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

FOURTH SECTION

DECISION

Applications nos. 63196/09 and 63204/09
Cezara Cecilia BEBIȘ against Romania
and Ștefan BOBOC against Romania

The European Court of Human Rights (Fourth Section), sitting on 10 October 2017 a Committee composed of:

Faris Vehabović, *President,*
Carlo Ranzoni,
Péter Paczolay, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having regard to the above applications lodged on 26 November 2009,

Having regard to the decision of 16 September 2014 taken by the President under Rule 54 § 3 of the Rules of Court;

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Ms Cezara Cecilia Bebiş (hereinafter "the first applicant") and Mr Ştefan Boboc (hereinafter "the second applicant"), are Romanian nationals who were born in 1947 and 1950 respectively, and live in Bucharest. The applicants were represented before the Court by Mr L.F. Cojocaru, a lawyer practising in Bucharest.

2. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, of the Ministry of Foreign Affairs.

A. The circumstances of the cases

3. The facts of the cases, as submitted by the parties, may be summarised as follows.

1. The background of the cases

4. From 5 October 1994 to May 2000 the second applicant was appointed by the Romanian Parliament as president of the National Securities Commission (*Comisia Națională a Valorilor Mobiliare*, hereinafter "the CNVM"), a State body tasked with supervising and regulating, amongst other things, the financial markets and investment organisations operating on them. The first applicant was also appointed by the Romanian Parliament as a member of the same organisation.

5. In May 2000 the National Investment Fund (*Fondul Național de Investiții*, hereinafter "the FNI"), a large investment organisation numbering 300,000 investors nationwide, collapsed. A large public corruption scandal ensued, intensely scrutinised by the media. Amongst other things, the scandal was fuelled by the fact that the State had guaranteed the capital placed in FNI shares by the investors.

6. On 25 May 2000 the President of the Romanian Senate informed the Prosecutor General of Romania that, given the information which had been disclosed during a meeting held by the Senate's Commission for Budget, Finance and Banks and attended by representatives from the CNVM, he considered that it was necessary for the prosecutor's office to take action (*să se autosesizeze*) and identify the source of the FNI's problems and the persons involved in order to establish the measures which had to be taken.

7. On 30 May 2000 the prosecutor's office attached to the High Court of Cassation and Justice (hereinafter "the Court of Cassation") notified the Bucharest Police Department of the Romanian Senate's position, and ordered that a criminal investigation be opened in respect of the FNI's activities.

8. On 31 May 2000 the newspaper *Bursa* (Stock Exchange) published an article citing the Press Relations Department of the Romanian President as a source. It stated that the Romanian President had urged Parliament to suspend the leaders of the CNVM pending the outcome of the FNI investigation and to form a parliamentary investigation commission to determine the CNVM's responsibility in relation to the case.

9. On the same date the Press Relations Department of the Romanian President issued a press release stating that the National Security Council (*Consiliul Suprem de Apărare a Ţării*, hereinafter "the CSAT") had examined the consequences of the FNI's collapse and had decided that an investigation commission should be organised within the prosecutor's office attached to the Court of Cassation. The press release concluded by stating that the investigation commission had to examine acts of fraud committed by administrators of the CNVM in breach of the domestic legislation. Lastly, it stated that the CSAT had taken note of the criminal investigation opened against some administrators and members of the CNVM.

10. On the same date, the Press Relations Department of the Romanian President notified the press about an error in its press release, in so far as the

CSAT had taken note of a criminal investigation opened against some administrators and members of the FNI, and not of the CNVM as had been previously stated.

11. On 1 June 2000 the newspaper *Jurnalul Național* (National Journal) published an article with the title "The arrests started in connection with the FNI scandal". The article stated that the Prime Minister and the Minister of the Interior were about to become some of the people responsible for directly supervising the investigation opened by the prosecutor's office into the fraud which had affected the national economy. The article noted that the investigators would continue to hear members of the CNVM because, according to the available information, their conduct had facilitated the commission of offences.

12. On the same date the newspaper *Observatorul Financiar* (Financial Observer) published an article citing the Public Relations Department attached to the Romanian Ministry of the Interior as a source. The title of the article was "The Ministry of the Interior has decided: the SOV Invest big shots under criminal investigation. Mr Boboc waits his turn". The article stated that the criminal investigation concerning the FNI's collapse would also be extended to the individuals controlling the activity of the CNVM who had failed to properly supervise the FNI's activities, and who had therefore helped the FNI to repeatedly breach the financial transactions rules.

