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

FOURTH SECTION

DECISION

Application no. 17934/15
Alexandru-Marian IANCU against Romania
and 2 other applications
(see list appended)

The European Court of Human Rights (Fourth Section), sitting on 28 September 2021 as a Committee composed of:

Tim Eicke, *President,*
Faris Vehabović,
Pere Pastor Vilanova, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar*,

Having regard to the above applications lodged on the various dates indicated in the appended table,

Having deliberated, decides as follows:

THE FACTS

1. A list of the applicants is set out in the appendix.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicants, may be summarised as follows.

1. First-instance court's judgment

3. By a judgment of 28 November 2011, the Bucharest County Court convicted Mr Alexandru-Marian Iancu ("the first applicant") and Mr Constantin Mărgărit ("the third applicant") of continuous tax evasion, continuous money laundering and conspiracy to commit crime. By the same judgment Mr Octavian Iancu ("the second applicant") was convicted of continuous money laundering and conspiracy to commit crime. The court held that the applicants had committed the offences between the years 2000 and 2003, in their capacity as managers of various private commercial

companies, by falsifying accounting records in relation to acquisitions of oil products in order to place illegal products on the market and to evade taxes. Other individuals, some of them foreign nationals, were also convicted on similar charges in the same proceedings.

4. All parties appealed against that judgment to the Bucharest Court of Appeal.

2. The appeal proceedings

5. The trial of the appeal before the Bucharest Court of Appeal began in 2012. The applicants submitted copies of interlocutory judgments given at six hearings, as described below.

6. At hearings held on 13 November and 20 December 2013, the bench, formed of Judges S.M. and F.D., ordered the adjournment of the case.

7. By a decision of the court's Governing Board (*Colegiul de conducere*) of 26 June 2014, Judges S.M. and F.D., on leaving office, were replaced on all benches they had sat, pursuant to Articles 21 and 25 of the Internal Regulations of Courts as approved by Decision no. 387/2005 of the Higher Council of the Judiciary (*Consiliul Superior al Magistraturii*).

8. At hearings held on 15 and 19 September and on 1 and 9 October 2014, the bench of judges, comprising Judge C.B. and Judge M.A.M., examined the evidence and heard and replied to requests by the parties as follows.

9. At the hearing of 15 September 2014, the court allowed an application by the prosecutor under Article 249 §§ 1 and 4 of the Code of Criminal Procedure ("the CCP") to extend the seizure measures so that they would relate to all the proceeds derived directly from the offences for which the defendants had been tried. These included assets located in Romania and abroad that belonged to relatives of the defendants or to other identified third parties. The court held that confiscation of the proceeds of crime was an obligation provided for by the law in cases of money laundering and tax evasion. It further held that, in view of the extensive damage allegedly caused by the offences for which the defendants were being tried, those measures were necessary to prevent them from hiding, destroying or selling assets which might serve to cover that damage. The court further ordered that any assets which might be subject to seizure be identified, and that their owners be summoned to appear before the court in order to protect their rights under the civil limb of Article 6 § 1 of the Convention and under Article 1 of Protocol No. 1.

10. At the hearing on 1 October 2014 the applicants, who were present and were represented by lawyers of their choice, contested the above-mentioned seizure measure. They contended that all their personal assets, as well as the assets belonging to the companies they managed, had been acquired lawfully and had no connection with the offences under examination. The court decided that all documents concerning the seized

assets be made available to the parties, who were informed that any interested party could lodge complaints against the seizure measures. For this purpose, the court ordered that a list of the immovable property which had been seized be sent to the National Property Registration Office (*Agenţia Naţională de Cadastru şi Publicitate Imobiliară*) and to the Commercial Companies Office (*Oficiul Naţional al Registrului Comerţului*), in order for the seizure measures to be made public. The list was mentioned in the record of the hearing. Another hearing was scheduled for 9 October so that the seizure measures could be publicised and all those with an interest in the relevant property could come forward and be heard. All parties who had lodged written complaints against the seizure measures were summoned to appear at the next hearing.

11. At the hearing on 9 October 2014, at which all the applicants were present and represented by lawyers of their own choosing, the third applicant challenged Judge C.B. for bias, arguing that she had unlawfully decided to extend the seizure measure in the case. The challenge was rejected by the same bench pursuant to Article 64 § 4 and § 5 of the CCP as it was considered clearly inadmissible since it did not include any grounds for bias provided for by law, but only reflected the applicant's dissatisfaction with the decision taken by the judge in question. At that hearing, all applicants expressed the wish to submit additional written comments. The court postponed the delivery of the judgment in order to allow all interested parties to submit written comments.

