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

THIRD SECTION

CASE OF CUTEAN v. ROMANIA

(Application no. 53150/12)

JUDGMENT

STRASBOURG

2 December 2014

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Cutean v. Romania,

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

Josep Casadevall, *President,*
Luis López Guerra,
Dragoljub Popović,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 13 November 2014,

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

PROCEDURE

1. The case originated in an application (no. 53150/12) 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 Vasile Emilian Cutean ("the applicant"), on 3 August 2012.

2. The applicant was represented by Mr R. Chiriţă, a lawyer practising in Cluj-Napoca. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the physical conditions of his detention in the Bucharest Police Department's Arrest, Jilava Prison Hospital, Jilava and Rahova Prisons, the conditions of transport to court hearings and the unfairness of the criminal proceedings opened against him in so far as he and the witnessed had not been heard directly by the domestic courts which convicted him amounted to a breach of his rights guaranteed by Articles 3 and 6 of the Convention.

4. On 7 May 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1965. He is currently detained in Jilava Prison.

A. Background to the case

6. By a decision of the Romanian prime minister from 29 November 2002 to 20 December 2004 the applicant occupied the post of Secretary of State for the State Secretariat for the Problems of the December 1989 Revolutionaries (“the State Secretariat”).

7. On 7 December 2002, as a result of his appointment to the post of Secretary of State, the applicant delegated his duties as president of the Revolutionary Association “Club 22” (“the Association”) to the vice-president of the said organisation. Under the terms of the agreement signed on the same date, he did not delegate his right to be a signatory on the bank account and various other duties of utmost importance for the organisation and its members, which were to be determined by mutual agreement at a later date.

8. In an interlocutory judgment of 25 May 2005 the Romanian Court of Auditors (*Curtea de Conturi a României*) examined the report produced after inspection of the financial documents and the activity of the State Secretariat for the year 2004. It noted *inter alia* that, although the applicant was dismissed from his post on 20 December 2004, he continued even after that date to sign and authorise payments on behalf of the State Secretariat. By unlawfully using his power to authorise payments, he approved 2,907,902,590 Romanian lei (ROL) (approximately 75,190 euros (EUR)) from public funds in the form of financing for the Association as a subsidy covering rent and utility charges incurred by the Association, despite the lack of any contractual agreement with the aforementioned Association as required by law. Consequently, the Court of Auditors referred the case to the Bucharest Court of Appeal and the Public Prosecutor’s Office attached to the Court of Cassation in order to investigate the applicant’s administrative and criminal liability respectively.

B. Criminal proceedings opened against the applicant

9. On 25 January 2006 the National Anticorruption Department brought criminal proceedings against the applicant and a co-accused for improperly using his influence and information acquired by virtue of his position in order to obtain unwarranted material gain for himself or others. It held that

on 21 and 22 December 2004 the applicant, although his post of State Secretary had already been revoked, authorised payments of approximately EUR 75,000 from the account of the Secretariat to the account of the Association of which he was a president. Although required by law, no formal agreement had been signed between the two organisations and, although he was not registered as a tenant, the applicant was living in the building occupied by the offices of the Association.

10. On an unspecified date the National Anticorruption Department indicted the applicant and his co-accused for improperly exploiting his influence and information obtained by virtue of his position for the purposes of acquiring unwarranted material gain for himself or for others and sent his case for trial.

11. At hearings on 31 May and 23 October 2006, the Court of Cassation examined the applicant's and some of the parties' submissions in respect of the procedural aspects of the case.

12. At a hearing on 1 November 2006 the Court of Cassation, sitting as a panel of three judges, heard the applicant in respect of the charges brought against him. In addition it allowed the applicant's request for a financial expert report, documents and testimonial evidence to be added to the file.

13. At hearings on 29 November 2006, 21 February, 21 March, 23 April and 26 September 2007, the Court of Cassation heard the witnesses in the case. In particular, it heard C.C., G.M., G.N.V., F.Z., G.B., D.H., M.L.N., C.G., N.R., and T.M. In addition, the court examined the parties' submissions and their requests for evidence and noted that documents had been added to the file, including the expert report requested by the applicant.