13. On the same date the Romanian Government adopted Emergency Ordinance no. 64, temporarily allowing the Romanian Government to suspend, or in exceptional circumstances discharge, members of the CNVM rather than members of Parliament and discharged the said members. Subsequently, the emergency ordinance was repealed by Parliament on 25 September 2001.

2. The first round of criminal investigation proceedings against the applicants

14. On 1 June 2000 the prosecutor's office attached to the Court of Cassation opened a criminal investigation against the second applicant and subsequently charged him with abuse of office against the personal interests of others because there was evidence (a reasonable suspicion) that he had committed such an offence. In particular, although as the president of the CNVM he had been aware of the irregularities in the FNI's activities, he had failed to take the appropriate measures required by his professional duties, causing pecuniary damage.

15. On the same date the prosecutor's office attached to the Court of Cassation detained the second applicant pending trial on the grounds that, *inter alia*, the evidence in the case file indicated that he had committed the offence.

16. On 4 June 2000 the newspaper *Ziua* published an article which noted that the second applicant had been heard by the Senate's Commission for Budget, Finance and Banks. The article noted that the president of the commission had stated that the second applicant's pre-trial detention was an abuse of process and that his pre-trial detention amounted to him being treated as a scapegoat.

17. On 5 June 2000 the prosecutor who had ordered the second applicant's pre-trial detention stated to the newspaper *Ziua* that he had not been informed that the second applicant had been heard by the Senate. He further stated that he had been surprised by the decision of the Senate, because he had been convinced that he was the one carrying out the investigation. He also argued that, since he had issued the second applicant's arrest warrant, there had been irrefutable evidence which supported his decision. He further contended that he had never before been faced with a similar situation.

18. On the same date the newspapers *Ziua* and *Bursa* published articles which noted that the president of the Senate's Commission for Budget, Finance and Banks had resigned from his political party following the controversy generated by his statements concerning the second applicant (see paragraph 16 above). The article published in *Ziua* also stated that the press release issued by the political party suggested that the party members had considered the statements of the president unacceptable, given that the wrongful involvement of the CNVM had been proved by the FNI's collapse. The article in *Bursa* also stated that the president had declared that he considered the second applicant guilty in respect of the FNI scandal, but did not agree with the way in which he had been treated.

19. On 14 June 2000 the prosecutor's office attached to the Court of Cassation held that the available evidence indicated that the offence of abuse of office against the personal interests of others had been committed and ordered the opening of a criminal investigation against the first applicant. The following day the same prosecutor's office charged the first applicant with abuse of office against the personal interests of others. It held that there was evidence (a reasonable suspicion) that she had committed the offence. In particular, although she had been aware of the irregularities in the FNI's activities as a member of the CNVM and a department coordinator, she had failed to take appropriate measures, causing pecuniary damage. Subsequently, the prosecutor's office detained the first applicant pending trial on the grounds that, *inter alia*, the evidence in the file indicated that she had committed the offence.

20. By decision no. 23 of 27 June 2000 the Romanian Parliament set up a parliamentary commission to investigate the CNVM's activities and responsibility in relation to the collapse of the FNI. The commission was instructed to submit its report to Parliament by 31 August 2000.

21. On 19 July 2000 the newspaper *Ziua* published an article with the title "C. [the Romanian President] promised the FNI investors that those responsible would be imprisoned".

22. In August and September 2000 the prosecutor's office attached to the Court of Cassation and the Romanian Ministry of Justice replied to referrals and requests by the president of the Chamber of Deputies' Commission for the Investigation of Abuses, Corruption and Petitions dated 3 July, 3 and 4 August 2000, and informed him of some of the measures taken by the investigating authorities in respect of the first applicant and of the lawfulness of her pre-trial detention.

23. On 31 August 2000 the parliamentary commission set up by the Romanian Parliament on 27 June 2000 (see paragraph 20 above) produced a report following its investigation of the CNVM's activities. The report concluded that all members of the CNVM shared equal responsibility for the FNI affair, that they were all guilty of negligence in office and a lack of decisiveness in enforcing the law and that they had breached several domestic legal provisions. The parliamentary commission considered that the public prosecutor's office and the Ministry of the Interior needed to continue the investigation and punish all those responsible for breaching the law as shown in the report.

