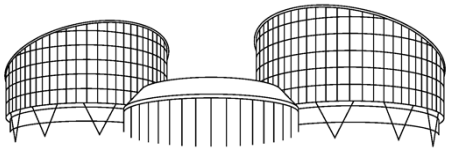

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF CARAIAN v. ROMANIA

(Application no. 34456/07)

JUDGMENT

STRASBOURG

23 June 2015

FINAL

19/10/2015

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

In the case of Caraian v. Romania,

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

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

Having deliberated in private on 2 June 2015,

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

PROCEDURE

1. The case originated in an application (no. 34456/07) 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 Vasile Caraian ("the applicant"), on 2 August 2007.

2. The applicant was represented by Mr A. Marin, a lawyer practising in Bucharest. The Romanian Government ("the Government") were represented successively by their co-Agent and by their Agent, Ms I. Cambrea and Ms C. Brumar, from the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, expressly or in substance a breach of his right to the presumption of innocence and his right to a fair trial guaranteed by Article 6 §§ 1 and 2 of the Convention, because the domestic courts dismissed his appeal against the prosecutor's order declaring him guilty of the offences for which he had been indicted after the criminal proceedings initiated against him had been discontinued as time-barred. Moreover, the domestic courts endorsed the prosecutor's order and confirmed his guilt by relying on the evidence available in the file, without retaining the case for examination and without adducing additional evidence. Furthermore, the length of the criminal proceedings initiated against him had been excessive.

4. On 24 January 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1940 and lives in Bucharest.

A. The first round of proceedings

6. On 23 August 1996 the Sibiu Police Department remanded the applicant in custody for twenty-four hours on suspicion of intellectual forgery (*fals intelectual*) and use of forged documents (*uz de fals*).

7. By an order of 24 August 1996 the Sibiu Prosecutor's Office detained the applicant for five days pending trial on account of the seriousness of the offences and the need to protect public order.

8. By an order of 28 August 1996 the Sibiu Prosecutor's Office extended the applicant's pre-trial detention by twenty-five days on account of the seriousness of the offences, the need to protect public order, and the need to prevent him from destroying evidence.

9. The applicant challenged the order before the domestic courts and requested to be released under judicial supervision.

10. By a final interlocutory judgment of 18 October 1996 the Alba Iulia Court of Appeal allowed the applicant's challenge. It held that the applicant's arrest had been lawful; however there was no lawful reason concerning the applicant that would prevent the court from releasing him under judicial supervision.

11. On 2 September 1997 the Sibiu Prosecutor's Office indicted the applicant and other co-accused for bribery, influence peddling, complicity in fraud, intellectual forgery, and use of forged documents, and referred the case to the Sibiu County Court.

12. On 17 April 1997, 15 May, 2 July and 17 September 1998 the Sibiu County Court heard the applicant, his co-accused and the witnesses in the case. In addition it allowed the applicant's and his co-accuseds' request for documentary evidence, and ordered an expert financial report to be produced in the case. The applicant submitted that he did not agree that a financial expert report should be produced in the case, and refused to submit observations on the report's objectives following the court's request.

13. On 15 October 1999 the applicant informed the Sibiu County Court that he had no objections in respect of the financial expert report.

14. On 22 May 2000 the applicant's chosen legal representative submitted oral observations to the court in respect of the merits of the case.

15. On 15 June 2000 the Sibiu County Court acquitted the applicant on the basis of documentary, testimonial and expert evidence in addition to the applicant's statements, on the ground that no unlawful act had been committed.

16. The Sibiu Prosecutor's Office appealed against the judgment.

17. On 5 December 2000 the Alba Iulia Court of Appeal allowed the Sibiu Prosecutor's Office's appeal on the merits, quashed the judgment of 15 June 2000, convicted the applicant of bribery, trafficking influence, complicity in fraud, and forgery of privately signed documents (*fals în înscrisuri sub semnătură privată*) which following changes to the relevant domestic legislation had absorbed the offences of intellectual forgery (*fals intelectual*) and use of forged documents (*uz de fals*), and sentenced him to three years' imprisonment.

18. The applicant appealed on points of law (*recurs*) against the judgment.

19. On 1 March 2002 the Court of Cassation allowed the applicant's appeal on points of law, quashed the judgments of 15 June and 5 December 2000, and referred the case back to the Sibiu Prosecutor's Office for the entire criminal investigation of the case to be carried out again. The court held that the prosecutor's office had failed to observe the lawful requirements for investigating the case, had established the facts of the case superficially, and had breached procedural rules which affected the very existence of the criminal investigation and the lawfulness of the referral of the case to the court. It noted that the investigation had been carried out mainly by the police, and not by the prosecutor as required by the applicable rules of criminal procedure; the prosecutor's office had failed to produce all the relevant evidence in the case concerning the existence of the offences and of the defendants' guilt, and had not clarified the contradictions in the available evidence, in particular between the expert opinions produced in respect of the case. The domestic courts which had examined the case had also been unable to clarify the existence or inexistence of the alleged damage caused by the defendants, or to quantify it.