14. The applicant was present personally at the hearing of 29 November 2006 when the witness G.N.V. was heard.

15. From 26 October 2007 to 20 November 2008 the Court of Cassation held six additional hearings at which it examined various submissions made by the parties, allowed the parties' objections to the expert report available on file, ordered a new financial expert report after the expert had answered the parties' objections, and allowed the additional objections made by the parties to the new financial expert report.

16. By an interlocutory judgment of 12 January 2009 the Court of Cassation referred the applicant's case to the Bucharest District Court on the grounds that the applicant's mandate as Member of the Romanian Parliament had expired and the Court of Cassation was no longer competent to examine his case.

17. None of the Court of Cassation judges who had examined the applicant's case prior to its referral could continue to examine his case after the date of the transfer.

18. From 23 March to 1 June 2009 the Bucharest District Court, sitting in a single judge formation, held four hearings at which it examined some of

the parties’ procedural requests, allowed them to examine the expert’s answer to their additional objections, heard and examined the applicant’s request for additional explanations from the expert, and examined documents necessary to clarify the findings of the expert financial report. On 1 June 2009 the court noted that the judicial stage of the investigation of the case had ended and adjourned the proceedings for the parties’ pleadings on the merits of the case and for debate.

19. On 4 June 2009, at the debate stage of the proceedings, the Bucharest District Court, sitting in the same single-judge formation, heard the parties’ pleadings in respect of the merits of the case. It also allowed the applicant to address the court last. In addition, it adjourned the proceedings to 15 June 2009 pending the delivery of the judgment.

20. By a judgment of 15 June 2009 the Bucharest District Court, sitting in the same single-judge formation, convicted the applicant for improperly exploiting his influence and information acquired by virtue of his position for the purposes of acquiring unwarranted material gain for himself or for others and sentenced him to five years’ imprisonment, without hearing him or any of the witnesses directly. On the basis of the available documents, financial invoices and legal provisions it held that, in order to cover the rent and the utility costs incurred by the Association, the applicant and his co-defendant had unlawfully set up a State-run and State-funded programme designed to help all organisations similar to the Association who had difficulties in covering their utilities. Subsequently, he approved the Association’s request for funding and ordered the payments of the available public funds to the said organisation. The applicant and his co-defendant had approved and ordered the payments knowing that no legal agreement existed with the Association and that no invoices supporting the Association’s request for funding had been submitted.

21. The court noted that C.C. and F.Z. also testified regarding the way the funds had been paid, stating that the Association had been the only organisation who had applied for funding and that a legal agreement or contract was required for it to access the funds in question. The same conclusion had been reached by the second expert report, which also found that the statement made by G.N.V. on behalf of the Association did not amount to a contractual agreement. Moreover, the applicant’s co-defendant had stated when confronted by the applicant that she had cautioned him about the absence of the legal agreement, but she had been asked to sign the payment orders on the grounds that G.N.V.’s statement had amounted to such an agreement.

22. The court further held that under normal circumstances the availability of the public funds should have been publicised so that all the organisations concerned could have applied for them. However, the applicant failed to put this into effect. With this in mind, the court found relevance in T.M.’s testimony that he was not aware of the program and that

the applicant had denied the existence of the funds when he had been asked about them by the witness. The court noted that T.M.'s testimony had been confirmed by C.G. and G.B. At the same time, on the basis of G.N.V.'s and G.M.'s testimonies, it notes that it was the applicant who had initiated the program following the G.N.V.'s request for help on behalf of the Association.

23. The Court also noted on the basis of the available documents as well as the applicant's and his co-defendant's statements that he had also continued to look for additional funding by drawing on funds from other programs in order to cover all the Association's debts. However only part of the funds made available to the Association went towards the rent. The rest was redirected to a bank account controlled by the applicant.