24. On 19 September 2000 and 28 July 2003 the Romanian Parliament sent a copy of the report produced by the parliamentary commission on 31 August 2000 to the prosecutor's office attached to the Court of Cassation.

25. On 28 September 2000 the Romanian Parliament adopted Decision no. 35 and endorsed (*şi-a însuşit*) the parliamentary commission's report of 31 August 2000.

26. On 30 November 2000 the criminal investigation unit attached to the Romanian police proposed that the applicants and the other co-accused be indicted for the offences they had been charged with. In describing the defendants' general attitude, the investigation unit stated that during the investigation all of the accused had constantly been untruthful in relation to the facts presented to them, and had denied committing the offences. They had constantly maintained that the existing legal system was flawed, something which in any event did not absolve them of responsibility.

27. On 4 December 2000 the prosecutor's office attached to the Court of Cassation indicted the applicants and ten other co-accused and sent their cases for trial. Relying on the available evidence, it held that the commission of the offences with which they had been charged would be taken into account in the applicants' case because, although they had been aware of the irregularities in the FNI's activities, they had failed to take appropriate measures, thus causing damage. In describing the defendants' general attitude, the prosecutor's office reiterated the assessment made by

the criminal investigation unit attached to the Romanian police (see paragraph 26 above).

3. The first round of court proceedings

28. Between 5 December 2000 and 23 February 2001 the Bucharest District Court (hereinafter "the District Court") held three hearings in the case and repeatedly adjourned the proceedings on procedural grounds.

29. On 2 March 2001 the District Court allowed an objection on grounds of unconstitutionality by one of the applicants' co-defendants, and adjourned the proceedings pending a decision by the Constitutional Court. On 8 May 2001 the Constitutional Court dismissed this objection.

30. Between 15 June and 20 September 2001 the District Court held three further hearings in the case and adjourned the proceedings on procedural grounds. On the latter date it allowed an objection on grounds of unconstitutionality raised by some of the applicants' co-defendants and also adjourned the proceedings pending a decision by the Constitutional Court. On 28 November 2001 the Constitutional Court dismissed this objection.

31. Between 14 February and 6 June 2002 the District Court held five further hearings in the case and adjourned the proceedings on procedural grounds.

32. On 13 June 2002 the District Court referred the case back to the prosecutor's office attached to the Court of Cassation, on the grounds that the criminal investigation was incomplete. It held that the applicants' indictment and that of their co-defendants was based on insufficient evidence, and significant aspects of the case had to be clarified.

33. The public prosecutor's office and one of the applicants' co-defendants appealed against the judgment on points of fact and points of law.

34. Between 13 and 20 November 2001 the Bucharest County Court (hereinafter "the County Court") held two hearings in the case and adjourned the proceedings for deliberations.

35. On 27 November 2002 the County Court dismissed the appeals on points of fact and points of law by the public prosecutor's office and the applicants' co-defendant.

4. The second round of criminal investigation proceedings against the applicants

36. On an unspecified date the prosecutor's office attached to the Court of Cassation reopened the investigation of the case, as instructed by the domestic courts. The prosecutor's office collected a significant amount of evidence, heard a large number of witnesses and ordered a financial expert report.

37. Between November and December 2004 the applicants and their co-defendants were presented with all the available evidence in the criminal investigation file.

38. On 7 December 2004 the prosecutor's office attached to the Court of Cassation indicted the applicants and their co-defendants and sent their cases for trial. After it reviewed the available evidence concerning the applicants, the prosecutor's office concluded that, through the flawed way in which they had performed their lawful duty of supervising the FNI's activities, the applicants had facilitated the damage suffered by the FNI investors by fraudulent manoeuvres. Consequently, the applicants' actions satisfied the elements of the offence of negligence in office. The prosecutor's office noted that on 4 December 2000 the applicants had been indicted for abuse of office against the personal interests of others (see paragraph 27 above). However, given the new evidence added to the file, the prosecutor's office considered that the applicants had not intentionally performed their professional duties badly, but had acted negligently by ignoring all the signals concerning the irregularities in the FNI's activities and not enforcing the necessary punishment in circumstances where the final outcome of those unlawful activities could and should have been foreseen. As a result, the prosecutor's office changed the legal classification of the offence the applicants had been charged with to negligence in office. In describing the defendants' general attitude, and by referring to the applicants' statements, the prosecutor's office stated that during the investigation all the defendants had been untruthful in denying taking part in the commission of the offences presented to them or stating that they had been unaware that the information provided to them had not reflected the actual situation of the investment fund.