12. On 14 October 2014, after examining all the evidence, including various documents and expert reports, and testimony given before it by all the defendants, witnesses, experts and injured parties, in an extensively reasoned judgment of 275 pages, the appeal bench, composed of Judges C.B and M.A.M., confirmed the first and third applicants' conviction of continuous tax evasion, conspiracy to commit crime and continuous money laundering, and sentenced them to twelve and ten years' imprisonment respectively. The second applicant's conviction of conspiracy to commit crime and continuous money laundering was also confirmed and he was sentenced to ten years' imprisonment. Pursuant to Article 552 § 1 of the CCP, which entered into force on 1 February 2014, the judgment was final.

13. The court also decided to maintain the seizure measures. In that connection, it observed that the defendants had committed offences which had resulted in serious financial losses to the State budget. It held that there was ample evidence proving that they had invested the direct proceeds of those crimes in various properties and had been unable to justify their contention that they had acquired the seized assets lawfully. In reply to the arguments raised during the proceedings (see paragraph 10 above), the court held that the procedure for putting in place the seizure measures had been in accordance with the law and that the procedural rights of all interested parties had been respected. In addition, the court held that the seizure of the

direct proceeds of crime, as had occurred in the proceedings before it, was in full compliance with the national legal framework on seizure and with the Constitution.

B. Relevant domestic law

14. The relevant provisions of the CCP in respect of challenges for bias against judges are described in *Alexandru Marian Iancu v. Romania* (no. 60858/15, § 38, 4 February 2020).

15. A detailed description of the domestic law and practice and international documents concerning the seizure and confiscation of proceeds of crime can be found in *Telbis and Viziteu v. Romania* (no. 47911/15, §§ 35-44, 26 June 2018).

16. The relevant provisions of Article 552 § 1 of the CCP can be found in *Borcea v. Romania* ((dec.), no. 55959/14, §§ 38-40, 22 September 2015).

COMPLAINTS

17. The applicants complained under Article 6 § 1 of the Convention that the bench that had delivered the final decision in their case had not been composed lawfully because of the change in composition during the proceedings. The first and third applicants also complained of the lack of impartiality of the new judges appointed to the bench. Under the same Article, the applicants complained of the unfairness of the proceedings due to the rejection of their complaints in connection with the seizure measure.

18. Relying on Article 6 § 3, the applicants complained that they had not had adequate time and facilities to prepare their defence before the appeal court.

19. The applicants also complained under Article 7 of the Convention that they had been convicted on the basis of legal provisions that were not in force at the time the offences had been committed. They also complained that owing to amendments to the CCP while the proceedings against them were pending, they had been deprived of a third level of jurisdiction. Under the same Article, they further complained that another co-defendant had been subject to different treatment since the proceedings against him had been disjoined in a separate set of proceedings.

20. Lastly, the applicants complained in general terms that the change in the composition of the appeal bench and the application of the new provisions of the CCP to the pending proceedings in their case constituted discrimination contrary to Article 14 of the Convention.

THE LAW

I. JOINDER OF THE APPLICATIONS

21. Given the factual and legal similarities of the applications, the Court decides to order their joinder (Rule 42 § 1 of the Rules of Court).

II. COMPLAINTS UNDER ARTICLE 6 OF THE CONVENTION

22. The applicants complained of a breach of their rights under Article 6 § 1 of the Convention, the relevant parts of which read as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an ... impartial tribunal ..."

A. Composition of the Court of Appeal (all applications)

23. The applicants complained that the bench of the Court of Appeal that had delivered the final decision in their case had not been lawfully composed because the judges had been replaced arbitrarily and the principle of random distribution of cases had not been respected.

24. The Court notes that there is no evidence in the file that the applicants ever raised this complaint before the domestic authorities. In any event, assuming that this issue had been raised by the applicants, the Court reiterates that it has previously examined similar complaints and found that the assignment of a case to a particular judge or court fell within the margin of appreciation enjoyed by the domestic authorities in such matters (see *Bochan v. Ukraine*, no. 7577/02, § 71, 3 May 2007). Bearing in mind that in the present case the judges on the appeal bench, on leaving office, were replaced following a decision of the court's Governing Board adopted on the basis of the Internal Regulations of Courts (see paragraph 7 above), and in the absence of any other elements indicating a lack of impartiality of the new judges on the bench (see paragraph 11 above), there is no appearance of a breach of the guarantees set forth by Article 6 of the Convention (see, *mutatis mutandis, Tsanova-Gecheva v. Bulgaria*, no. 43800/12, § 108, 15 September 2015).

25. 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.

B. Impartiality of the Court of Appeal (applications nos. 17934/15 and 18441/15)

26. The third applicant, Mr Constantin Mărgărit, alleged that the appeal bench that had delivered the judgment of 14 October 2014 had lacked impartiality and had unlawfully rejected his challenge for bias.

