

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

FOURTH SECTION

DECISION

Application no. 79490/17
Olezia CADAR and Others
against Romania

The European Court of Human Rights (Fourth Section), sitting on 30 January 2024 as a Committee composed of:

Faris Vehabović*, President*,
Anja Seibert-Fohr,
Sebastian Răduleţu*, judges*,

and Crina Kaufman, *Acting Deputy Section Registrar*,

Having regard to:

the application (no. 79490/17) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 16 November 2017 by the applicants listed in the appended table ("the applicants"), who were represented by Ms S. Almaș and Ms L. Cadar, lawyers practising in Cluj-Napoca;

the decision to give notice of the complaint under Article 6 of the Convention concerning the alleged breach of the applicant's right to a fair hearing in the proceedings before a pre-trial judge to the Romanian Government ("the Government"), represented by their Agent, Ms O.F. Ezer, of the Ministry of Foreign Affairs, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the alleged unfairness of criminal proceedings against the first two applicants, wife and husband and owners and managers of the applicant company, a commercial company.

2. By an indictment of 30 April 2013 issued by the Cluj Anti-Corruption Department of the Prosecutor's Office, the applicants were charged with corruption-related offences.

3. On 25 July 2014 the Cluj County Court, sitting as a pre-trial judge and upon request of the applicants, verified the lawfulness of the bill of indictment. While doing so, it noted that the bill of indictment was based on a large body of evidence, including statements of the co-defendants, witness testimonies, transcripts of intercepted telephone conversations, search reports and documentary evidence.

4. The applicants, assisted by a lawyer of their choice, filed written submissions by which they challenged the legal classification and the description of the acts allegedly committed by them. The pre-trial judge confirmed the legal classification given by the prosecutor but pointed out that it could subsequently be changed during the court proceedings based on the evidence adduced before the court by the parties. The applicants also challenged the lawfulness of the telephone recordings, carried out during the preliminary investigation stage. The judge held that the recordings had been authorised and carried out in accordance with the relevant provisions of the Code of Criminal Procedure. The pre-trial judge also emphasised that, at that stage, only the lawfulness of the indictment and evidence was reviewed but not the merits of the case.

5. By an interlocutory judgment given in chambers without the parties being present, the pre-trial judge dismissed the applicants' challenge to the lawfulness of the indictment.

6. On 26 August 2014 the Cluj Court of Appeal, sitting in chambers, dismissed as ill-founded an appeal lodged against the interlocutory judgment of the pre-trial judge by the second applicant.

7. The subsequent criminal proceedings concerning the merits of the case were conducted before the Cluj County Court. They were public, oral and adversarial. The applicants, assisted by lawyers of their choice, were able to reiterate all their arguments and had all the evidence in the case file examined by the judge. By a duly reasoned judgment of 22 January 2016 the Cluj County Court convicted the applicants as charged and sentenced the first two applicants to a term of imprisonment, and the third applicant to a criminal fine.

8. By a final judgment of 19 May 2017 the Cluj Court of Appeal rejected appeals by the applicants and partially allowed an appeal by the prosecution. It also increased the sentence imposed on the second applicant.

THE COURT'S ASSESSMENT

9. Relying on Article 6 § 1 of the Convention, the applicants complained that the examination by the pre-trial judge, in chambers, of their challenge to the indictment had not complied with the principles of adversarial

proceedings and equality of arms, thus impairing the fairness of the trial as a whole.

10. The Government pointed out that only one of the applicants had lodged an appeal against the interlocutory judgment of the pre-trial judge before the Cluj Court of Appeal, and asked the Court to dismiss the applications lodged by the other two applicants for non-exhaustion of domestic remedies. The Court considers it unnecessary to examine the Government's objection since, even assuming that it is justified, the applicants' complaints are inadmissible for the reasons mentioned below.

11. The general principles of the Court's case-law concerning the fairness of the pre-trial proceedings have been summarised in *Stăvilă v. Romania*, no. 23126/16, § 55, 1 March 2022.

12. The Court further notes that the present case is similar to the case of *Alexandru-Radu Luca v. Romania* (no. 20837/18, §§ 75-76, 14 June 2022), in which the Court found that the measures and decisions taken during the pre-trial judge proceedings viewed overall had not weakened the applicant's position to such an extent that the subsequent proceedings aimed at determining the merits of the criminal charge against him had been rendered unfair.

In the instant case, as in the above-mentioned case, pursuant to the relevant provisions of the Code of Criminal Procedure in force at the relevant time, the proceedings before the pre-trial judge were conducted in chambers and in the absence of the parties. The applicants could make only written submissions before the pre-trial judge concerning the competence of the court examining the case and the lawfulness of the bill of indictment, the criminal investigation authorities' actions and the way evidence had been gathered by them.

13. The pre-trial judge's activities did not concern the merits of the case, and the judge's decisions were not aimed at determining the essential elements of the alleged criminal offence (see paragraph 4. above). These points were determined by the criminal courts only at the trial stage of the proceedings (see paragraphs 7 and 8 above).

14. The Court further observes that the applicants had the opportunity to present all their arguments in court during the trial stage, and that the courts at two levels of jurisdiction reached their decisions based on the evidence presented by the parties, including the applicants. They and their legal representatives actively participated in the proceedings at the criminal investigation stage, asked for evidence to be added to the case file and submitted comments, and the courts gave thorough answers to their arguments (see paragraphs 7 and 8 above).

15. Taking into account the fact that in the instant case the applicants were able to reiterate their arguments in the trial courts and that there is no indication that those proceedings failed to comply with all the guarantees set out in Article 6 of the Convention, the Court considers that its analysis and

reasoning in *Alexandru-Radu Luca* (cited above) also apply to the present application and sees no reason to reach a different conclusion.

16. Having regard to the above, the Court concludes that the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 22 February 2024.

Crina Kaufman Acting Deputy Registrar	Faris Vehabović President

Appendix

List of applicants:

Application no. 79490/17

No.	Applicant's name	Year of birth	Nationality	Place of residence
1.	Olezia CADAR	1975	Romanian	Cluj-Napoca
2.	Eronim Ștefan CADAR	1973	Romanian	Gherla
3.	FANY PRESTĂRI SERVICII S.R.L.	1992	Romanian	Cluj- Napoca