5. The second round of court proceedings

39. Between 16 February and 30 September 2005 the County Court held sixteen hearings in the case and adjourned the proceedings on procedural grounds, for evidence to be adduced and for deliberations. It also noted that over a hundred thousand individuals and legal entities had joined the proceedings as civil parties.

40. On 13 October 2005 the County Court examined the applicants' cases on the merits, convicted them, and sentenced them to three years' imprisonment, suspended. In addition, together with the other co-accused and the CNVM, it found them jointly liable to pay the civil damages claimed by the victims of the FNI's collapse.

41. The applicants appealed against the judgment. They argued, *inter alia*, that the first-instance court had ignored the conclusions of the parliamentary commission set up on 27 June 2000 (see paragraph 23 above) concerning the first applicant's professional duties.

42. Between 29 May and 5 June 2006 the Bucharest Court of Appeal (hereinafter "the Court of Appeal") held two hearings in the case and adjourned the proceedings, so that the parties could submit written observations and it could deliberate.

43. On 12 June 2006 the Court of Appeal allowed the applicants' appeal, quashed the judgment of 13 October 2005, and ordered a retrial on procedural grounds.

6. The third round of court proceedings

44. Between 30 January and 6 March 2007 the County Court held three hearings in the case and adjourned the proceedings for deliberations.

45. On 20 March 2007 the County Court examined the applicants' case on the merits, convicted them, and sentenced them to three years' imprisonment, suspended. In addition, together with other co-accused and the CNVM, it found them jointly liable to pay the civil damages claimed by the victims of the FNI's collapse.

46. The applicants and the prosecutor's office attached to the Court of Cassation appealed against the judgment.

47. Between 12 November 2007 and 11 June 2008 the Court of Appeal held twelve hearings in the case and adjourned the proceedings on procedural grounds, for evidence to be adduced and for deliberations.

48. On 18 June 2008 the Court of Appeal examined the applicants' case on the merits and upheld their conviction. However, it allowed their appeals in part in so far as they concerned their sentences, and held that they had been pardoned.

49. The applicants and the civil parties appealed against the judgment on points of fact and points of law. The applicants asked the Court of Cassation for an acquittal. They argued, *inter alia*, that the lower courts had failed to assess and interpret the available evidence in the file correctly, objectively and impartially, because they had misunderstood, failed to clarify or ignored some of the evidence, and their only concern had been to provide reasons in support of the prosecutor's office's decisions. The lower courts had ignored the principle of the presumption of innocence, as they had not been concerned with the objective assessment of each piece of evidence in relation to all the other pieces of evidence available in the file. They had not considered how the pieces of evidence could have been corroborated in order to establish the truth and determine the real evidentiary value of each piece of evidence. Also, the lower courts had ignored the conclusions of the parliamentary commission organised on 27 June 2000 (see paragraph 23 above) concerning the first applicant's professional duties.

50. Between 13 April and 21 May 2009 the Court of Cassation held four hearings in the case and adjourned the proceeding for deliberations.

51. By a final judgment of 4 June 2009 the Court of Cassation dismissed the applicants' appeal on points of fact and points of law as ill-founded.

After examining the applicants' claims in the light of the available evidence, the court held that the lower courts had correctly established the applicants' guilt. It allowed the appeal on points of fact and points of law lodged by some of the civil parties, quashed the judgment of 18 June 2008 (see paragraph 48 above) in part in respect of the civil proceedings, and ordered a retrial.

52. On 6 March 2015 the Government informed the Court that, following the judgment of 4 June 2009, the civil proceedings had been separated from the criminal proceedings. The Government also submitted supporting documents. The separate sets of civil proceedings ended by way of two final judgments of 24 September 2013 and 23 January 2014 delivered by the Court of Cassation, and by way of a final judgment of 10 April 2014 delivered by the Court of Appeal. The domestic courts allowed at least in part the civil claims lodged by the civil parties.