B. The second round of proceedings

20. On 16 October 2002 the Sibiu Prosecutor's Office referred the applicant's case to the National Anticorruption Prosecutor's Office. It held that given the applicant's status and the nature of some of the offences the National Anticorruption Prosecutor's Office was competent to carry out the criminal investigation in respect of the case.

21. From 27 November 2002 to 13 January 2003 the prosecutor attached to the National Anticorruption Prosecutor's Office heard the applicant and his co-accuseds in respect of all the charges brought against them. In addition, the prosecutor also heard two witnesses in respect of the circumstances of the case.

22. On 30 June 2003 the National Anticorruption Prosecutor's Office discontinued the criminal proceedings opened against the applicant for

bribery and influence peddling on the ground that no unlawful act had been committed. The prosecutor's office relied on testimonial evidence, including statements by the applicant produced both before the courts and before the prosecutor's office after the case had been referred back there by the courts. In addition, it referred the case to the Sibiu Prosecutor's Office in order to carry out the criminal investigation opened against the applicant for complicity in fraud and forgery of privately signed documents, on the ground that it was not competent to carry out the investigation in respect of those offences.

23. On 31 July 2003 the Sibiu Prosecutor's Office discontinued the criminal investigation initiated against the applicant. It held on the basis of the documentary, testimonial and expert evidence available in the file that although the applicant's criminal liability was undeniable, the criminal action initiated against him was time-barred.

24. The applicant challenged that decision, and on the basis of Article 13 of the Romanian Code of Criminal Procedure requested that the authorities continue the criminal investigation initiated against him to enable his innocence to be established.

25. On 11 November 2003 the Sibiu Prosecutor's Office allowed the applicant's challenge and reopened the criminal investigation against the applicant.

26. On 12 November 2003 the prosecutor attached to the Sibiu Prosecutor's Office heard the applicant. On the same date the applicant stated that he did not have any more evidence to request, and that the evidence already produced fully proved his innocence. In addition, he asked the authorities to examine the circumstances of his case by relying on the evidence produced at the pre-trial and trial stages of the proceedings.

27. On 14 November 2003 the Sibiu Prosecutor's Office discontinued the criminal investigation initiated against the applicant. It held on the basis of the testimonial, documentary and expert evidence available in the file, as well as the applicant's own statements, that although the applicant's unlawful acts had been proven, the criminal action initiated against him was time-barred.

28. The applicant appealed against the order before the Sibiu County Court. He argued that the prosecutor's office's order was unlawful, because the criminal investigation against the applicant had been carried out by the same prosecutor who had previously confirmed the applicant's indictment. In addition, he denied committing the impugned offences.

29. On 31 May 2004 the Sibiu County Court held that it was not competent *ratione materiae* to examine the applicant's action, and referred the case to the Sibiu District Court.

30. On 14 July 2004 the Sibiu District Court allowed the applicant's action, quashed the prosecutor's office's order of 14 November 2003, and referred the case back to the prosecutor's office for the criminal

investigation against the applicant to be reopened. It held that the criminal investigation against the applicant had been carried out by the same prosecutor who had previously confirmed the applicant's indictment. In addition, by declining to examine the remaining arguments raised by the applicant, it had instructed the prosecutor's office to assess if the applicant's complaint concerning the merits of the case was founded. Lastly, it instructed the prosecutor's office to clearly determine the extent of the applicant's involvement in committing the impugned offences and also whether he had been indicted for the same unlawful acts of which he had been informed.

31. The applicant appealed on points of law against the judgment, without providing any arguments.

32. On 18 October 2004 the Sibiu County Court dismissed the applicant's appeal on points of law as ill-founded, and upheld the judgment of the first-instance court. The court noted that the applicant had submitted the grounds for his appeal on points of law after the debates on the merits of the case had been closed.

C. The third round of proceedings

33. On 21 March 2005 the Sibiu Prosecutor's Office discontinued the criminal investigation initiated against the applicant. It held on the basis of the documentary, testimonial and expert evidence available in the file produced both during the previous investigation and during the trials that, although the applicant was guilty of the impugned offences, the criminal proceedings initiated against him were time-barred. In addition, it described the applicant's involvement in committing the unlawful acts and noted that after its reopening the criminal investigation against the applicant had been carried out by a different prosecutor from the one who had confirmed his indictment. Furthermore, the applicant had been indicted for the same unlawful acts of which he had been informed. In this connection, the prosecutor's office noted that some of the offences had been examined by the prosecutor's order of 30 June 2003. Also, following some amendments to the relevant legislation, the domestic legal practice had changed: the offences of intellectual forgery and use of forged documents had been absorbed by the offence of forgery of privately signed documents.

