

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

THIRD SECTION

CASE OF GONȚA v. ROMANIA

(Application no. 38494/04)

JUDGMENT

STRASBOURG

1 October 2013

FINAL

01/01/2014

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



In the case of Gonța v. Romania,

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Corneliu Bîrsan,
Luis López Guerra,
Nona Tsotsoria,
Johannes Silvis,
Valeriu Griţco, *judges,*

and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 10 September 2013,

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

PROCEDURE

1. The case originated in an application (no. 38494/04) 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 Moldovan national, Mr Gheorghe Gonța ("the applicant"), on 13 October 2004.

2. The applicant was represented by Mr D. Caraman, a lawyer practising in Bucharest. The Romanian Government ("the Government") were initially represented by their Agents, Mr R.-H. Radu, and subsequently by Ms I. Cambrea.

3. The applicant alleged, *inter alia*, that the excessive length of his detention during the investigation and trial and the failure of the domestic courts to provide reasons for its repeated extension had breached his rights guaranteed by Article 5 of the Convention.

4. On 21 October 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). The Moldovan Government did not make use of their right to intervene in the proceedings (Article 36 § 1 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1953 and lives in Bucharest.

A. Background to the criminal proceedings

6. The applicant and several other persons were arrested and investigated in criminal proceedings concerning five international drug-trafficking networks. The proceedings were widely reported in the media as they concerned one of the biggest drug-trafficking cases being investigated by the Romanian authorities at the time.

7. One of the drug-trafficking networks was headed by V.B., who organised the transportation of heroin from Romania to Western Europe.

B. The criminal investigation initiated against the applicant

8. The applicant was arrested on 30 May 2003 on the premises of his factory, during a search being conducted there on the basis of information provided by I.P., a person already under investigation for drug trafficking.

9. A search report was drawn up on the same day. The report stated that I.P. had accompanied the investigation authorities to the applicant's factory. In the yard they found a trailer which I.P. maintained had been used for the transportation of heroin from Romania to the Netherlands on several occasions. I.P. showed the investigators two special hiding places in the floor of the trailer which were especially designed for hiding drugs. The investigators also noted that the trailer's registration plate had been modified.

10. Documents proving a connection between the applicant and the co-accused, members of V.B.'s network, were identified and seized: an employment contract between the applicant's company and V.B., copies of the identity cards of two other co-accused, and documents recording the receipt by the applicant of large sums of money from V.B.

11. According to the applicant, during the search he was beaten by police officers in the presence of the investigating prosecutor. He was then taken to the headquarters of the Bucharest Police Inspectorate to be questioned.

12. The applicant alleges that the prosecutor took his first statements, on 30 May and 3 June 2003, without allowing him to be assisted by his own chosen counsel, and that the counsel assigned to him also represented one of the co-accused, V.A.P., who had made incriminatory statements against him.

13. On 30 May 2003 the investigating prosecutor drafted a report stating that the applicant had agreed to be assisted by G.S.C., a lawyer appointed by the prosecutor. The applicant and G.S.C. signed that report. He gave a first statement in which he denied any involvement in drug-trafficking or any illegal activities.

14. On 3 June 2003 the applicant gave another statement, assisted by G.S.C. He stated that he agreed to be assisted by this lawyer but expressed

his intent to appoint his own lawyer in the future. He did made no comment on the charges against him, stating that he maintained his previous statement of 30 May 2003.

15. In a statement given before the prosecutor's office on 17 September 2003, I.P. named the applicant as an important member of V.B.'s drug-trafficking network. He stated that the applicant was the owner of a fish factory where drugs transported from Turkey were deposited, packed in aluminium foil and transported to western European countries, and that the trucks used for the heroin transportation were parked in the applicant's yard. I.P. also referred to a person named "Kolea", who was considered V.B.'s "right-hand man", who transported the heroin from Constanta to Bucharest.

C. The applicant's detention during the investigation and trial

16. On 30 May 2003 the prosecutor issued an arrest warrant for a period of five days in the applicant's name. On 3 June 2003 a new arrest warrant was issued for a period of twenty-five days.