B. Relevant domestic law

53. Rules 1 and 86 of the Rules Concerning Joint Meetings of the Romanian Senate and the Romanian Chamber of Deputies, adopted by Decision no. 4 of 1992 of the Romanian Parliament, provided that the two houses of parliament could hold joint meetings in order to set up joint inquiry commissions. In exercising Parliament's powers of control, during a joint meeting, the two houses of parliament could decide to carry out their own investigation by setting up special joint enquiry commissions, or by making use of the permanent commissions of the two houses of parliament.

54. Article 22 of Law no. 52/1994 on securities and stock exchanges provided that the CNVM had to present the Romanian Parliament with a yearly activity report by 30 April, and that the Romanian Parliament could order an enquiry into the CNVM's activities at any time.

55. Articles 23, 124 and 132 of the Romanian Constitution provide that a person is presumed innocent pending a final court judgment convicting him or her. Judges are independent and must obey only the law. Prosecutors work under the authority of the Ministry of Justice, and in line with the principles of lawfulness, impartiality and hierarchical control.

COMPLAINTS

56. Invoking Article 6 of the Convention, the applicants complained about the length and the unfairness of the proceedings against them, as well as about a breach of their right to be presumed innocent and to have their cases examined by an impartial tribunal. They noted that a public investigation was being carried out by a parliamentary commission at the

same time as the criminal investigation against them, relying on the same evidence and concerning the same facts. In addition, they alleged that the situation had also been aggravated by the conclusions of the report by the parliamentary commission, amendments to the legislation, press releases, and statements of various state and judicial bodies establishing their guilt prior to the conclusion of the criminal trial against them.

THE LAW

A. Joinder of the applications

57. In view of the similarity of the applications in terms of both fact and law, the Court finds it appropriate to order their joinder (Rule 42 § 1 of the Rules of Court).

B. Complaint concerning the length of proceedings

58. According to the applicants, the length of the proceedings opened against them had been excessive. They relied on Article 6 § 1 of the Convention, which, in so far as relevant, read as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by an independent and impartial tribunal established by law ..."

1. Scope of the complaint

59. The Government argued that, in their application form submitted to the Court, the applicants had only complained regarding the length of the criminal proceedings.

60. The applicants did not submit observations on this point.

61. The Court notes that, following the FNI's collapse, the domestic authorities instituted criminal proceedings against the applicants and other co-defendants, which a large number of civil parties joined. It also notes that the criminal proceedings opened against the applicants ended on 4 June 2009 by a final judgment of the Court of Cassation (see paragraph 51 above). However, the civil proceedings continued to be examined by the domestic courts several years after those criminal proceedings had ended (see paragraph 52 above).

62. The Court further notes that, according to the applicants' own initial submissions, the focus of their arguments concerning the length of the proceedings was the criminal set of proceedings opened against them, and they did not dwell on the length of the civil proceedings. Moreover, the

applicants did not contest the Government's argument that their complaint to the Court in fact concerned only the length of the criminal proceedings.

63. In these circumstances, the Court considers that the length of the civil proceedings against the applicants is not the focus of their application, and consequently there is no need for the Court to examine any of the parties' submissions in respect of this matter.

64. The Court will therefore examine the applicants' complaint only in so far as it concerns the length of the criminal proceedings.

2. The parties' submissions

(a) The Government

65. The Government submitted that the applicants had not raised their complaint concerning the length of proceedings before the domestic courts.

66. They further argued that the proceedings against the applicants had been one of the most complex cases the authorities had been faced with at the time and that in the case of *Albert and Others v. Romania* ((dec.), no. 48006/11, § 53, 8 January 2013), the Court had acknowledged that the magnitude of the consequences of the FNI's collapse had been difficult to quantify.

67. The Government acknowledged that the number of civil parties could not, by itself, justify the length of the proceedings. However, they contended that the authorities had had to add a large amount of evidence to the case file, had acted diligently in examining the case, and by reopening the proceedings they had aimed to protect the parties' procedural rights.

68. Relying on the Court's findings, *inter alia*, in the cases of *Tan and Others v. Turkey* (no. 42577/98, § 81, 20 June 2006) and *Motocu v. Romania* ((dec.) no. 49794/10, 13 January 2015), the Government finally submitted that, given the number of levels of jurisdiction, the overall length of the proceedings in the instant case was reasonable.

(b) The applicants

69. The applicants submitted that the domestic authorities had been responsible for the delays caused by the repeated reopening of the proceedings. This showed that the investigation had been conducted inappropriately and that their right to a fair trial within a reasonable time had been breached.