24. The court also held – on the basis of the available lease contracts and the applicant's statements – that the applicant had been living in the building that housed the Association. By relying on G.N.V.'s testimony it rejected the applicant's submission that he was not the only member of the Association living in the building. The court considered the applicant's living circumstances relevant because it clarified the applicant's motivation for his actions. The applicant appealed against the judgment.

25. On 19 April 2010 the applicant asked the Bucharest County Court to rehear the witnesses T.M., C.G. and G.N.V. He argued that he had not been present when the three witnesses had been heard by the court. In addition, he needed to rehear the three witnesses in order to clarify the facts, because the first-instance court had changed the meaning of their testimonies. Furthermore, he had brought criminal proceedings against T.M. for perjury.

26. On the same date the applicant also asked the Bucharest County Court to hear three new witnesses for the first time. He argued that these witnesses would be able to clarify the way in which the representatives of the other organisations and of the financial experts perceived the administrative acts produced by the applicant, and that this would prove that he had not misled the State authorities when he initiated the program and that all the documents drafted or signed by him had been made public and available for everyone to read. Also, the new witnesses could clarify certain circumstances concerning the agreement drawn up by G.N.V. on behalf of the Association.

27. On the same date, the Bucharest County Court refused the applicant's requests. It informed the applicant that he could provide the court with updates on the criminal proceedings brought by him against T.M. In addition, it held that the applicant's request regarding the first three witnesses in fact concerned the interpretation of evidence, given that the witnesses' testimonies and the reasoning of the first-instance court had been available in writing. The second-instance and the third-instance courts were charged with the interpretation of evidence. Consequently, help in the form of the witnesses' testimony was not needed, given that they had given and

signed them under oath. The three witnesses had been heard during the criminal-investigation stage of the proceedings and before the first-instance court, where the applicant’s legal representative could have asked them questions aimed at clarifying the circumstances of the applicant’s case.

28. As regards the applicant’s request for the hearing of three new witnesses, the court considered it unnecessary for the case because no witness would be able to assess and clarify the understanding of the experts or of the representatives of the other organisations.

29. On 21 February 2011, during the debates, the applicant asked the Bucharest County Court to verify whether on the date of the deliberation of the case, the Bucharest District Court had in fact allowed him to address the court last.

30. On the same date, the Bucharest District Court refused the applicant’s request on the grounds that the evidence in the file attested that the applicant had been allowed to address the court last. In addition, it had allowed the applicant to address the court last in respect of the merits of the case.

31. By a judgment of 1 April 2011 the Bucharest County Court, after having examined the applicant’s submissions and arguments, dismissed his appeal as ill-founded. The applicant and the witnesses were not heard directly by the County Court. It held *inter alia* that the criminal proceedings brought by the applicant against T.M. for perjury were not sufficiently relevant, given the overwhelming evidence supporting the accusations brought against the applicant. In addition, the non-public nature of the information used by the applicant was not a factor that influenced his conviction, given the nature of the offence he had been charged with. The applicant appealed on points of law (*recurs*) against the judgment. He reiterated his complaint that he had not been allowed to address the first-instance court last.

32. By a final judgment of 7 February 2012, after having examined the applicant’s submissions and arguments for his appeal on points of law and without hearing him or the witnesses, the Bucharest Court of Appeal dismissed it as ill-founded. It held *inter alia* that according to the relevant criminal procedure rules, an accused is to be heard last by the court before the debates are declared closed. During his pleading the accused may not be questioned in order to allow him to submit all the arguments he wishes to make in support of his defence. Consequently, the applicant’s rights to defence had not been breached given that the court, pending the delivery of the judgment, had allowed him to submit written observations before it. The applicant lodged an extraordinary annulment appeal (*contestaţie în anulare*) against the judgment. He argued that although he had been heard by the Court of Cassation on 1 November 2006, none of the courts who convicted him had heard him directly although they had a lawful duty to do so.

