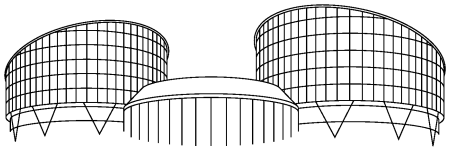

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF CONIAC v. ROMANIA

(Application no. 4941/07)

JUDGMENT

STRASBOURG

6 October 2015

FINAL

01/02/2016

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Coniac v. Romania,

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

Luis López Guerra, *President*,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc,
Branko Lubarda,
Mārtiņš Mits, *judges*,
and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 15 September 2015,

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

PROCEDURE

1. The case originated in an application (no. 4941/07) 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 Victor Coniac ("the applicant"), on 18 January 2007.

2. The applicant was represented by Mr V. Amăriuței, a lawyer practising in Focșani. The Romanian Government ("the Government") were represented by their Agent, Mrs. C. Brumar, from the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the criminal proceedings against him had not been fair in so far as he had been convicted without evidence being heard directly either from him or from the witnesses whilst he was present.

4. On 19 June 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1955 and lives in Focșani.

6. As administrator of four commercial companies, the applicant concluded several contracts with different commercial companies for the

supply of merchandise. In payment for the merchandise the applicant issued several cheques.

7. On an unspecified date a criminal investigation was initiated against the applicant for fraud in connection with the cheques issued for the payment of the merchandise.

8. On 24 June 2003 the prosecutor's office attached to the Vrancea County Court informed the applicant, in his capacity as administrator of one of the four companies, that the criminal investigation initiated against him was going to be discontinued because the elements of the offence of fraud were missing.

9. On 3 July 2003 one of the sellers lodged a criminal complaint against the applicant, accusing him of fraud (*înşelăciune)* under Article 215 of the Criminal Code (as in force at the material time) for having issued cheques and promissory notes without holding the necessary funds in the companies' accounts and after the companies' accounts had been frozen.

10. On 8 September 2003, the prosecutor ordered criminal proceedings to be instituted against the applicant on charges of fraud. The investigation took place in the absence of the applicant, who had left the country on 25 June 2003.

11. According to documents submitted by the applicant, his wife instituted divorce civil proceedings against him. By a final judgment of 20 October 2003 the Focşani District Court allowed her claim and pronounced the divorce.

12. On 13 November 2003, the prosecutor issued an indictment for aggravated fraud under Article 215 § § 1, 3 and 4 of the Criminal Code. The case was registered with the Vrancea County Court.

13. The proceedings before the first-instance court took place in the applicant's absence on the grounds that the applicant's domicile abroad was unknown. The applicant was represented by I.B., a lawyer assigned by the court. In his final submissions before the court the latter maintained that the bill of indictment contained many errors because the investigation had been carried out in the applicant's absence. His main argument was that the applicant had not committed the acts with the intention of deceive his business partners. In this respect he added that the applicant had continued to pay his debts. He contested the allegation that the cheques had been issued after his companies' accounts had been frozen. Moreover, several cheques had been issued while the applicant was abroad. He also contested the amounts that the applicant allegedly had to reimburse to different creditors.

14. On 13 May 2005 the Vrancea County Court found the applicant guilty of fraud and imposed a three-year prison sentence suspended on probation. It found that the applicant, in his capacity as administrator of four commercial companies had issued cheques after the companies' accounts

had been frozen and without holding the necessary funds in the companies' accounts.

15. Both the applicant and the prosecutor's office appealed against the judgment. The applicant claimed, *inter alia*, that his defence rights had not been observed as he had not been notified about the accusations against him and had not been summoned by the investigating authorities to attend the hearing. In this respect, the applicant claimed that he had been unaware that criminal proceedings were pending against him. He admitted that his criminal file contained several reports stating that police officers had tried to find his whereabouts but he further contended that he had never been officially summonsed or informed about the charges against him. He also stressed that he had not intended to deceive his business partners and that his difficult financial situation had been the result of the cancellation of a public procurement contract with the Ministry of Defence. Moreover, he had continued to make payments to his creditors after leaving the country.

16. During the appeal proceedings the applicant was represented by a lawyer of his choosing, namely I.B., the same lawyer who had been assigned by the first-instance court.

17. The last hearing before the appeal court was held on 30 November 2005.

18. As the applicant did not return from Italy until 5 December 2005, he did not attend any of the hearings before the appeal court.