34. The applicant appealed against the decision before the Sibiu District Court by relying on Article 278^1 § 8 (c) of the Romanian Code of Criminal Procedure. He argued that the domestic court should quash the prosecutor's decision, retain the case for examination, and acquit him. In addition, he contended that the prosecutor's order had been unlawful because it concerned acts with which the criminal investigation was not concerned, and was in any case not supported by the evidence available to the file. Also, without providing any grounds the investigating authorities had

ceased to accuse him of intellectual forgery or use of forged documents. Furthermore, the Sibiu Prosecutor's Office did not follow the mandatory instructions received from the court. There was no evidence in the file that he had been an accomplice to an offence. Lastly, he had disagreed with being charged with forgery of privately signed documents; he had argued that the parties had not been allowed to submit observations in respect of the requalification carried out.

35. On 18 January 2006 the applicant and his chosen legal representative informed the Sibiu District Court that he did not have other requests in respect of the judicial investigation of the case. They further argued, among other things, that although in July 2004 the Sibiu District Court had ordered the prosecutor's office to reopen the criminal proceedings against him and had given the investigating authorities several instructions, none of those instructions had been followed. In particular, no evidence was adduced, and they were not called to take part in the production of evidence. Also, the investigating authorities did not clarify any of the issues identified by the court. Consequently, they requested that on the basis of Article 278[1] § 8 (c) the court should quash the prosecutor's order and, given that the production of other evidence was not necessary, acquit the applicant in respect of the merits of the case.

36. By a judgment of 2 February 2006 the Sibiu District Court dismissed the applicant's appeal and upheld the prosecutor's decision, relying on the available evidence. It held that the investigating authorities had not ceased to accuse him of intellectual forgery or use of forged documents, but had re-qualified those offences as forgery of privately signed documents. Also, the Sibiu Prosecutor's Office had observed the mandatory instructions received from the court. In particular, the criminal investigation had been carried out by a different prosecutor from the one who had indicted the applicant, the prosecutor had explained in detail how the applicant had helped and contributed to the commission of the offences, and had verified that the acts for which the criminal investigation had been opened were identical to those indicated by the prosecutor's order. Furthermore, the prosecutor's order had clearly described in detail, by relying on evidence, why the applicant had been an accomplice to an offence. Lastly, the applicant's own statements amounted to an acknowledgment that he had forged privately signed documents.

37. The applicant appealed against the judgment on points of law. He argued that the domestic court should quash the prosecutor's decision, retain the case for examination, and on the basis of the same evidence available in the file acquit him of fraud and forgery of privately signed documents. He further contended that the evidence in the file and the examination carried out by the prosecutor's office did not prove that he had committed the offences. Also, the parties had not been allowed to submit observations

following the requalification of two of the offences he had been charged with to forgery of privately signed documents.

38. By a final judgment of 30 March 2007 the Bacău County Court dismissed the applicant's appeal on points of law and acknowledged the lawfulness of the prosecutor's order of 21 May 2005 and of the first-instance court's judgment. It so held on the basis of the available documentary, testimonial and expert evidence produced both during the criminal investigation and before the domestic courts that the applicant had committed the offences of complicity in fraud and forgery of privately signed documents. In addition, the prosecutor's office had examined the applicant's guilt on the merits, and had established that the acts had existed and therefore the criminal proceedings against the applicant could not have been discontinued on the ground that no unlawful act had been committed. Therefore, the prosecutor's office had correctly held that the criminal proceedings initiated against him had been time-barred.

39. In a letter of 28 February 2008 the applicant informed the Court that the criminal proceedings initiated against him had destroyed his reputation, and that a virulent press campaign had been initiated against him and his company at the time of his arrest. The applicant submitted three articles published in local and national newspapers between June 1997 and March 1998 describing the events which led to the charges being brought against him and a chronological narration of the criminal proceedings initiated against him.

II. RELEVANT DOMESTIC LAW

A. The Romanian Constitution

40. Article 23 § 11 provides that a person is presumed innocent pending a final court judgment convicting him.

B. The former Romanian Criminal Procedure Code

41. Article 10 provided, *inter alia*, that criminal proceedings must be discontinued if they are time-barred.

42. Article 13 provided, *inter alia*, that an accused can ask for criminal proceedings initiated against him to be continued if they have become time-barred.