33. On 24 February 2012 the Bucharest Court of Appeal rejected the applicant's annulment appeal. It held that it could not conclude that the applicant had not been heard by the first-instance court, given that he was heard by the Court of Cassation and that – in accordance with the relevant criminal procedure rules – the court to which the case had been referred could use the acts and measures undertaken by the court from which the case had been referred. In addition, he had been present and had been assisted by a legal representative before the second-instance court. Consequently, according to the relevant criminal procedure rules, the last-instance court had not been subject to a duty to hear him.

C. The physical conditions of detention and transport

34. In his first letters, the applicant contended before the Court that in the Bucharest Police Department's detention facility, Jilava Prison Hospital and Rahova Prison his cells had been overcrowded and had not been separate from the bathroom facilities. In addition, in Jilava Prison the detention cells had been overcrowded and he had been forced to lie on the bed constantly on account of the lack of space; the hygiene conditions had been inadequate and the sanitary installations defective; there had never been any running warm water and he had been allowed to wash only twice a week together with another hundred persons; the outdoor physical exercise had been limited to only one hour a day and the food had been inadequate. Lastly, the prison authorities had transported him regularly for approximately one hour to attend domestic courts together with other detainees in vehicles which had lacked windows or artificial light and any form of ventilation.

35. On 2 August 2013, after the case had been communicated to the Government, the applicant informed the Court that he wished to relinquish his claim concerning the alleged violation of Article 3 of the Convention.

II. RELEVANT DOMESTIC LAW

36. Article 42 (2) of the former Romanian Criminal Procedure Code provided that the court to which a case had been referred could use the acts and measures undertaken by the court from which the case had been referred.

37. Article 292(2) and (3) of the former Romanian Criminal Procedure Code provided that the panel of judges was to remain the same throughout the trial. Where this was not possible, the panel could be changed before the debates on the merits of the case had begun. If the panel was changed after the debates had begun, the debates had to be reopened.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

38. The applicant complained about the physical conditions of his detention in the Bucharest Police Department's detention facility, Jilava Prison Hospital and Jilava and Rahova Prisons as well as the conditions of transport to appearances before the domestic courts. He relied on Article 3 of the Convention, which reads:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. The parties' submissions

39. The Government, referring to the applicant's letter of 2 August 2013, asked the Court to strike out his claim under Article 3 of the Convention pursuant to Article 37 § 1 (a) of the Convention.

40. The applicant did not submit any comments on this point.

B. The Court's assessment

41. The Court notes that by a letter of 2 August 2013, after some of his complaints had been communicated to the Government, the applicant notified it of his wish to relinquish his claim concerning the alleged violation of Article 3 of the Convention.

42. In these circumstances and within the meaning of Article 37 § 1 (a) of the Convention, the Court considers that further examination of this part of the application is no longer justified. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of this part of the applicant's claims.

43. Accordingly, this part of the applicant's case should be struck out of the list.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

44. The applicant complained that the criminal proceedings brought against him had been unfair in so far as he and the witnesses had not been heard directly by the courts which convicted him. He relied on Article 6 of the Convention which, in so far as relevant, reads:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...

> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ... (c) to defend himself in person or through legal assistance of his own choosing ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."

A. Admissibility

45. The Court notes that the applicant's 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 parties' submissions

46. The applicant submitted that his right to defend himself in person had been breached as he had not been heard directly by any of the judges who pronounced his conviction. Although he had been heard by the Court of Cassation prior to the referral of the case to the Bucharest District Court, none of the judges who had heard him had been part of the panel which convicted him.

47. The applicant also contended that the case-law of the Court relied on by the Government – in which a violation of Article 6 had been found because a last-instance court had convicted an accused without hearing evidence from him directly – is applicable in this case. In particular, if the guarantees set up by Article 6 had been breached in the aforementioned cases, the failure of all the courts who convicted a person to hear him directly would justify even more strongly the finding of a breach of Article 6.