17. The applicant appeared before a judge for the first time on 19 June 2003, when the Bucharest County Court approved a request by the prosecutor to have his detention extended for another thirty days.

18. His detention and that of the other accused who had been arrested, was repeatedly extended by the Bucharest County Court. The number of persons concerned varied from twelve to seventeen. The applicant lodged appeals against the interlocutory judgments; all his appeals were dismissed by final decisions of the Bucharest Court of Appeal.

19. The reasons given by the domestic courts to justify the repeated extension of the detention were: the existence of a reasonable suspicion that the accused had committed the alleged crimes; the gravity and nature of the alleged crimes; and the necessity to conduct further procedural acts (extend the investigations to other persons, verify the criminal records of the accused, obtain lists of the telephone calls between the accused, carry out site investigations and so on).

20. In a decision of 30 June 2004 the Bucharest Court of Appeal confirmed the legality of the measure to extend the detention of the applicant, stating:

> "In the case of each of the accused, the legal situation was analysed and the decision to keep them in detention [during the investigation and trial] was grounded in fact and law, given the nature of the crimes committed and the extremely high level of danger posed by this group of traffickers of high-risk drugs."

21. On 15 June 2005, taking into account the progress of the judicial investigation, the County Court decided to replace the measure of detention with release under an obligation not to leave the country, to be applied to all the accused. The prosecutor lodged an appeal. During the following days,

different national newspapers published articles with such headlines as: “Court frees fourteen heroin traffickers”, “The price of freedom: one million dollars?”, “Torino gang set free by the Bucharest County Court”. These articles reported on the significance of the case, which was the most important case under investigation in Romania, mentioned the name of the judge who had ordered the release, and stated that according to judicial sources the release decision had been taken following a bribe of one million dollars paid by a Turkish mafia family.

22. On 17 June 2005 the Bucharest Court of Appeal allowed the prosecutor’s appeal, holding that the first-instance court had erred in finding that the reasons which had so far justified the pre-trial detention had changed. It considered that the requirement to hold a trial within a reasonable time needed to be considered in the light of the complexity of the case, which involved many accused, and that it was for the first-instance court to speed up the proceedings.

23. The applicant was held in the lock-up of the Bucharest Police Inspectorate until 16 January 2004 at the latest, by which date it appears from the information in the case-file that he was already detained in Rahova Prison.

24. The applicant was held in detention until 4 October 2005, when he was released following acquittal by the first-instance court.

D. The proceedings on the merits of the case

25. On 25 September 2003 the prosecutor issued an indictment in respect of twenty-six accused persons, including the applicant, and the next day the case was registered with the Bucharest County Court. The indictment also indicated that ten of the accused persons had absconded from the investigation.

26. The judicial investigation before the first-instance court lasted from 26 September 2003 until 4 October 2005, when the first-instance judgment was delivered.

27. The interlocutory judgments delivered during the hearings of the case indicate adjournments of the hearings due to the following: irregularities in summoning the accused who were absconding, the absence of a Turkish-language interpreter, the absence of certain of the accused, who had not been escorted to the hearings by the detention authorities, the absence of the lawyers of some of the accused, or the absence of the case file.

28. On 6 September 2004 the County Court decided to disjoin the case in respect of the co-accused who had absconded, given that the proceedings concerning them were more complex and this was likely to affect the length of the trial.

29. The County Court took statements from the accused and witnesses from 14 October 2004 onwards.

30. On 28 October 2004 I.P. gave a new statement in the presence of the applicant, who was assisted by his chosen lawyer. He stated, *inter alia*, that in the autumn of 2001 he had gone with another co-accused to the applicant's factory in order to identify the trailer to be used for drug transportation. He had seen the hiding places in the trailer's floor and had been present when R.F. had modified the trailer's registration plate.

31. On 16 December 2004 the applicant gave a statement before the court. He stated that he withdrew the statements given before the prosecutor during the investigation as they had been taken in the absence of a lawyer of his choice and under duress. He denied all the accusations against him.