43. Article 66 provided that a person charged with a criminal offence enjoyed the right to be presumed innocent and did not have to prove his innocence. If evidence of guilt existed, the person charged with a criminal offence had the right to rebut it.

44. Article 197 provided that breaches of domestic law regulating criminal trials may render an act null only when the quashing of the aforementioned act is the only solution to remedy the damage caused. Breaches of the rules governing among other things competence *ratione materiae* and referral of the case to the courts render such acts null without any possibility of avoiding quashing the act.

45. The relevant provisions of Articles 275-78[1] are described in detail in *Dumitru Popescu v. Romania (no. 1)*, 49234/99, §§ 44-46, 26 April 2007.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

46. The applicant complained that the criminal proceedings opened against him had been excessively lengthy. In addition, he complained of a breach of his right to the presumption of innocence and his right to a fair trial, because the domestic courts had dismissed his appeal against the prosecutor's decision finding that he was guilty of the offences for which he had been indicted even though the criminal proceedings initiated against him had been discontinued as time-barred. Also, the domestic courts had endorsed the prosecutor's decision and confirmed his guilt by relying on the evidence available in the file, without retaining the case for examination and without adducing additional evidence. He relied on Article 6 §§ 1 and 2 of the Convention, the relevant parts of which read as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by a ... tribunal ...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law ..."

A. Length of the criminal proceedings opened against the applicant

47. After the failure of an attempt to reach a friendly settlement, by letter of 11 September 2012 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by this part of the application. They further asked the Court to strike out this part of the application, in accordance with Article 37 of the Convention.

48. The declaration provided as follows:

> "The Government declare - by way of unilateral declaration - their acknowledgement of a violation of Article 6 § 1 of the Convention resulting from the excessive length of the proceedings.

> The Government declare that they are prepared to pay the applicant as just satisfaction in respect of the length of proceedings the sum of EUR 2,430 (two thousand four hundred and thirty euros), which they consider to be reasonable in the light of the Court's case-law. This sum, which will cover all pecuniary and non-pecuniary damage as well as costs and expenses, will not be subject to any tax. It will be converted into Romanian lei at the rate applicable on the date of payment, and will be payable into a bank account indicated by the applicant within three months of the date of notification of the decision by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
>
> The Government respectfully ask the Court to decide that the examination of the part of the application concerning the length of proceedings is no longer justified and to strike it out of the Court's list of cases, according to Article 37 § 1 (c) of the Convention."

49. By letter of 19 November 2012 the applicant objected to the striking out of this part of the application. He argued that his complaints also concerned other numerous breaches of Article 6 of the Convention. In addition, the amount proposed by the Government was insufficient considering the substantial damage suffered by him as a result of the other alleged breaches of his Convention rights.

50. The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "... for any other reason established by the Court, it is no longer justified to continue the examination of the application".

51. It also notes that in certain circumstances it may strike out an application under Article 37 § 1(c) on the basis of a unilateral declaration by a respondent Government, even if the applicant wishes the examination of the case to be continued.

52. To this end, the Court will carefully examine the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (see *Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03, 18 September 2007).

53. The Court has established in a number of cases, including those brought against Romania, its practice concerning complaints about violations of Article 6 § 1 of the Convention on account of length of proceedings (see, for example, *Cerăceanu v. Romania*, no. 31250/02, 4 March 2008).

54. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed, the Court considers that it is no longer justified to continue the examination of the part of the application concerning the length of the criminal proceedings opened against the applicant (Article 37 § 1(c)).

55. Moreover, in the light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of this part of the application (Article 37 § 1 *in fine*).

56. In any event, the Court's decision is without prejudice to any decision it might take to restore, pursuant to Article 37 § 2 of the Convention, this part of the application to its list of cases should the Government fail to comply with the terms of their unilateral declaration (see *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008, and *Aleksentseva and 28 Others v. Russia* (dec.), nos. 75025/01 et al., 23 March 2006).

57. In view of the above, it is appropriate to strike the case out of the list in respect of the applicant's complaint concerning the length of the criminal proceedings opened against him.

B. The applicant's right to presumption of innocence and to a fair trial

1. Admissibility

58. In respect of the applicant's remaining complaints, the Court notes that they are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

59. The Court notes, however, that the ongoing criminal proceedings opened against the applicant had become time-barred and that a determination of the criminal charge brought against him within the context of formal criminal proceedings was no longer possible after that. In this context, taking into account the way the applicant framed his complaint and the fact that he had accepted the risk that the determination of the criminal charge brought against him could have been carried out only within the framework of informal criminal proceedings, the Court considers that the main issue raised by his complaints is the alleged breach of the principle of presumption of innocence. Consequently, it considers that the applicant's complaints should be examined only under Article 6 § 2 of the Convention.