48. The applicant argued that although the relevant criminal procedure law rules allow the court to which a case has been referred to use the acts and measures taken by the court by which the case has been referred, those rules do not exempt the court to which the case has been referred from safeguarding the accused's right to defend himself. Moreover, the criminal procedure rules in question do not impose any such duty on the national courts, but rather let them assess the extent to which the measures taken by the previous court can be maintained. However, the requirements of a fair trial must still be observed, and in the applicant's case this had not been done, given that he and the witnesses had not been heard directly by the courts that convicted him.

49. The applicant submitted that although an objective reason for the referral of the case had existed in the present case, there was no objective

reason making it impossible for the new panel which convicted the applicant to hear him and the witnesses directly.

50. The applicant contended that in the present case, unlike in the cases of *Karjalainen v. Finland*, no. 30519/96, Commission decision of 16 April 1998, unreported, and *P.K. v. Finland* (dec.), no. 37442/97, 9 July 2002, the entire panel of judges who had heard the applicant and the witnesses directly had been changed. Also, although domestic court hearings were normally recorded, the witnesses' testimonies had not written down verbatim, but instead the presiding judge had dictated the testimony to the registrar. This latter argument was even more relevant given that the applicant had specifically asked the second-instance court to rehear three of the witnesses, claiming that there was a problem in respect of the interpretation of their testimonies. In addition, the applicant had constantly contested the veracity of T.M.'s testimony and had even brought criminal proceedings against him for perjury. In addition, unlike the situation in *Karjalainen*, the proceedings brought against the applicant had been criminal and not civil. Consequently, the authorities' compliance with the requirements of Article 6 had to be examined more strictly. Furthermore, the aforementioned cases relied on by the Government involve situations where important witnesses had not been heard directly by the new judges, but none of them examined a situation where the accused himself had not been heard directly by the courts which convicted him. Therefore, these cases cannot be used as justification for a national court to convict a person without having heard him prior to delivering judgment.

51. The applicant argued that while the documents and the expert reports had been taken into account by the national courts in order to convict him, their reliance on the testimonies of the witnesses had been decisive. In particular, the first-instance court had established the absence of the requisite contractual agreement which constituted one of the elements of the offence by relying on the testimonies of several witnesses. In addition, it had established the applicant's bad faith – concluding that he had withheld information about the existence of funding from other organisations in order to favour his own – by relying on the testimonies of C.G. and T.M. Moreover, the court had settled the crucial question of whether the applicant had obtained a benefit through committing the offence on the basis of testimony by G.N.V., who had stated that the applicant was the only person living in the building used as offices for the Association. Even though he had challenged the testimonies of the aforementioned witnesses, the domestic courts had refused to rehear them.

52. The applicant contended that although on 21 February 2011 he had complained to the second-instance court that he had not been properly heard by the first-instance court, his complaint remained unanswered. In addition, although he had reiterated his complaint before the last-instance court, it

dismissed it on the grounds that he had been allowed to submit written observations.

53. The applicant submitted that the fact that he had been allowed to submit written observations did not equate to a direct hearing by the court during the trial because during a hearing an accused could present his own version of the facts, submit his own defence and the court could directly and personally assess his credibility and the veracity of his statements. In addition, the court would be able to ask questions about the circumstances of the case that were unclear or disputed.

54. The Government submitted that the criminal proceedings brought against the applicant had met the requirements of the right to a fair trial and that the overall fairness of the proceedings had not been impaired by the domestic courts which had not heard him or the witnesses directly.

55. The Government contended that – unlike in the case of *Constantinescu v. Romania*, no. 28871/95, 27 June 2000 – in the instant case the Court of Cassation had heard the applicant and the witnesses extensively in respect of the charges brought against him. Consequently, the applicant could not complain that the principle of a fair hearing in the investigation of a criminal charge against him had not been properly observed. Both the Court of Cassation and the Bucharest District Court had acted as first-instance courts. In addition, the relevant domestic criminal procedure rules allowed the court to which a case was referred to use the acts and measures undertaken by the court by which that case had been referred. Furthermore, it was acceptable for the panel of judges to be changed before the debates on the merits of the case had started. Consequently, even if the case had been examined from the beginning by the Bucharest District Court, the applicant could still have been in a situation of being convicted by a panel of judges that had not heard him directly.