32. On 29 September 2005 the judicial investigation was closed and the lawyers of the accused and the accused themselves submitted their arguments on the merits of the case; the delivery of the first-instance judgment was postponed to 4 October 2005.

33. On the latter date the applicant was acquitted on the grounds that the evidence submitted against him did not lead to the conclusion that he was guilty. It was noted that the statements of I.P. according to which the applicant's factory had been used as a place for storing drugs and loading them into trucks were not consistent with other statements I.P. had made and were not supported by any evidence in the case file. It was further established that the statements of I.P. concerning the applicant were indirect statements based on alleged discussions between I.P. and the head of one of the drug-trafficking networks, V.B., and that they appeared to be false. The statements of another witness, V.A.P., concerning the applicant were also judged not to be relevant.

34. On 7 June 2006 the Bucharest Court of Appeal upheld the first-instance judgment in respect of the applicant, finding that the statements incriminating him were not corroborated by any other evidence, especially the statements made by V.A.P.

35. On 14 June 2007 the High Court of Cassation and Justice reversed the judgment in respect of the applicant, changed the legal classification of the facts and convicted him to seven years' imprisonment. Having reviewed the evidence in the case, the High Court held that the applicant had supported the activities of the gang by providing help with the packing of the drugs which were to be transported, and by storing them on the premises of his factory and then allowing them to be collected by other members of the network. The court found that the first two decisions concerning the applicant ran counter to the available evidence, mainly the statements of V.A.P. and I.P., but also the evidence obtained following the search of the factory.

36. On 22 September 2008, the High Court of Cassation and Justice allowed an extraordinary appeal by the applicant and quashed the final

decision of 14 June 2007, in respect of the applicant only, on account of the fact that at the time the applicant had been hospitalised in the Republic of Moldova and had been unable to attend the proceedings. A new hearing date of 3 November 2008 was set for the appeal on points of law in respect of the applicant. At that hearing the applicant, who was again absent, was represented by his chosen lawyer. The lawyer declared that the applicant was aware of the hearing date but could not be present.

37. By a final decision of 4 December 2008 the High Court of Cassation and Justice, after hearing the submissions of the prosecutor and the applicant's lawyer, allowed the appeal on points of law, changed the legal classification of the facts concerning the applicant, and convicted him to seven years' imprisonment. In reaching this conclusion, it had reassessed the evidence adduced in the case and concluded that it indicated that the applicant was guilty.

38. A new mandate for the execution of the remaining part of the sentence (after deducting the period already spent in detention) was issued on 5 December 2008. The applicant had served his prison sentence until 30 March 2012 when he was released from detention under probation.

E. Criminal complaint regarding the alleged ill-treatment on 30 May 2003

39. On 2 September 2004 the applicant lodged a criminal complaint alleging that he had been ill-treated on 30 May 2003, that the search of his factory had been unlawful, that he had asked to undergo a medical examination but this had been tacitly refused, that he had been forbidden by the prosecutor to have any contact with his family during the investigation, and that he had been detained in inhuman and degrading conditions.

40. On 21 January 2005 the prosecutor attached to the High Court of Cassation and Justice dismissed the applicant's complaints, finding that all the applicant's procedural rights had been respected and that he would have the opportunity to raise again in his defence during the criminal proceedings on the merits any of the complaints raised before the prosecutor. This solution was upheld by the chief prosecutor on 10 March 2005; he also held that the complaint of ill-treatment had been brought two years after the events and that not enough detailed information had been provided to enable the facts to be assessed. The applicant's complaint against these decisions was dismissed by a first-instance judgment delivered by the High Court of Cassation and Justice on 5 December 2005. By a letter of 26 May 2010 the applicant informed the Registry that, for a number of reasons, he had not lodged an appeal on points of law against that judgment.

II. RELEVANT DOMESTIC LAW

41. The relevant domestic provisions of the Romanian Code of Criminal Procedure (CCP) concerning the pre-trial detention as in force at the material time, are set forth in the case of *Riccardi v. Romania* (no. 3048/04, §§ 42-43, 3 April 2012).