2. Merits

(a) Submissions of the parties

60. The applicant submitted that in spite of the Court of Cassation's judgment of 1 March 2002 instructing the criminal-investigation authorities to start the criminal investigation against him again, the Sibiu Prosecutor's Office had failed to carry out any additional investigation in respect of his case. In addition, he did not have to prove his innocence. It was the prosecutor's office which had to prove his guilt, even though after the domestic courts ordered the reopening of the criminal investigation he did not ask for additional evidence to be produced in the file.

61. The shortcomings and the superficiality of his indictment were emphasised by the first-instance court's acquittal, the Court of Cassation's judgment, and the National Anticorruption Prosecutor's Office decision to discontinue the criminal proceedings opened against him for two of the offences on the ground that no unlawful act had been committed.

62. The applicant contested the Government's argument that after the reopening of the case a complete re-hearing was not required. The applicant contended that the Court of Cassation had ordered the reopening of the criminal proceedings partly because the investigation of the case had been carried out by a body without competence to do so, namely the police, and therefore it was null *ab initio*. However, only the National Anticorruption Prosecutor's Office took additional investigating measures after the reopening of the case and heard him, his co-accused and some of the witnesses in the case, and subsequently discontinued the criminal investigation opened against him in respect of two of the offences.

63. The applicant also contested the Government's allegation that the Court of Cassation had ordered the reopening of the criminal investigation against him on purely formal grounds. He argued that the Court of Cassation had ordered the reopening of the investigation because there had been serious breaches of the domestic legislation, which had rendered the investigation null and void. In addition, he disagreed that the problems identified by the domestic courts had been solved and that the prosecutors had made a complete assessment of the available evidence, given that the prosecutor's office had not actually carried out any investigating measures after the reopening of the investigation in the case.

64. The applicant submitted that the Government had failed to indicate the acts and measures taken by the prosecutor's office in order to observe the instructions given by the Court of Cassation. As long as he had been unaware of the evidence relied on by the prosecutor's office in order to accuse him, it would have been impossible to ask for evidence to be produced in order to support his defence.

65. Relying on the Court's cases of *Stoica v. Romania*, no. 42722/02, §§ 105-109, 4 March 2008, and *Chiriță v. Romania*, no. 37147, §§ 98-103,

29 September 2009, the Government contended that the remedy provided by Article 278[1] was an effective one. According to the aforementioned Court case-law the said remedy gave the courts the power to review the investigation carried out by the prosecutor's office and to hear evidence. Thus, the interested party had the possibility of challenging the prosecutor's order to discontinue the criminal investigation with the effect of having the merits of the case examined by the court.

66. The Government submitted that before delivering the judgment on the basis of Article 278[1] the applicant was given the opportunity to submit observations, and subsequently the courts examined the prosecutor's order by taking into account the pieces of the criminal investigation file and any new documents submitted by the parties.

67. The Government also argued that the circumstances of the applicant's case fell under the provisions of Article 278[1] § 8 (a) of the former Romanian Criminal Procedure Code. They relied on the fact that after the case had been sent to the prosecutor's office for a new investigation the applicant had failed to ask for additional documentary, testimonial or expert evidence to be produced. After the judgment rendered by the Court of Cassation, the National Anticorruption Prosecutor's Office heard the applicant and his co-defendants and questioned relevant witnesses.

68. The Government contended that where a case was reopened there was no requirement for a complete re-hearing of the case, and the applicant did not express an intention to produce any evidence. The applicant's procedural conduct failed to change even after he had asked the domestic authorities to continue the proceedings in respect of his case on the basis of Article 13 of the former Romanian Criminal Procedure Code. Although he had been given the opportunity to produce additional evidence, he expressly stated that he had no other evidence to adduce to the file, and that the existing evidence was sufficient to prove his innocence. In addition, although he had challenged the prosecutor's office's order before the domestic courts he did not apply to the courts for leave to produce additional evidence. Under these circumstances the domestic courts had no legal basis on which to allow the applicant's complaint, and the application of Article 278[1] (8 (c)) of the former Romanian Code of Criminal Procedure was not warranted.

69. The Government submitted that both the Court of Cassation and the Sibiu District Court, on 1 March 2002 and 14 July 2004 respectively, quashed the prosecutor's orders for formal reasons. While the aforementioned courts also touched on the merits of the case, that was an incidental issue and not the main reason for sending the case back to the prosecutor's office. Once the formal issue identified by the courts had been remedied, the prosecutor's office carried out a full assessment of the available evidence and found the applicant guilty of the charges brought against him. The prosecutor's office's conclusion was subsequently upheld

by the domestic courts, rendering it unnecessary for the domestic courts to allow the applicant's complaint under Article 278[1] and to retain the case for an examination on the merits.