56. By relying on the cases of *Karjalainen*, cited above, and *P.K. v. Finland*, cited above, the Government submitted that the principle of immediacy could not be understood to amount to a permanent prohibition of any change in the composition of a panel of judges during a trial and that administrative or procedural factors might arise rendering impossible a judge's continued participation in a trial.

57. In the applicant's case, the transfer of the case had been rendered necessary under the relevant criminal procedure rules. Also, the transcripts of the statements by the applicant and the witnesses had remained attached to the file. Moreover, it was undisputed that these transcripts had reflected the statements correctly. Furthermore, according to the reasoning of the domestic courts, it was the available documents and expert reports that had been decisive as regards the applicant's conviction rather than the statement of an important witness. In this connection the Government underlined that, according to the domestic courts, T.M.'s statement had not been of

sufficient relevance given the overwhelming evidence supporting the accusations brought against the applicant. Also his request for a rehearing of witnesses C.G. and G.N.V. had been dismissed because the principle of adversarial proceedings had been respected. In addition, the applicant had been present before the court on 29 November 2006 when G.N.V. had been heard. Moreover, the applicant's claims for new evidence before the appellate courts showed that his and the witnesses' statements had not been important in the context of the evidence available in the file. Furthermore, the applicant had not at any stage of the proceedings asked the domestic courts to rehear him or all the witnesses.

58. The Government contended that the applicant had been assisted by one or more chosen legal representatives during the proceedings. He had denied having committed the offence from the beginning of the investigation and had had the opportunity to examine witnesses and to obtain the attendance and examination of witnesses on his behalf under the same conditions of witnesses against him.

59. The Government also submitted that even though the applicant had not been reheard by the courts, he had had the opportunity to argue his case extensively by way of conclusions, notes and other submissions. Consequently, the applicant had not submitted any evidence which could suggest that it would have been relevant to rehear him or the witnesses.

2. The Court's assessment

60. The Court reiterates that an important aspect of fair criminal proceedings is the ability for the accused to be confronted with the witnesses in the presence of the judge who ultimately decides the case. The principle of immediacy is an important guarantee in criminal proceedings in which the observations made by the court about the demeanor and credibility of a witness may have important consequences for the accused (see *Beraru v. Romania*, no. 40107/04, § 64, 18 March 2014). The Court considers that, given the high stakes of criminal proceedings, the aforementioned considerations also apply as regards the direct hearing of the accused himself by the judge who ultimately decides the case.

61. The Court recalls that according to the principle of immediacy, in a criminal case the decision should be reached by judges who have been present throughout the proceedings and evidence-gathering process (see *Mellors v. the United Kingdom* (dec.), no 57836/00, 30 January 2003). However, this cannot be deemed to constitute a prohibition of any change in the composition of a court during the course of a case (see *P.K. v. Finland*, cited above). Very clear administrative or procedural factors may arise rendering a judge's continued participation in a case impossible. Measures can be taken to ensure that the judges who continue hearing the case have the appropriate understanding of the evidence and arguments, for example, by making transcripts available, where the credibility of the witness

concerned is not in issue, or by arranging for a rehearing of the relevant arguments or of important witnesses before the newly composed court (see *Mellors*, cited above; and *P.K. v. Finland*, cited above).