19. By a decision of 23 December 2005 the Galați Court of Appeal partly allowed the appeal lodged by the prosecutor's office and increased the applicant's sentence to four years' imprisonment. It dismissed the applicant's appeal as unfounded. The appeal court acknowledged that the applicant had not been officially notified of the charges against him and he had likewise not been heard by either the investigating authorities or by the first-instance court. It further held that this situation was the fault of the applicant, who had left the country on 25 June 2003 deliberately seeking to escape trial. The court noted that the investigating authorities had repeatedly visited his known domicile in Romania and had informed his wife about the criminal complaint lodged against him. Written reports had been issued on 2 and 4 August, 9, 15 and 16 September and 14 October 2003 in this respect.

20. On 28 December 2005 the applicant appealed on points of law, arguing that his defence rights had been infringed on account of his absence during the investigation stage and the proceedings before the courts at the first two levels of jurisdiction. He claimed that he had not been aware of the proceedings because he had left the country for Italy before the criminal complaint had been lodged against him. He alleged that all the procedural steps taken by the investigating authorities and the courts had been null and void because they had been undertaken in his absence, and he therefore asked for the case to be referred to the investigating authorities for a

re-opening of the proceedings in his presence. He also claimed that fourteen out of twenty-seven cheques that he had allegedly issued without having the necessary funds in the companies' accounts had been issued after 25 June 2003, while he had been abroad. He also contended that he had issued the cheques and the promissory notes before the companies' accounts had been frozen and contested other elements of fact considered by the court of appeal in its decision of 23 December 2005, such as the date on which the public procurement contract had been cancelled. He alleged that the incorrect conclusions formulated by the appeal court had been based on the findings of the expert who had produced a technical report attached to the file.

21. The applicant was present and was assisted by a lawyer of his choosing during the proceedings before the High Court of Cassation and Justice. He attended all the hearings but he was not heard by the court.

22. At the last hearing the High Court of Cassation and Justice was addressed by the defence counsel and the prosecutor. It allowed the defendant to address it before the end of the hearing (*ultimul cuvânt al inculpatului*).

23. On 18 October 2006 the High Court of Cassation and Justice dismissed the applicant's appeal on points of law as unfounded. It acknowledged that the applicant "was not heard, was not informed about the charges against him and that he was not given the prosecution documents". It held that the applicant could not rely on his absence from the proceedings by way of defence, because he had left the country on 25 June 2003 in order to avoid the investigation and the trial against him.

24. The applicant served his prison sentence between 25 October 2006 and 3 December 2008, when he was released from prison on probation.

25. In another set of criminal proceedings against the applicant for fraud in connection with similar acts – namely the issuance by the applicant of cheques after the companies' accounts had allegedly been frozen – the Bacău Court of Appeal acquitted him. It noted that direct intent was an essential element of the offence of fraud under Article 215 § 4 of the CCP and from the evidence in the file it was apparent that the applicant had not acted with a direct intent to obtain an unjust advantage from the company in favour of which he had issued a cheque on 17 June 2003. It also held that the inability to pay for the merchandise bought by him from the company had been caused chiefly by circumstances arising after he had issued the cheque, namely the cancellation of the public procurement contract he had signed with the Ministry of Defence to provide food to a military unit. In its decision of 11 May 2006, the appeal court noted, among other things, the following:

> "The fact that the applicant had left the country on 25 June 2003 is not enough to support the conclusion that he was trying to avoid the criminal investigation or the trial. On the contrary, the fact that the applicant had acted diligently in order to cover

the damage caused by his acts and that he came back before the end of the criminal trial asking the appeal court to allow him to be heard, supports his defence that he had left for Italy to find work so that he could pay off the company's debts."

26. On 22 May 2007 and in January 2008 the applicant lodged two criminal complaints against the expert who had prepared a technical expert report in the criminal proceedings against him (see paragraph 20 above). He alleged that the expert had made false allegations which had resulted in his conviction for fraud. On 24 December 2013 the applicant lodged a complaint with the Focșani District Court concerning the prosecutor's decisions of 22 December 2009 and 29 November 2013 by which the criminal complaints against the expert had been discontinued.

It appears that the proceedings are still pending.

II. RELEVANT DOMESTIC LAW

27. The relevant provisions of the Code of Criminal Procedure concerning the authority of courts ruling on appeals on points of law, as in force at the material time are described in the case of *Găitănaru v. Romania* (no. 26082/05, §§ 17-18, 26 June 2012). In particular, Article 385^{15} of the Code, as in force at the material time, provided for the Supreme Court of Justice (now "the High Court of Cassation and Justice") – when allowing an appeal on points of law – to remit the case to a lower court if it was necessary to hear evidence in the case.