70. The Government also contended that during the first round of proceedings the applicant had had the opportunity to ask the domestic courts to have evidence produced. In addition, the applicant had been heard directly by the court during the first procedural cycle. Furthermore, after the reopening of the criminal investigation he was once again heard by a prosecutor, and he had the opportunity to submit extensive oral and written observations to the domestic courts. However, he did not consider that it had been necessary to give evidence after the reopening of the criminal investigation, as he did not raise the issue of not being heard before the courts.

71. The Government submitted that the domestic courts enforce the procedural rules set for trials at the first-instance and appeal levels, including the rules for producing evidence, when they allow a complaint lodged on the basis of Article 278[1]; only afterwards do they examine the merits of the case as a first-instance trial court.

72. The Government also argued that the procedure set out by Article 278[1] of the former Romanian Criminal Procedure Code does not limit the applicant's right of access to court to such an extent as to breach Article 6 of the Convention. The aforementioned procedure is different from the ordinary criminal procedure. Its main purpose is exerting control over a prosecutor's orders to discontinue criminal proceedings; only in certain circumstances does it facilitate the institution of a new round of trial proceedings. The procedure in question has a legitimate aim, namely to allow applicants the legal means to obtain a review by a domestic court of orders issued by prosecutors' offices. In addition, there is a reasonable proportionality between this aim and the means employed, because the courts are given the opportunity to save time and resources in respect of those cases which do not raise any issues under the substantive or procedural criminal law, therefore allowing them the opportunity to focus on relevant legal matters brought before them.

73. The Government submitted that no issue could arise in respect of the applicant's right to be presumed innocent, because the prosecutor's office established the applicant's guilt after it had assessed the evidence available to the file, and its decision was subsequently confirmed by the domestic courts.

(b) The Court's assessment

74. The Court reiterates that the presumption of innocence enshrined in Article 6 § 2 is one of the elements of a fair criminal trial required by Article 6 § 1, and must be interpreted in the light of the Court's case-law. It will be violated if a statement by a public official concerning a person

charged with a criminal offence reflects the opinion that he is guilty, unless he has been proved so according to law, in particular where he has had the opportunity to exercise his rights to mount a defence (see *Müller v. Germany*, no. 54963/08, § 46, 27 March 2014; *Capetti and Maimut v. Romania* (dec.), no. 13043/05 and 23408/08, §§ 77 and 78, 15 May 2012 and *Allen v. the United Kingdom* [GC], no. 25424/09, § 93, ECHR 2013). It suffices, even in the absence of any formal finding, that there is some reasoning to suggest that the official regards that person as guilty (see *Daktaras v. Lithuania*, no. 42095/98, § 41, ECHR 2000-X; *A.L. v. Germany*, no. 72758/01, § 31, 28 April 2005; and *Grabtchouk v. Ukraine*, no. 8599/02, § 42, 21 September 2006). Whether a statement by a public official is in breach of the principle of the presumption of innocence must be determined in the context of the particular circumstances in which the impugned statement was made (see *Grabtchouk*, cited above, § 42). The scope of Article 6 § 2 is moreover not limited to pending criminal proceedings, but extends to judicial decisions taken after a prosecution has been discontinued or after an acquittal (see *Capetti and Maimut*, cited above, § 77).

75. In the instant case the Court notes that the applicant's case was terminated during the third round of proceedings at the pre-trial stage by the prosecutor's office on the ground that the prosecution for the offences the applicant had been charge with was time-barred. The prosecutor office's decision was subsequently confirmed by the judgments of the domestic courts.

76. It is true that, even if the criminal proceedings opened against the applicant had become time-barred, he asked for them to be continued and for the domestic courts to determine his guilt or innocence. It is also true that the voicing of suspicions regarding an accused's innocence is conceivable as long as the conclusion of criminal proceedings has not resulted in a decision on the merits of the accusation (see *Grabtchouk*, cited above, § 45). However, the Court notes that in the present case the prosecutor office's decision terminating the criminal proceedings against the applicant was couched in terms which left no doubt as to their view that the applicant had committed the offences. In particular, the prosecutor's office in its decision of 21 March 2005 held that the applicant was guilty of the impugned offences and the Sibiu District Court and the Bacău County Court also indicated that the applicant had committed the offences. The proceedings before the domestic courts were not ordinary criminal proceedings as the formal outcome was that the proceedings were discontinued. Accordingly, it cannot be concluded that the proceedings before those courts resulted, or were intended to result in the applicant being "proved guilty according to law". In these circumstances, the Court considers that the prosecutor's office's and the domestic courts' express

statements in respect of the applicant's guilt constituted an infringement of the presumption of innocence.