62. In the instant case the Court considers, on the basis of the parties' arguments and submissions, that the essence of the applicant's complaint concerns the change, during the course of the proceedings, in the composition of the panel of judges of the first-instance court which eventually convicted him without having heard him or the witnesses in the case. Its finding is supported by the fact that the applicant did not contest that from 1 November 2006 to 26 September 2007 the Court of Cassation had heard him and all the witnesses in the case. In addition, he did not deny that the said court had been lawfully acting as a first-instance court in respect of his case on account of the applicant's status at the time or that it had been competent to hear him or the witnesses. Moreover, the applicant had acknowledged that the transfer of the case from the Court of Cassation to the Bucharest District Court had been brought about by objective procedural factors and that the latter court had been free to maintain the acts and measures taken by the former court.

63. In this context, the Court notes that it is undisputed that the original panel of judges examining the applicant's case had changed during the course of the proceedings before the first-instance court. In addition, the judge who convicted him had not heard him or the witnesses directly. Moreover, the appellate courts which upheld the applicant's conviction also failed to hear him or the witnesses directly.

64. The Court notes that none of the judges in the initial panel who had heard the applicant and the witnesses at the first level of jurisdiction had stayed on to continue with the examination of the case (contrast and compare with *P.K. v. Finland*, cited above; and *Beraru*, cited above, § 66).

65. In addition, while the applicant's conviction was not based solely on witness testimony or on his own statement, the Court notes that the domestic courts relied to some extent on the aforementioned evidence in order to justify his conviction. Moreover, the applicant challenged the credibility of the testimonies of three of the witnesses relied on by the first-instance court to convict him and asked unsuccessfully that they be re-heard by the second-instance court (contrast *P.K. v. Finland*, cited above). While it does not appear from the available evidence that the applicant reiterated his challenge against the three witnesses before the last-instance court or that he attempted to challenge in any way the credibility of the remaining witnesses before the appellate courts, the Court is not convinced that a general and repeated challenge by the applicant would have had better prospects of success given the reasons provided by the second-instance court for dismissing his challenge against the three witnesses.

66. Moreover, the Court notes that the first-instance judge who ultimately convicted the applicant was charged with carrying out an assessment of the elements of the alleged offence, including the subjective element, namely the applicant's intention to commit it. In these circumstances, the direct hearing of the applicant appears even more relevant, particularly since the appellate courts also failed to directly hear the applicant or the witnesses.

67. The Court notes that the applicant failed to complain during the ordinary proceedings about the failure of the second panel of judges of the first-instance court to hear him. However, he had raised a complaint of this nature during the course of extraordinary proceedings and it was dismissed.

68. The Court notes that the applicant did not contest that the first-instance court judge who formed the second panel of that court was also the judge who closed the debates on the merits of the case and who convicted him. In addition, that same judge heard the applicant's pleadings during the debates in respect of the merits of the case and examined the written observations submitted by the applicant before the first-instance court pending the delivery of the judgment. In addition, while it is unclear from the available evidence if the applicant was allowed to directly address the first-instance court last, it appears that he was able to do so before the appellate courts.

69. However, the Court observes that it has already held that, although an accused's right to address the court last is certainly of importance, it cannot be equated with his right to be heard during the trial (see *Constantinescu*, cited above, § 58, and *Spînu v. Romania*, no. 32030/02, § 58, 29 April 2008). The Court considers that the same considerations also apply as regards the pleadings during the debates in respect of the merits of the case and the written observations submitted by the applicant pending the delivery of the judgment.

70. The Court observes that there is no evidence in the file suggesting that the first-instance court's composition was changed in order to affect the outcome of the case to the applicant's detriment – or for any other improper motives – or that the Bucharest District Court's single judge lacked independence or impartiality and also notes that the District Court judge had at his disposal the transcripts of the hearings at which the witnesses and the applicant had been heard. However, the Court also notes that the applicant's and the witnesses' statements constituted relevant evidence for his conviction which was not directly heard by the District Court single judge. Consequently, the Court considers that the availability of statement transcripts cannot compensate for the lack of immediacy in the proceedings.

71. Furthermore, the Court is aware that the possibility exists that a higher or the highest court might, in some circumstances, make reparation for deficiencies in the first-instance proceedings (see *Beraru*, cited above, § 67). In the present case the Court notes that the courts of last resort not

only upheld the judgment of the first-instance court, but also based their decisions on the evidence adduced before the court of first instance without a direct hearing of it.