28. Law 356/2006, published in the Official Gazette no. 677 of 7 August 2006, amended the CCP. It entered in force on 6 September 2006 but according to its transitory provisions it was not applicable to pending proceedings.

29. According to Article 385^{14} § 1^{1} of the CCP, as amended by Law 356/2006, when trying an appeal on points of law, the court must hear evidence from the applicant if he was not heard by the first-instance court or the appeal court.

In the event that the applicant was not heard by the court of last resort and his hearing was compulsory according to Article 385^{14} § 1^{1} of the CCP, the applicant could lodge an extraordinary appeal under Article 386 let (e).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

30. The applicant complained that his right to a fair trial had been infringed as he had been convicted for fraud even though he had never been informed of the accusations against him and had never been heard by the

investigating authorities or by any court. He relied on Article 6 of the Convention, which reads:

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

A. Admissibility

1. *The objection concerning abuse of the right of individual application*

31. The Government asked the Court to dismiss the application, alleging abuse of the right of individual application. Making reference to other decisions delivered by the Court, by which the applications concerned had been dismissed for the applicant's failure to inform the Court about essential aspects, they pointed out that the applicant had not informed the Court that lawyer I.B., who had been appointed by the first-instance court, had represented him before the court of appeal as the lawyer of his choosing. Moreover, the applicant had not informed the Court that he was in permanent contact with this lawyer, who had even paid the expert's fees. The applicant had not mentioned his request for adjournment of the hearings, nor the fact that his wife and his employee (his uncle) had informed him about the criminal proceedings instituted against him.

32. The applicant contested the Government's allegation that he had been aware of the criminal proceedings against him at the initial stages of the investigation. He stated that even when present before the court for the purposes of examining the appeal on points of law lodged by him, he had not been informed about the charges against him and had not been heard by the Court.

33. The Court notes that the essence of the applicant's complaint was that even though he had been tried *in absentia*, he had not been heard by the court of last resort and had not had the possibility of challenging the charges against him. Moreover, it considers that the issue of abuse of the right of individual application is closely linked to the merits of the complaint concerning the fairness of the proceedings. It therefore finds it necessary to join it to the merits of this complaint.

2. *The objection concerning non-exhaustion of domestic remedies*

34. The Government also submitted that the applicant had not exhausted the domestic remedies. In this respect they pointed out that he should have lodged an extraordinary appeal against the decision delivered on 18 October 2006 by the High Court of Cassation and Justice.

35. As regards the objection of non-exhaustion of domestic remedies, the applicant contended that the remedy referred to by the Government was not effective. In this respect he pointed out that the legal provisions

concerning the extraordinary appeal indicated as a remedy (*contestația în anulare*) by the Government – namely those in Article 386 let (e) of the Romanian Code of Criminal Procedure – were not applicable to his situation.

36. The Court notes that the decision delivered by the High Court on 18 December 2006 was *res judicata*. Moreover, inherent to the Convention are the notions of legal certainty and the rule of law (see *Marckx v. Belgium*, 13 June 1979, § 58, Series A no. 31; and *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 49, Series A no. 301-B). In such circumstances, the applicant's recourse to the High Court to challenge proceedings which had been brought to an end by a final decision must be seen as being akin to a request to re-open those proceedings by means of the extraordinary remedy provided for by Law 356/2006. However, the Court points out in this connection that the Convention does not guarantee a right to re-open proceedings in a particular case; nor is an applicant normally required to avail himself of an extraordinary remedy for the purposes of the exhaustion rule under Article 35 § 1 (see *Kiiskinen v. Finland* (dec.) no. 26323/95, ECHR -1999 V).

37. Accordingly, the Government's objection in this respect must be dismissed.

38. 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 parties' submissions*

39. The applicant submitted that he had been neither summonsed and informed of the charges against him nor heard by the investigating authorities or a court at any level. He pointed out that this situation had been acknowledged by the High Court of Cassation and Justice in its decision of 18 October 2006. He also maintained that, even assuming the investigating authorities had indeed tried to summons him at the beginning of the investigation, they had later abandoned their attempt, given that the last report drafted by the police officers trying to serve him with a summons had been on 14 October 2003, whereas the bill of indictment had not been issued until 13 November 2003. Moreover, the police officers never served a summons at his last known domicile in Romania and the reports of 9, 15 and 16 September indicated that they had been trying to find him at the headquarters of one of his companies instead of at his last home address.