3. The Court's assessment

70. The Court notes that the Government have raised a preliminary objection of non-exhaustion of domestic remedies. The Court considers that it is not necessary to examine the objection, because, even assuming that it would be dismissed, the complaint is in any event inadmissible for the reasons given below.

71. The Court reiterates that the period to be taken into consideration under Article 6 § 1 of the Convention must be determined autonomously. It begins at the time when formal charges are brought against a person, or when that person is otherwise substantially affected by actions taken by the authorities as a result of a suspicion against him (see, among other authorities, *Sava v. Romania* (dec.), no. 26148/07, § 19, 17 May 2014).

72. In the current case, the period to be taken into consideration began on 14 June 2000 for the first applicant and on 1 June 2000 for the second applicant, when criminal proceedings were opened against them by the public prosecutor's office (see paragraphs 14 and 19 above). The criminal proceedings ended with the final judgment of the Court of Cassation of 4 June 2009 (see paragraph 51 above). Hence, they lasted eight years, eleven months and twenty days for the first applicant, and nine years and three days for the second applicant, over three levels of jurisdiction.

73. The Court further reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities, and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

74. The Court observes that the criminal proceedings opened against the applicants were particularly complex and involved a very large number of co-defendants and other parties to the proceedings. Moreover, at least during the initial stages of the judicial proceedings, the applicants' co-defendants raised a number of objections on grounds of unconstitutionality, which resulted in repeated stays of the proceedings pending decisions by the Constitutional Court (see paragraphs 29-30 above).

75. The Court also observes that the domestic authorities did not remain inactive for substantial periods of time during the proceedings, and that they took constant steps to clarify the circumstances of the case.

76. The Court further notes that the authorities bear responsibility for some procedural defects concerning the proceedings (see, for instance, paragraphs 32 and 43 above). However, given the extreme complexity of the case and the fact that the authorities remained active during the proceedings, the Court considers that, in the particular circumstances of the instant case, it cannot be said that the authorities failed in their duty to administer justice expeditiously, or that their conduct was primarily responsible for the length of the proceedings.

77. Therefore, having examined all the material submitted and having had regard to its case-law on the subject, the Court considers that, in the instant case, the proceedings complained of by both applicants do not disclose any appearance of violation of the "reasonable time" requirement enshrined in Article 6 § 1 of the Convention.

78. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

C. Complaint concerning a breach of the principle of the presumption of innocence

79. The applicants alleged that, in breach of their right to be presumed innocent, their guilt had been established prior to the conclusion of the criminal trial against them. They noted that a public investigation was being carried out by a parliamentary commission at the same time as the criminal investigation against them, relying on the same evidence and concerning the same facts. In addition, they alleged that the situation had also been aggravated by the conclusions of the report by the parliamentary commission, amendments to the legislation, press releases, and statements of various state and judicial bodies.

They invoked in this respect Article 6 § 2 of the Convention, which reads as follows:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

1. The parties' submissions

(a) The Government

80. Relying on the case of *Rupa v. Romania (no.1)* (no. 58478/00, § 233, 16 December 2008), the Government submitted that the applicants could have complained before the domestic authorities and courts regarding every individual aspect which, in their opinion, could have had an effect on the overall fairness of the proceedings and those courts could have ordered adequate redress to protect the applicants' rights.

81. Relying on the Court's findings in the cases of *Valentino Acatrinei v. Romania* (no. 18540/04, § 89, 25 June 2013), *Fesiuc v. Romania* ((dec.) no. 25497/04, § 65, 4 June 2013), and *Voicu v. Romania* ((dec.) no. 22015/10, § 39, 7 June 2011), the Government argued that the Court had already held that applicants had to raise their complaints regarding an alleged breach of their right to be presumed innocent before the domestic authorities before raising them before the Court.

82. The Government further submitted that the domestic authorities could not be held responsible for the articles in the press, which had not been fuelled by statements made by public officials. They referred to the cases of *Păvălache v. Romania* (no. 38746/03, § 118, 18 October 2011) and *Burzo v. Romania* (nos. 75109/01 and 12639/02, § 165, 30 June 2009) and also argued that the applicants could have initiated general tort law proceedings against the journalists who had breached their rights.

83. In any event, if the Court considered that the applicants had not had an effective remedy to exhaust with regard to their complaints concerning the alleged political involvement in the criminal investigation and the press statements of several public officials, then their application, in so far as it concerned an alleged breach of their right to be presumed innocent, was outside of the six-month time-limit.