42. The provisions of Law no. 143/2000 on the fight against drug trafficking and illegal drug use ("Law no. 143/2000") are set out in *Constantin and Stoian v. Romania* (nos. 23782/06 and 46629/06, § 34, 29 September 2009).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

43. The applicant complained that he had been held in pre-trial detention for an unreasonably long period of time and that the domestic courts had provided very summary reasoning for their decision to keep him detained, in breach of Article 5 § 3 of the Convention, which reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

44. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

45. The applicant maintained his initial allegations.

46. The Government submitted that the applicant's pre-trial detention had lasted from 30 May 2003 to 4 October 2005. Making reference to the case of *Degeratu v. Romania* (no. 35104/02, §§ 39-40, 6 July 2010), they claimed that the period to be taken into consideration by the Court in connection with the complaint raised by the applicant should be one year,

six months and fourteen days, rather than two years, four months and four days, as the applicant had not challenged the interlocutory judgments of 19 June 2003, 4 September 2003, 23 October 2003, 12 February 2004, 4 March 2004, 8 March 2004, 7 April 2004, 28 April 2004, July 2004, 4 August 2004 and 30 September 2004.

47. The Government further submitted that the applicant's pre-trial detention could not be considered excessive given the complexity of the case, which concerned drug trafficking committed by an organised criminal group. In this connection, they noted that the criminal proceedings had involved another fifteen accused also held in detention, as well as another ten accused who had absconded from the trial. They added that the domestic courts had provided adequate and sufficient reasons for the extension of the pre-trail detention.

2. The Court's assessment

(a) General principles

48. The Court will examine the applicant's complaint in the light of the general principles emerging from its case-law concerning the reasonableness of detention within the meaning of Article 5 § 3 of the Convention (see *Calmanovici v. Romania*, no. 42250/02, §§ 90-94, 1 July 2008, and *Tiron v. Romania*, no. 17689/03, § 36, 7 July 2009).

49. The Court reiterates that the question whether a period of time spent in pre-trial detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed with reference to the facts of each case and according to its specific features. Continued detention can be justified in a given case only if there are actual indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, §§ 110 et seq., ECHR 2000-XI).

50. The existence and persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention. However, after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds are "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152 and 153, ECHR 2000-IV). Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Shishkov v. Bulgaria*, no. 38822/97, § 66, ECHR 2003-I).

51. Lastly, the Court accepts that in cases involving numerous defendants, the risk that, if released, a detainee might put pressure on witnesses or might otherwise obstruct the proceedings is often particularly high. All these factors can justify a relatively long period of detention. However, they do not give the authorities unlimited power to extend this preventive measure (see *Osuch v. Poland*, no. 31246/02, § 26, 14 November 2006). The fact that a person is charged with acting in a criminal conspiracy is not in itself sufficient to justify long periods of detention; his personal circumstances and behaviour must always be taken into account (see *Velichko v. Russia*, no. 19664/07, § 87, 15 January 2013).

(b) Application of these principles to the present case

52. The Court notes at the outset that the applicant was held in pre-trial detention from the date of his arrest on 30 May 2003 until his sentencing by the first-instance judgement on 4 October 2005, that is, for a total duration of two years, four months and four days.

53. The Court cannot agree with the Government's view that the period to be taken into consideration by the Court in connection with the complaint raised by the applicant should be one year, six months and fourteen days rather than two years, four months and four days on the ground that the applicant did not challenge all the preliminary judgments extending his pre-trial detention. From the material in the case file it appears that the applicant did in fact challenge almost all the interlocutory judgments extending his detention which the Government referred to as not appealed against.

54. The Court further notes that in the present case the domestic courts regularly and repeatedly extended the applicant's pre-trial detention. It also notes the abstract and brief reasoning in the domestic courts' judgments, which was limited to mentioning certain grounds provided for by the CCP and failed to explain how these criteria came into play in the applicant's case (see *Calmanovici*, cited above, §§ 97-98). Moreover, the court orders maintaining the detention nearly always used identical, even stereotyped, wording and relied repeatedly on the same criteria, a practice which cannot be considered to comply with the requirements of Article 5 § 3 of the Convention (see *Mansur v. Turkey*, 8 June 1995, § 55, Series A no. 319-B; *Svipsta v. Latvia*, no. 66820/01, § 109, ECHR 2006-III (extracts); and *Tiron*, cited above, § 39). The court also considered all the accused together, without any individual analysis of their personal circumstances.