40. He also maintained that he had known that a criminal investigation had been instituted against him for fraud in connection with his activity as

the administrator of the commercial companies. However, the prosecutor had decided to discontinue the investigation on 23 June 2003 because there had been not enough evidence in the file, and he had therefore left the country knowing that the investigation against him had been discontinued. When his ex-wife informed him in September 2003 that proceedings had been instituted against him, in the absence of any written summons served by police officers at his home in Romania, and without having been informed that the prosecutor's decision of 23 June 2003 had been quashed, he had concluded that there was no official charge against him in that respect.

41. He also pointed out that when he had become aware of the proceedings against him, he had voluntarily returned from Italy before the trial had ended and had attended all the hearings before the court of last resort. He maintained that he had entered Romania on 5 December 2005, as proved by the travel document replacing his passport issued by the Romanian Embassy in Rome, stamped by the Hungarian and Romanian customs authorities upon his entry into the country.

42. The applicant further pointed out that in another set of criminal proceedings against him for similar offences of fraud in connection with the issue of cheques, he had been acquitted on the grounds that he had committed the acts without having any direct intent to obtain an unjust advantage for himself.

43. The Government accepted that the applicant had been tried and convicted *in absentia* but pointed out that he had been aware of the proceedings and had chosen not to be present. In this respect they submitted that one of the applicant's employees, P.T, had stated before police officers on 12 September 2003 that he had had a telephone conversation with the applicant and had informed him that the police were investigating him. Moreover, the applicant's wife had also stated on 14 October 2003 that she had informed the applicant by telephone about the proceedings instituted against him.

44. They also contended that the applicant had been represented by the same lawyer, namely I.B, in the criminal proceedings at the first two levels of jurisdiction: in the proceedings before the first-instance court, lawyer I.B. had been appointed by the court, while in the proceedings before the appeal court the same lawyer had been appointed by the applicant. Moreover, in the Government's view, the fact that the lawyer in question had submitted several documents to the first-instance court concerning the activity of the commercial companies administered by the applicant, as well as the invoice for the expert's fee, might suggest that he had been in direct contact with the applicant, who had given him instructions.

45. The Government further pointed out that the applicant had been repeatedly summonsed at his last address in Focșani, to which the judgment delivered by the first-instance court had been sent. The lawyer appointed by

the applicant to represent him in the appeal proceedings, namely I.B., had lodged an appeal against this judgment on 18 May 2005.

46. The Government also maintained that the applicant himself had lodged an appeal on points of law on 28 December 2005 against the decision delivered on appeal by the Galați Court of Appeal. At the last hearing before the court of last resort on 18 October 2006, the applicant – assisted by a lawyer of his own choosing – had not submitted any new documents and had not asked to be heard.

47. They also maintained that all the evidence submitted by the lawyer appointed by the applicant had been assessed by the domestic courts. Moreover, an expert report had been ordered at the request of the lawyer.

48. They also pointed out that, despite having returned from Italy on 5 June 2005 – at which point the proceedings against him were pending before the Galați Court of Appeal – the applicant had preferred not to be present at the hearings.

2. The Court's assessment

49. The Court notes at the outset that although proceedings that take place in the accused's absence are not of themselves incompatible with Article 6 of the Convention, a denial of justice nevertheless undoubtedly occurs where a person convicted *in absentia* is unable subsequently to obtain from the court which heard his case a fresh determination of the merits of the charge – in respect of both law and fact – where it has not been established that he waived his right to appear and to defend himself (see *Sejdovic v. Italy* [GC], no. 56581/00, § 82, ECHR 2006-II; and *Colozza v. Italy*, 12 February 1985, § 29, Series A no. 89), or that he intended to escape trial (see *Medenica v. Switzerland*, no. 20491/92, § 55, ECHR 2001-VI). The Convention leaves Contracting States wide discretion as regards the choice of the means implemented to ensure that their legal systems are in compliance with the requirements of Article 6. The Court's task is to determine whether the result sought by the Convention has been achieved. In particular, the procedural means offered by domestic law and practice must be shown to be effective where a person charged with a criminal offence has neither waived his right to appear and defend himself nor sought to escape trial (see *Somogyi v. Italy*, no. 67972/01, § 67, ECHR 2004-IV).

50. The Court reiterates in this respect that neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his own free will, either expressly or tacitly, his entitlement to the guarantees of a fair trial (see *Sejdovic*, cited above, § 86). However, if it is to be effective for Convention purposes, such waiver of the right to take part in the trial must be established in an unequivocal manner and be attended by minimum safeguards commensurate to its importance.