84. In this respect, the Government contended that, according to the applicants' application form, the facts complained of had taken place between May and December 2000. Relying on the case of *Blaj v. Romania* ((dec.) no. 36259/04, § 99, 13 September 2011), the Government argued that the six-month time-limit had started to run on 4 December 2000, when the applicants had been indicted and their case had been sent for trial. However, they had only raised their complaint before the Court on 26 November 2009.

(b) The applicants

85. The applicants argued that they had submitted their application to the Court after their claims and arguments had been duly considered by the domestic courts, and within six months of the Court of Cassation delivering the final judgment of 4 June 2009 (see paragraph 51 above).

86. According to the applicants, given the particular nature of their case, it would have been impossible for them to properly deal with the criminal case and also assign additional personal and financial resources to initiate judicial proceedings dealing with every shortcoming on the part of the respondent State's representatives – shortcomings including statements made by public officials, activities carried out by parliamentary commissions, and press articles.

87. The applicants argued that the intervention of the political factor had made people think in a certain way, and had fuelled a nationwide expectation that all those who had already been declared guilty would be convicted. Consequently, all the prosecutors and judges involved in the proceedings had started with the preconceived idea that the applicants were guilty, and had been aware of the social backlash which could be expected in the event of an acquittal decision.

2. The Court's assessment

88. The Court observes that the applicants raised before the Court of Cassation a complaint regarding an alleged breach of the principle of the presumption of innocence, because of the way in which the domestic courts had interpreted and assessed the evidence available in the file (see paragraph 49 above). However, they did not argue before that court that their right to be presumed innocent had been breached because of the public investigation being carried out by a parliamentary commission at the same time as the criminal investigation, the conclusions of the parliamentary

commission's report, amendments to the legislation, or the press releases and statements of the various state and judicial bodies being made public and allegedly establishing their guilt prior to the conclusion of the criminal investigation against them.

89. The Court also notes that it recently established in the context of public statements made by political figures that there was no remedy available in Romania for complaints regarding a breach of the right to be presumed innocent (see *Neagoe v. Romania*, no. 23319/08, §§ 26-29, 21 July 2015, and *Bivolaru v. Romania*, no. 28796/04, § 114, 28 February 2017). The Court considers that that conclusion also applies to the applicants' complaint concerning the breach of their right to be presumed innocent following a public investigation carried out by a parliamentary commission, the conclusions of the parliamentary commission's report, amendments to the legislation, and the publication of press releases and statements of State bodies and the prosecutor's office.

90. The Court reiterates that, where no domestic remedy is available in respect of an act alleged to be in violation of the Convention, in principle the six-month time-limit contained in Article 35 § 1 of the Convention starts to run from the date on which the act complained of took place or the date on which an applicant was directly affected by, became aware or could have become aware of such an act (see *Aydın v. Turkey* (dec.), nos. 28293/95, 29494/95 and 30219/96, CEDH 2000-III (extracts)).

91. The Court notes that, according to the available evidence, the press releases, press campaign, measures, statements, actions and investigations which the applicants considered detrimental to their right to be presumed innocent date from the period May 2000 to December 2004, when the last indictment was produced by the public prosecutor's office (see paragraphs 8-38 above). However, the applicants lodged their application with the Court on 26 November 2009.

92. Accordingly, this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

D. Complaint concerning an alleged lack of an impartial tribunal

1. The parties' submissions

(a) The Government

93. The Government reiterated some of their submissions concerning the applicants' complaint of an alleged breach of their right to be presumed innocent (see paragraphs 80-82 above).

94. In addition, they submitted that the applicants had not alleged that the domestic courts had lacked independence or impartiality because of the way in which the judges responsible for examining their case had been

appointed, because of a lack of protection against external pressures, or because of doubt as to whether there had been an appearance of independence. Moreover, the applicants had not complained regarding a personal lack of impartiality on the part of the judges. If the applicants had had any doubt about the judges' lack of impartiality, they could have either lodged a challenge against them or ask for the case to be transferred to and examined by a different court.

95. The Government submitted that the national authorities' and the public's interest in the development of the criminal investigation against the applicants, and the press statements made by various public authorities, had been justified by the serious consequences the FNI's collapse had had on the national economy.