72. The Court therefore concludes that the change of the first-instance court's panel of judges and the subsequent failure of the appellate courts to hear the applicant and the witnesses was tantamount to depriving the applicant of a fair trial.

73. It follows that there has been a violation of Article 6 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

74. Relying on Article 3 of the Convention the applicant complained that he had been subjected to inhuman and degrading treatment because he had had to share his cell with recidivists and other detainees convicted for violent offences in breach of the domestic legislation.

75. Invoking Article 6 of the Convention the applicant complained that the criminal proceedings brought against him had been unfair in so far as the courts had wrongfully assessed the evidence and misinterpreted the applicable legal provisions and that the courts had failed to provide reasons for rejecting the statements of twenty witnesses, his submissions and the reasoning substantiating his appeals – including his argument concerning his conviction for acts which had lacked the requisite elements for the criminal offences with which he was charged.

76. Relying on Article 7 of the Convention the applicant complained that he had been convicted for acts which did not constitute criminal offences at the time they were committed in so far as his acts had lacked the requisite elements for the criminal offences with which he was charged.

77. The Court has examined these complaints as submitted by the applicant. 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 application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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

79. The applicant submitted that the extreme suffering and distress caused by the domestic authorities' breach of the Convention guarantees warranted an award of EUR 15,000 for non-pecuniary damage.

80. The Government contended that the amount claimed by the applicant with regard to non-pecuniary damage was excessive and that the finding of a violation would amount to sufficient just satisfaction.

81. The Court considers that, as a result of the violation found, the applicant undeniably suffered non-pecuniary damage which cannot be made good merely by the finding of a violation.

82. Consequently, ruling on an equitable basis, the Court awards the applicant EUR 2,400 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

83. The applicant also claimed EUR 3,000 for the costs and expenses incurred before the Court. He submitted a copy of a legal assistance contract signed by his wife retaining his lawyer to represent him before the Court for a fee of EUR 3,000. In addition, he submitted several invoices issued in his wife's name amounting to ROL 7,000 (approximately EUR 1,953) representing part of the legal fees paid to his legal representative. According to him, his wife had been unable to pay the remaining amount on account of their financial situation following his conviction.

84. The Government contended that there is no evidence in the file that the applicant consented to his wife signing the legal assistance contract with his legal representative. His detainee status would not have prevented him from expressing a valid consent. In addition, he had submitted proof of only partial payment of the claimed costs and expenses. Furthermore, the amount claimed by the applicant was excessive.

85. The Government contended that they did not object to the Court awarding the applicant some of the costs and expenses incurred in respect of the proceedings before the Court, but only in so far as they have been shown to have been necessarily incurred and were linked to the case.

86. 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, the authority form signed by the applicant and authorising his legal representative to represent him before the Court and the above criteria, the Court considers it reasonable to award the sum of EUR 1,953 covering costs and expenses incurred before the Court.

C. Default interest

87. 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. *Takes note* of the wish of the applicant to relinquish his claim in respect of part of the complaints under Article 3 of the Convention concerning the physical conditions of his detention and the conditions of transport to domestic courts;

2. *Decides* to strike the aforementioned part of the application out of its list of cases in accordance with Article 37 §§ 1 (a) and (c) of the Convention;

3. *Declares* the complaint under Article 6 of the Convention concerning the failure of the domestic courts which convicted him to hear him and the witnesses directly admissible, and the remainder of the application inadmissible;

4. *Holds* that there has been a violation of Article 6 of the Convention;

5. *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:
      (i) EUR 2,400 (two thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,953 (one thousand nine hundred and fifty three euros), plus any tax that may be chargeable, in respect of costs and expenses, into a bank account indicated by the applicant;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant’s claim for just satisfaction.

Done in English, and notified in writing on 2 December 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Josep Casadevall President