51. The Court observes in this connection that the first question is whether the applicant was officially notified of the criminal proceedings against him. The Court has already held that informing someone that a prosecution is being brought against him is a legal act of such importance that it must be carried out in accordance with procedural and substantive requirements capable of guaranteeing the effective exercise of the accused's rights; vague and informal knowledge cannot suffice (see *Sejdovic*, cited above, § 99; *Stoyanov v. Bulgaria*, no. 39206/07, § 34, 31 January 2012; and *Kounov v. Bulgaria*, no. 24379/02, § 47, 23 May 2006).

52. Turning to the present case, the Court notes that it is not disputed between the parties that the applicant left the country before the start of the proceedings against him. In this connection it notes that the applicant left the country on 25 June 2003, the criminal complaint against him was lodged in July 2003, and the criminal investigation was initiated in September 2003.

53. As regards the question of whether the authorities acted diligently and made sufficient and adequate efforts to trace the applicant and establish his whereabouts so that they might notify him of the criminal proceedings against him, the Court notes that the reports drafted in August and September 2003 prove that the investigating authorities tried to contact the applicant at the beginning of the investigation. They show that the investigating authorities went to the applicant's last place of residence several times. However, there is no evidence that the applicant was served with a summons at his last place of residence or at any other address after September 2003. Moreover, it is difficult to establish whether the applicant had been informed about the investigation by his wife, given that the documents submitted by the applicant show that their divorce was pronounced on 20 October 2003. Moreover, the Court notes that the applicant did not receive any official notification of the institution of criminal proceedings against him or the date of his trial. It appears that each time the police officers went to the applicant's last place of residence they tried to obtain information about his whereabouts, but they did not leave any summons or documents.

54. In the light of the above considerations and in the absence of any official notification addressed to the applicant, the Court is not convinced that the latter had knowledge of the trial against him at the beginning of the proceedings. However, it appears that after his conviction by the first-instance court, the applicant became aware of the criminal proceedings. He lodged an appeal against his conviction and chose to be represented by the same lawyer who had been appointed by the court to represent him before the first-instance court.

55. Being mindful of all of the above, the Court is of the view that in the instant case it has not been shown by the respondent Government that the applicant had a degree of knowledge of the investigation that had been

opened or the specific charges brought against him sufficient to justify the conclusion that he had waived his right to participate in the proceedings or had attempted to evade justice.

56. Moreover, the Court notes that after the dismissal of his appeal the applicant came back to Romania of his own free will and attended all the hearings before the High Court of Cassation and Justice in the proceedings concerning the appeal on points of law.

57. In this connection, the Court reiterates that the proceedings as a whole may be said to have been fair if the defendant was allowed to appeal against the conviction *in absentia* and was entitled to attend the hearing in the court of appeal, thus opening up the possibility of a fresh factual and legal determination of the criminal charge (see *Jones v. the United Kingdom* (dec.), no. 30900/02, 9 September 2003).

58. Moreover, where an appellate court is called upon to examine a case as to the facts and the law and to make a full assessment of the question of the applicant's guilt or innocence, it cannot, as a matter of fair trial, properly determine those issues without a direct assessment of the evidence given in person by the accused who claims that he has not committed the act alleged to constitute a criminal offence (see *Ekbatani v. Sweden*, 26 May 1988, § 32, Series A no. 134; *Lacadena Calero v. Spain*, no. 23002/07, § 36, 22 November 2011; and *Văduva v. Romania*, no. 27781/06, § 37, 25 February 2014).

59. Turning to the instant case, the Court notes that the procedure in force at the material time permitted the High Court to deliver a fresh judgment on the merits even when examining an appeal on points of law. In the cases of *Popa and Tănăsescu v. Romania* (no. 19946/04, § 48, 10 April 2012) and *Găitănaru v. Romania* (no. 26082/05, § 30, 26 June 2012), the Court has already had the opportunity to examine the scope of the High Court's powers, and found that the proceedings before it were full proceedings governed by the same rules as a trial on the merits, with the court being required to examine both the facts of the case and questions of law. The High Court could decide either to acquit the applicant or to convict him, after making a thorough assessment of the question of his guilt or innocence. If the necessity to hear evidence arose directly from the circumstances of the case, the High Court could remit the case to a lower court in accordance with the provisions of the CCP in force at the material time (see paragraph 27 above).