77. In conclusion, there has been a violation of Article 6 § 2 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

78. Relying on Article 5 of the Convention the applicant complained that his pre-trial detention between 23 August and 18 October 1996 had been unlawful. Citing Article 6 § 2 of the Convention, the applicant complained that a virulent press campaign was initiated against him at the time he was remanded in custody. Citing Article 8 of the Convention, the applicant complained that the criminal proceedings initiated against him had destroyed his reputation.

79. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. 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

81. The applicant claimed 4,320,059 euros (EUR) in respect of pecuniary damage and EUR 500,000 for non-pecuniary damage. He argued that the amount claimed for pecuniary damage represented investments made in his company, dividends he could have obtained as a result of his company's activities, and sums confiscated by the authorities as proceeds of crime. At the same time the non-pecuniary damage claimed represented compensation for the suffering caused by the criminal proceedings opened against him.

82. The Government contended that the applicant's claims for pecuniary damage concerned hypothetical revenues, and that he had failed to challenge before the domestic authorities the measure of confiscation of proceeds of crime. Also, they submitted that there was no causal link

between the alleged breaches of the Convention and the pecuniary damage claimed. Furthermore, they contended that the amount claimed by the applicant as compensation for non-pecuniary damage was excessive, and that the mere finding of a violation would represent in itself sufficient just satisfaction.

83. The Court does not discern any causal link between the violation found and the pecuniary damage alleged, and therefore rejects this claim. However, the Court takes the view that, as a result of the violations found, the applicant undeniably suffered non-pecuniary damage which cannot be made good merely by the finding of a violation.

84. Consequently, making an assessment on an equitable basis, the Court awards the applicant EUR 3,600 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Default interest

85. 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 terms of the respondent Government's declaration in respect of the complaint under Article 6 of the Convention concerning the excessive length of the criminal proceedings opened against the applicant;

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

3. *Declares* the complaints concerning the dismissal by the domestic courts of the applicant's appeal against the prosecutor's order to declare him guilty of the offences admissible, and the remainder of the application inadmissible;

4. *Holds* that there has been a violation of Article 6 § 2 of the Convention;

5. *Holds*
   (a) that the respondent State is 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, EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in

respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 23 June 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Josep Casadevall
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Silvis and López Guerra is annexed to this judgment.

J.C.M.
J.S.P.

CONCURRING OPINION OF JUDGE SILVIS JOINED BY JUDGE LÓPEZ GUERRA

1. A distinguishing feature of this case is that the authority responsible for the decision to discontinue the criminal investigation as well as the courts upholding that decision are reproached by the applicant for breaching his right to be presumed innocent, while many cases of alleged violations of Article 6 § 2 of the Convention are concerned with the voicing of suspicion by authorities other than those responsible for the decision to end the proceedings without dealing with the merits.

2. Since the charges against the applicant had become time-barred, the Sibiu Prosecutor's Office decided to discontinue the criminal investigation. Apparently the prosecution regretted this ending, since it also expressed the view that, on the basis of the documentary, testimonial and expert evidence in the file, as produced during both the previous investigation and the trials, the applicant was guilty of the offences for which he had been prosecuted. The applicant appealed against the decision to discontinue the proceedings, claiming that he should be acquitted after examination of the case in a court. The Sibiu District Court dismissed the appeal and upheld the prosecutor's decision. In a final judgment, the Bacău County Court dismissed the applicant's appeal on points of law. The County Court held, on the basis of the available documentary, testimonial and expert evidence, that the applicant had committed the offences of complicity in fraud and forgery of privately signed documents, but concluded that the case was correctly found to be time-barred. To my mind it is beyond controversy that the domestic courts operated within their margin of appreciation when finding that the case could not have been discontinued on the ground that no unlawful act had been committed. However, the wording used by the domestic courts concerning the applicant's guilt breaches his right to the presumption of innocence (Article 6 § 2).

3. In the early case of *Minelli v. Switzerland* (25 March 1983, Series A no. 62), which concerned an order requiring the applicant to pay prosecution costs following discontinuance of criminal proceedings, the Court set out the applicable principle as follows:

> "37. In the Court's judgment, the presumption of innocence will be violated if, without the accused's having previously been proved guilty according to law and, notably, without his having had the opportunity of exercising his rights of defence, a judicial decision concerning him reflects an opinion that he is guilty. This may be so even in the absence of any formal finding; it suffices that there is some reasoning suggesting that the court regards the accused as guilty."