27. The Court notes that the third applicant challenged Judge C.B. for bias, arguing that she had taken an unlawful decision in the case (see paragraph 11 above). The Court further notes that the appeal bench examined this challenge and adopted a reasoned decision in compliance with the provisions of Article 67 § 5 of the CCP since the situation complained of was not listed among the grounds for disqualification of judges in criminal proceedings as provided by law (see the case-law cited in paragraph 14 above).

28. On the basis of the file, the Court considers that there is no appearance of any objective or subjective lack of impartiality on the part of Judge C.B. It follows that this complaint, as raised by the third applicant, is manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

29. The first applicant also complained of the lack of impartiality of the appeal bench. The Court notes that there is no evidence in the file to indicate that the above-mentioned applicant has exhausted the domestic remedies on this issue; more specifically, there is no evidence that he ever submitted an application to the Bucharest Court of Appeal for the recusal of the bench in question.

30. In view of the above, the Court finds that this complaint, as raised by the first applicant, is inadmissible for non-exhaustion of domestic remedies and must be rejected, in accordance with Article 35 §§ 1 and 4 of the Convention.

C. Fairness of the proceedings (all applications)

31. The applicants complained that the proceedings that ended with the judgment of 14 October 2014 had not been fair because the Bucharest Court of Appeal had unreasonably rejected their complaints against the seizure measure.

32. The Court notes that the applicants, who were present in court at all hearings and were represented by lawyers of their choice, submitted written and oral complaints against the seizure measures, as well as written evidence (see paragraphs 10 and 11 above). Therefore, the Court notes that the documents in the file indicate that the applicants had ample opportunity to present their arguments on points of fact and law before the court, both in writing and orally at hearings. The Court further notes that the domestic court gave thorough reasons for its decision concerning the seizure (see paragraphs 9 and 13 above) and took the necessary steps in order to allow all interested parties to put forward their arguments on this issue (see paragraphs 9-11 above). Moreover, the domestic court also duly examined and responded to the applicants' arguments in the light of the supporting evidence available in the case file and concluded that the seized assets formed part of the direct proceeds of the applicants' criminal activity, and

that the applicants did not show that those assets had been lawfully acquired (see paragraph 13 above). On this point, the Court reiterates that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see, among other authorities, *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, § 49, 20 October 2011).

33. In the light of the above, the Court considers that the Romanian authorities afforded the applicants a reasonable and sufficient opportunity to adequately protect their interests and gave sufficient reasons for their decision, replying to the arguments raised by the applicants. 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. COMPLAINTS UNDER ARTICLE 2 OF PROTOCOL NO. 7 TO THE CONVENTION (ALL APPLICATIONS)

34. Relying on Article 7 of the Convention, the applicants complained that, owing to the amendments to the CCP which entered into force while the proceedings against them were pending, they had been deprived of a third level of jurisdiction. This complaint falls to be examined under Article 2 of Protocol No. 7 to the Convention, which reads as follows:

> "1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.
>
> 2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal."

35. The Court has already examined similar complaints relating to the application to pending proceedings of the new procedural rules set forth in the CCP and has found them inadmissible since the applicants benefited from two levels of jurisdiction and the Convention does not guarantee a right to a third level of jurisdiction (see *Borcea v. Romania* (dec.), no. 55959/14, § 50, 22 September 2015).

36. In view of the above, this complaint is manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. REMAINING COMPLAINTS

37. The applicants also complained under Article 6 §§ 1 and 3 about the admissibility and assessment of the evidence and that they did not have adequate time and facilities to prepare their defence before the appeal court because some of their requests for postponement of hearings had been

rejected. Relying on Article 7, they further complained that they had been convicted on the basis of legal provisions that had not been in force at the time the offences were committed and that another co-defendant had received different treatment since the proceedings against him had been disjoined in a separate set of proceedings. Lastly, they complained of a breach of their rights guaranteed by Article 14 due to the change in the composition of the appeal bench and the application of the new provisions of the CCP to the pending proceedings in their case.

38. The Court has examined these complaints, as submitted by the applicants. However, having regard to all the material in its possession, and in so far as they fall within its jurisdiction, the Court finds that they do 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 applications must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 4 November 2021.

{signature_p_2}

Ilse Freiwirth
Deputy Registrar

Tim Eicke
President

APPENDIX

No.	Application no.	Lodged on	Applicant Year of birth Place of residence Nationality	Represented by
1.	17934/15	10/04/2015	**Alexandru-Marian IANCU** 1965 Bucharest Romanian	
2.	17946/15	10/04/2015	**Octavian IANCU** 1968 Bucharest Romanian	Maria Carolina NIȚĂ
3.	18441/15	14/04/2015	**Constantin MĂRGĂRIT** 1966 Bucharest Romanian	Vasile-Edward VASILICĂ