96. The Government contended that the judges who had been assigned to the applicants' case were professional judges and therefore less susceptible to external suggestions. Also, a significant amount of time had lapsed between the impugned events taking place and the applicants being convicted. Moreover, there was no evidence in the file that any of the judges who had examined the merits of the applicants' case had been influenced in their decision by the press campaign, the conclusions of the parliamentary investigation, or the statements of public officials. Furthermore, none of the judges had taken part in any of the hearings held by the parliamentary commission or any of the meetings of the investors' associations.

(b) The applicants

97. Relying, in substance, on the same facts and arguments submitted in order to substantiate a breach of their right to be presumed innocent (see paragraphs 85-87 above), the applicants alleged that the domestic courts dealing with their case could not be considered "impartial" within the meaning of Article 6 § 1 of the Convention.

2. The Court's assessment

98. The Court notes that the Government raised a preliminary objection of non-exhaustion of domestic remedies (see paragraph 94 above). The Court considers that it is not necessary to examine the said objection because, even assuming that it would be dismissed, the complaint is in any event inadmissible for the reasons given below.

99. The Court observes that the FNI's collapse and the criminal investigation opened against the applicants attracted intense media and political interest. That interest in the case was largely a result of the serious consequences of the FNI's collapse – the fact that it affected a large number of investors, had a significant impact on the national economy, and raised questions about corrupt practices in respect of public officials. The Court further observes that publicly elected officials and people tasked with investigating the case discussed the applicants' case in the media,

Parliament carried out an investigation into the circumstances of the case at the same time the criminal investigation was opened against the applicants (see paragraphs 20 and 23-25 above), and some State bodies issued press statements referring to investigative measures taken by the relevant authorities in the case (see, for instance, paragraphs 16-18 and 21-22 above).

100. The Court notes that the media and political involvement began immediately after it became clear that the FNI was collapsing, and coincided with the criminal investigation opened against the applicants. It also observes that the language used in the publications, by politicians and in the conclusions of the parliamentary commission and the relevant press statements, was strong and unambiguous, and that such language and political involvement could have influenced perception of the applicants' guilt.

101. The Court reiterates that a virulent press campaign can adversely affect the fairness of a trial by influencing public opinion and, consequently, jurors called upon to decide the guilt of an accused (see *Craxi v. Italy*, no. 34896/97, § 98, 5 December 2002). At the same time, the Court notes that press coverage of current events is an exercise of freedom of expression, guaranteed by Article 10 of the Convention. If there is a virulent press campaign surrounding a trial, what is decisive is not the subjective apprehensions of the suspect concerning the absence of prejudice required of the trial courts, however understandable, but whether, in the particular circumstances of the case, his fears can be held to be objectively justified (see *G.C.P. v. Romania*, no. 20899/03, § 46, 20 December 2011).

102. In the instant case, the Court observes that the applicants' trial had its roots in events which were a matter of intense and divisive public and political debate. It further notes that it is inevitable in a democratic society that on occasion the media make comments which sometime are harsh on a sensitive case which, like the one concerning the applicants, raise doubt with regard to the morality of public servants and the relationship between the political world and the business world (see, *mutatis mutandis*, *Craxi*, cited above, § 103).

103. However, the Court emphasises that the charges against the applicants were determined by professional judges, who would have been less likely to be influenced by the media and political attention the applicants' case received than a jury, on account of their professional training and experience enabling them to disregard improper external influence (see *G.C.P. v. Romania*, cited above, § 48, and *Craxi*, cited above, § 104). Furthermore, domestic courts across three levels of jurisdiction issued well-reasoned judgments based on the considerable amount of evidence available in the case file. The domestic courts gave due consideration to the applicants' claims and arguments, upheld some of their arguments, and sent back the case and reopened the proceedings in order to

protect the applicants' and their co-defendants' right to a fair trial (see paragraphs 32 and 43 above). Also, there is no evidence in the case file to suggest that the judges who examined the charges against the applicants and the merits of their case were influenced by any of the publications in the press, the investigation carried out by the parliamentary committee or its conclusions, the press releases issued by the relevant State bodies, or any of the statements made by either elected public officials or prosecutors tasked with investigating the case (see, *mutatis mutandis*, *Bivolaru*, cited above, § 124).

104. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 2 November 2017.

Andrea Tamietti
Deputy Registrar

Faris Vehabović
President