55. The Court also notes that the applicant and his co-accused repeatedly challenged the interlocutory judgments by which their pre-trial detention had been extended. The Bucharest Court of Appeal upheld those judgments on the basis of the same reasoning.

56. The Court accepts that the applicant's detention may initially have been warranted by a reasonable suspicion that he had committed serious offences. However, with the passage of time those grounds inevitably

became less sufficient (see *Luković v. Serbia*, no. 43808/07, § 50, 26 March 2013). Accordingly, the domestic authorities were under an obligation to examine the applicant's personal situation in greater detail and to give specific reasons for holding him in custody (see *I.A. v. France*, 23 September 1998, §§ 104-105, *Reports of Judgments and Decisions* 1998-VII, and *Tiron*, cited above, § 40)

57. Lastly, the Court emphasises that when deciding whether a person should be released or detained, the authorities have an obligation under Article 5 § 3 to consider alternative measures of ensuring his or her appearance at trial (see *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000). In the present case, the authorities did not consider the possibility of ensuring the applicant's attendance by the use of the other "preventive measures" which are expressly provided for by Romanian law to ensure the proper conduct of criminal proceedings.

58. Having regard to the above, the Court considers that by failing to address the specific facts of the case or consider alternative "preventive measures", the authorities extended the applicant's detention on grounds which, although "relevant", cannot be regarded as "sufficient" to justify his remand in custody for two years and four months. It therefore holds that the applicant's pre-trial detention was unreasonably long.

There has accordingly been a violation of Article 5 § 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 OF THE CONVENTION

59. The applicant complained that on the first two occasions when he had been questioned by the prosecutor, he had been subjected to ill-treatment and denied the assistance of his own chosen counsel, being allocated against his will a counsel who was already representing one of the co-accused. He further complained that he had not been allowed to question or confront the co-accused who had made incriminatory statements against him during the investigation stage. He relied on Article 6 of the Convention, the relevant parts of which provide:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> ...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

..."

60. The Government maintained that the applicant had agreed to be assisted by G.S.C., a lawyer appointed by the prosecutor, on both 30 May and 3 June 2003. Reports mentioning this had been drawn up on both occasions and the applicant had signed them. He and G.S.C. had also signed the written statements made on those occasions. The Government also pointed out that the applicant had raised these issues before the domestic authorities only on 28 April 2004 and that the court had dismissed his allegations as unfounded. Furthermore, the Government maintained that after 3 June 2003 the applicant had been constantly assisted by two lawyers of his own choice.

61. As regards the applicant's allegation that he had not been given an adequate opportunity to challenge and question the accused who had made incriminatory statements against him, the Government contended that the applicant, assisted by his chosen lawyers, had been present when the co-accused P.I. and V.A.P. were heard before the domestic courts. Moreover, the Government pointed out that the applicant's conviction had not been predominantly based on the statements of P.I. and V.A.P., and that he had in any event had the opportunity of challenging all the statements made against him.

62. The Court reiterates that it has previously held that Article 6, and especially paragraph 3 of that Article, may be relevant before a case is sent for trial if and in so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with its provisions (*Imbrioscia v. Switzerland*, 24 November 1993, § 36, Series A no. 275).

63. The Court has established that in order for the right to a fair trial to remain sufficiently "practical and effective", Article 6 § 1 of the Convention requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right (see *Salduz v. Turkey* [GC], no. 36391/02, § 55, 27 November 2008).

64. The Court has further held that the right to legal assistance does not confer an absolute right to choose one's counsel, and that domestic courts may override the applicant's choice of counsel when there are relevant and sufficient grounds (*Croissant v. Germany*, 25 September 1992, § 29, Series A no. 237-B).