4. In a number of cases with which the Court has had to deal concerning applications by a former accused for compensation or for defence costs, the Court has drawn on the principle set out in *Minelli*, explaining that a decision whereby compensation for detention on remand and reimbursement of an accused's necessary costs and expenses were refused following termination of proceedings might raise an issue under Article 6 § 2 if the supporting reasoning, which could not be dissociated from the operative provisions, amounted in substance to a determination of the accused's guilt without his having previously been proved guilty according to law and, in particular, without his having had an opportunity to exercise the rights of the defence (see *Englert v. Germany*, 25 August 1987, § 36, Series A no. 123; *Nölkenbockhoff v. Germany*, 25 August 1987, § 37, Series A no. 123; and *Lutz v. Germany*, 25 August 1987, § 60, Series A no. 123). All three cases, as was clearly observed in *Allen v. the United Kingdom* ([GC], no. 25424/09, § 121, ECHR 2013) concerned prior criminal proceedings which had ended in discontinuance, rather than acquittal. In finding no violation of Article 6 § 2 in those cases, the Court explained that the domestic courts had described a "state of suspicion" and that their decisions did not contain any finding of guilt.

5. In the subsequent case of *Sekanina v. Austria* (25 August 1993, Series A no. 266-A), the Court drew a distinction between cases where the criminal proceedings had been discontinued and those where a final acquittal judgment had been handed down, clarifying that the voicing of suspicions regarding an accused's innocence was conceivable as long as the conclusion of criminal proceedings had not resulted in a decision on the merits of the accusation, but that it was no longer admissible to rely on such suspicions once an acquittal had become final. Thus the *Sekanina* principle appears to seek to limit the principle established in *Minelli* to cases where criminal proceedings have been discontinued. The distinction made in *Sekanina* between discontinuance and acquittal cases has been applied in most of the cases concerning acquittal judgments which followed *Sekanina* (see, for example, *Rushiti v. Austria*, no. 28389/95, 21 March 2000, § 31; *Lamanna v. Austria*, no. 28923/95, § 38, 10 July 2001; *Weixelbraun v. Austria*, no. 33730/96, 20 December 2001, § 25; *Tendam v. Spain*, no. 25720/05, § 36, 13 July 2010, §§ 36-41; but compare and contrast *Del Latte v. the Netherlands*, no. 44760/98, § 30, 9 November 2004, and *Bok v. the Netherlands*, no. 45482/06, §§ 37-48, 18 January 2011).

6. More recently, as was also observed in the *Allen v. the United Kingdom* judgment (cited above, § 102) the Court has expressed the view that following discontinuance of criminal proceedings the presumption of innocence requires that the absence of a criminal conviction be preserved in any other proceedings of whatever nature. It has also indicated that the

operative part of an acquittal judgment must be respected by any authority referring directly or indirectly to any criminal responsibility of the interested party. However, the case at hand can be distinguished from those cases in that the voicing of (particularly strong) suspicion is here part of the reasoning in the discontinuance decision itself, while it is subsequently repeated by the courts that are called upon to review the prosecutor's decision.

7. To my mind Article 6 § 2 should not prevent prosecutors from voicing their conviction concerning the guilt of an applicant when they acknowledge that further examination of the case has become time-barred. But they should be careful in choosing their wording in order to avoid presenting their (professional) conviction as if it were equivalent to a case proven in court. Courts may confirm that the reason for discontinuing a case is merely technical in nature. By doing so they may thereby indicate a point of reference relevant to subsequent proceedings dealing with compensation claims on behalf of the accused person. However, the reasoning in such a context is a delicate matter. In the case of *Schreurs v. the Netherlands* ((dec.), no. 73058/13, 14 April 2015), a court had acquitted the applicant on technical grounds, noting that a different characterisation of the facts by the prosecution would have led to a different result. The applicant did not challenge that reasoning but came to our Court only when the domestic court in subsequent proceedings refused to award him compensation for having been in pre-trial detention, in support of which the court merely cited the reasoning underlying the earlier acquittal. Whatever the merits of that applicant's complaint concerning a violation of the right to be presumed innocent, his application was lodged too late, more than six months after the acquittal judgment containing the alleged voicing of suspicion.

8. Any suggestion by a court – confronted with justified discontinuance of a case – that an investigation of the merits would have resulted in a finding of guilt, breaches the right to the presumption of innocence of the person formerly charged. That is why I do agree with the majority in finding a breach of that right in the present case. Although I would have preferred to conclude that the finding of a violation sufficiently compensates the applicant, I see no reason to dissent on such a secondary issue where the majority think it more appropriate to grant a modest monetary award.