60. The matters that the High Court of Cassation and Justice examined in order to decide whether the applicant was guilty were of a factual nature which would have justified a fresh examination of the evidence, especially since it was the first court to hold a hearing in the applicant's presence.

61. The High Court did not avail itself of these possibilities, however, and instead judged the case on the basis of the evidence submitted in the applicant's absence to the prosecutor and the courts at the first two levels of

jurisdiction. The failure to hear the accused in person is even more difficult to reconcile with the requirements of a fair trial in the specific circumstances of this case, where the court of last resort carried out an assessment of the subjective element of the alleged offence, namely the applicant's intent to commit the offence. In this connection, the Court notes that the applicant had been acquitted in another set of criminal proceedings concerning a similar offence of fraud, namely issuing cheques without having enough funds in the bank's accounts, on the grounds that he had not acted with a direct intent to obtain an unjustified gain for himself (see paragraph 25 above).

62. Furthermore, with regard to the Government's argument that neither the applicant nor his lawyer had specifically asked the High Court to hear him or the witnesses, the Court takes the view that the applicant's absence from the proceedings before the investigating authorities and the lower courts gave the High Court a sufficiently strong reason to justify a fresh examination of the evidence. In any event, the Court reiterates that the domestic courts are under an obligation to take positive measures to such an end, even if the applicant has not requested it (see *Dănilă v. Romania*, no. 53897/00, § 41, 8 March 2007; and *Găitănaru*, cited above, § 34).

63. Moreover, although the High Court allowed the applicant to make a statement at the end of the hearing, it should be noted that the Court has already found that the use made of such an opportunity is not sufficient to the purpose of Article 6 of the Convention (see *Constantinescu v. Romania*, no. 28871/95, § 58, ECHR 2000-VIII).

In these circumstances, the omission of the High Court to hear the applicant in person or any other evidence in his presence, and its failure to redress the situation by remitting the case to the Court of Appeal for a fresh examination of the evidence, substantially reduced the applicant's defence rights.

64. The foregoing considerations are sufficient to enable the Court to dismiss the objection concerning the applicant's abuse of the right of individual application and to conclude that, in the instant case, the domestic courts failed to comply with the requirements of a fair trial.

65. Since that requirement was not satisfied, the Court considers that there has been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

66. Lastly, the applicant raised a complaint under Article 1 of Protocol No. 4 to the Convention.

67. The Court has examined this complaint as submitted by the applicant. However, having regard to all the material in its possession, and in so far as it falls within its jurisdiction, the Court finds that it does not disclose any appearance of a violation of the rights and freedoms set out in

the Convention or its Protocols. It follows that this complaint must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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

69. The applicant claimed 134,917 euros (EUR) in respect of pecuniary damage, of which EUR 14,352 represented the salary to which he would have been entitled and EUR 120,592 represented possible revenues from dividends in his capacity as shareholder.

In respect of non-pecuniary damage, the applicant asked for EUR 50,000 as compensation for the humiliation and suffering he had suffered.

70. The Government stated that the amounts claimed by the applicant for pecuniary damage were speculative, excessive and not proven.

In respect of the compensation for non-pecuniary damage claimed by the applicant, the Government stated that it was excessive and asked the Court, if it found a violation, to consider such finding of a violation in itself to be sufficient just satisfaction.

71. The Court notes that in the present case an award of just satisfaction can only be made on the basis of the applicant's not having had the benefit of the guarantees of Article 6. Whilst the Court cannot speculate as to the outcome of the trial had the position been otherwise, it considers that the applicant did suffer non-pecuniary damage.

72. Therefore, ruling on an equitable basis, in accordance with Article 41, it awards the applicant EUR 2,400 in respect of non-pecuniary damage.

B. Costs and expenses

73. The applicant also claimed EUR 3,000 for the costs and expenses incurred before the Court, representing his lawyer's fees. The applicant had submitted a contract of judicial assistance proving the fees charged by his lawyer.

74. The Government considered the amount requested to be excessive. In this respect they pointed out that the applicant had not submitted a time sheet showing the number of hours spent by his lawyer in preparing the

written observations for the Court and that part of his submissions were superfluous concerning aspects not communicated to them.

75. 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 3,000 for costs and expenses in the proceedings before the Court.

C. Default interest

76. 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. *Joins* to the merits and *dismisses* the objection concerning the applicant's abuse right of individual application;

2. *Declares* the complaint concerning the fairness of the criminal proceedings, raised under Article 6 § 1 of the Convention, admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *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 2,400 (two thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,000 (three thousand 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 October 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Luis López Guerra
President