On 15 June 2009 the District Court dismissed the first applicant's request. It had regard to the gravity of the offences allegedly committed by him, the severity of the sentence that could be applied to him and the risk of him reoffending. The judgment was upheld by the Alba County Court,

which dismissed the first applicant's appeal on points of law for the same reasons.

15. On 23 November 2009 the first applicant was eventually convicted of theft and sentenced to five years' imprisonment by the District Court. On 17 May 2010 an appeal on points of law by him against this judgment was dismissed by the Alba Court of Appeal.

16. According to information submitted by the Government, the first applicant was detained in prisons for adults between 24 October 2008 and 9 March 2010, but did not share his cells with adult prisoners. Moreover, between 24 October and 24 November 2008 he occupied an individual cell. His contact with adult prisoners was very limited.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL MATERIALS

17. Article 160^{h} of the Romanian Code of Criminal Procedure, as in force at the time of the events, provided that for minors between 14 and 16 years of age pre-trial detention could only be extended on an exceptional basis.

18. Relevant international materials concerning the deprivation of liberty of juveniles are set out in the cases of *Nart v. Turkey* (no. 20817/04, §§ 17-19, 6 May 2008) and *Blokhin v. Russia* ([GC], no. 47152/06, §§ 79, 82, 86 and 87, ECHR 2016).

THE LAW

I. PRELIMINARY ISSUE

19. The Government noted that the application had been lodged by the first applicant, a minor at the time, and his mother, the second applicant. The first applicant had since reached the age of majority and had been represented before the Court by a lawyer of his choice. They submitted that since the second applicant had not claimed to be victim of a violation of her rights set forth in the Convention, the part of the application concerning her should be dismissed as inadmissible *ratione personae* with the provisions of the Convention.

20. The applicants did not file any submissions in this connection.

21. The Court notes that the application form was lodged jointly by the first and second applicants, at a time when the first applicant was still a minor. The second applicant was his legal representative in the domestic proceedings, but did not bring any complaints of her own before the Court.

22. That being so, the Court considers that the second applicant cannot claim to be a victim within the meaning of Article 34 of the Convention and that the application, in so far as it concerns her, must be declared inadmissible as being incompatible *ratione personae* with the provisions of the Convention pursuant to Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

23. The first applicant complained that his pre-trial detention had been unreasonably long and that the domestic courts had provided stereotyped reasoning for keeping him in detention, without taking into account the fact that he was a minor. He relied on Article 5 § 3 of the Convention, which, in so far as relevant, reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

24. 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 Government's submissions

25. The Government submitted that the first applicant's pre-trial detention had been justified by the evidence against him and the gravity of the offences. The District Court had only ordered the first applicant's pre-trial detention after noting that other more lenient measures, such as a warning and two administrative fines, had been unable to prevent him from committing further thefts. It had also noted that he had been a minor at the time. The domestic courts' decisions extending the first applicant's pre-trial detention had been duly reasoned, providing replies to all the arguments raised by the first applicant and his lawyer.

26. The Government also contended that the domestic authorities had handled the case with diligence. A bill of indictment had been issued four months after the first applicant had been remanded in custody, and the criminal proceedings against him had lasted less than two years.

2. The Court's assessment

27. The Court will examine the first applicant's complaint in the light of the general principles emerging from its case-law concerning the reasonableness of detention within the meaning of Article 5 § 3 of the Convention (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 84-91, ECHR 2016).

28. The Court notes from the outset that the applicant was taken into custody on 24 October 2008 (see paragraph 5 above) and sentenced by the first-instance court on 23 November 2009 (see paragraph 15 above). Consequently, the total duration of his pre-trial detention amounted to one year and one month.

29. The Court also notes that under the important international texts referred to above (see paragraph 18 above) the pre-trial detention of minors should only be used as a measure of last resort; it should be as short as possible and, where detention is strictly necessary, minors should be kept apart from adults (see *Nart v. Turkey* no. 20817/04, § 31, 6 May 2008).

30. Moreover, under the Romanian Code of Criminal Procedure, in force at the relevant time, minors should only be remanded in pre-trial detention on an exceptional basis (see paragraph 17 above).

31. The Court has already found violations of Article 5 § 3 of the Convention where children have been held in pre-trial detention for considerably shorter periods than that spent by the applicant in the present case (see *Selçuk v. Turkey*, no. 21768/02, §§ 30-37, 10 January 2006; and *Nart*, cited above, §§ 29-35). For example, in *Selçuk* the applicant spent four months in pre-trial detention when he was 16 years old and in *Nart* the applicant spent forty-eight days in detention when he was 17 years old. In the present case, the first applicant was detained from the age of 15 and kept in pre-trial detention for a period of one year and one month.

32. Furthermore, the case file reveals that, during his detention, the first applicant was kept in a prison together with adults (paragraph 16 above). However, the Court notes that he did not raise any complaint about this in his initial application and therefore this issue is not within the scope of the present case before the Court.

33. The Court notes that, although the domestic courts repeatedly relied on the validity of the initial grounds justifying the first applicant's detention – the fact that he posed a danger to public order, the severity of the sentence if convicted, the fact that he was a repeat offender and the risk of him committing further offences – they failed, with the passage of time, to give specific reasons why terminating his pre-trial detention would have a negative impact on society or on the investigation (see paragraphs 10 and 14 above).

34. The Court accepts that the first applicant's detention may initially have been warranted by a reasonable suspicion that he had committed serious repeated offences. However, with the passage of time, those grounds

inevitably became less and less relevant. Accordingly, the domestic authorities were under an obligation to examine his personal situation in greater detail and give specific reasons for holding him in custody (see *Tiron v. Romania*, no. 17689/03, § 40, 7 April 2009, and *Leontiuc v. Romania*, no. 44302/10, § 77, 4 December 2012).

35. In the light of the foregoing, the Court considers that in the circumstances of the present case the domestic authorities failed to give comprehensive reasoning for applying a custodial measure to a 15 years old applicant for almost a year and one month which, under both international and domestic law, should have only been used as a measure of last resort.

36. There has therefore been a violation of Article 5 § 3 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The first applicant claimed 1,664 euros (EUR) in respect of pecuniary damage for loss of the salary that he could have earned from the company which had offered him a job between 1 October 2009 and 17 June 2010 (when his conviction was upheld by the appellate court). He also claimed EUR 71,336 in respect of non-pecuniary damage.

39. The Government argued that there was no causal link between the alleged violation and the loss of salary claimed by the first applicant. Moreover, they considered the sum claimed in respect of non-pecuniary damage excessive and argued that a finding of a violation would constitute sufficient just satisfaction.

40. The Court shares the Government's view that there is no causal link between the violation found and the pecuniary damage claimed (see, *mutatis mutandis*, *Khudoyorov v. Russia*, no. 6847/02, § 221, ECHR 2005-X (extracts)), and therefore rejects this claim. On the other hand, it considers that the first applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, the Court awards the first applicant EUR 660 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

41. The first applicant did not ask for a reimbursement of any costs and expenses. The Court therefore makes no award under this head.

C. Default interest

42. 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 5 § 3 of the Convention in respect of the first applicant admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the first applicant, within three months, EUR 660 (six hundred sixty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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 2 May 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti Deputy Registrar	Paulo Pinto de Albuquerque President