65. All the evidence must normally be produced in the presence of the accused at a public hearing with a view to adversarial argument. There are exceptions to this principle, but they must not infringe the rights of the

defence; as a general rule, paragraphs 1 and 3 (d) of Article 6 require that the defendant be given an adequate and proper opportunity to challenge and question a witness against him, either when he makes his statement or at a later stage (*Van Mechelen and Others v. the Netherlands*, 23 April 1997, § 51, *Reports* 1997-III, and *Lüdi v. Switzerland*, 15 June 1992, § 49, Series A no. 238).

66. Turning to the instant case, the Court notes that that the applicant gave his first two statements, on 30 May and 3 June 2003, in the presence of G.S.C., a lawyer appointed by the prosecutor. However, it notes that on both occasions the applicant declared that he agreed to being assisted by this lawyer and signed the reports drawn up by the prosecutor to that effect. Moreover, on both occasions the applicant declared his innocence and did not make any incriminatory statements.

67. The Court notes that the applicant at all times denied that he had committed any offence and that the statements given by him during the investigation stage, in the absence of his chosen lawyer, were not used by the domestic courts to justify his conviction and therefore did not cause any prejudice to him (see *Stanca v. Romania*, no 34116/04, § 62, 24 July 2012, and *Argintaru v. Romania* (dec.), no 26622/09, § 27, 8 January 2013).

68. The applicant's allegation that he had been subjected to ill-treatment during his first questioning in the absence of a chosen lawyer was examined by the domestic authorities. The applicant's criminal complaint against the prosecutor was dismissed as unfounded by a first-instance judgment delivered by the High Court of Cassation and Justice on 5 December 2005 (see paragraphs 40-41). The Court further notes that the applicant did not exhaust available remedies in this regard as he did not lodge any appeal against that judgment.

69. The Court observes that the domestic courts examined in detail all the evidence presented in the applicant's case. The applicant's conviction appears to have been the result of corroborated evidence that comprised the police report issued after the search of his company's premises on 30 May 2003 and the statements of co-accused and witnesses whom he had the opportunity to cross-examine at the various stages of the proceedings in the presence of his lawyers.

70. In the light of the above, the Court concludes that the applicant's trial, regarded as a whole, cannot be considered to have been conducted in a manner contrary to Article 6 §§ 1 and 3 of the Convention.

It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

71. The applicant complained that the wording of the domestic courts' decision of 30 June 2004 breached the presumption of innocence. He relied on Article 6 § 2 of the Convention, which provides:

> "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

72. The Government contested that argument. They maintained that the domestic courts which had examined the case on the merits had had no preconceived opinion as to whether the applicant was guilty. In this connection they submitted that four years had elapsed between the delivery of the interlocutory judgment of 30 June 2004 and the final decision on the merits.

73. The Court reiterates that Article 6 § 2 governs criminal proceedings in their entirety, "irrespective of the outcome of the prosecution, and not solely the examination of the merits of the charge" (see *Minelli v. Switzerland*, (25 March 1983, § 30, Series A no. 62)). It also reiterates that the presumption of innocence will be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court or the official regards the accused as guilty (see, among many other authorities, *Minelli,* cited above, §§ 27, 30 and 37; *Allenet de Ribemont v. France*, 10 February 1995, §§ 35-36, Series A no. 308; and *Matijašević v. Serbia*, no. 23037/04, § 45, ECHR 2006-X).

74. The Court also emphasises that there is a fundamental distinction to be made between a statement that someone is merely *suspected* of having committed a crime and a clear judicial declaration, in the absence of a final conviction, that the individual *has committed* the crime in question (see *Wojciechowski v. Poland*, no. 5422/04, § 54, 9 December 2008).

75. Turning to the present case, the Court notes that in the grounds for its decision of 30 June 2004 (see paragraph 20) the Bucharest Court of Appeal did not state that the applicant had committed the offences with which he was charged but it referred generally to the nature of the crimes committed without naming their authors.

76. Furthermore, the Court notes that on 7 June 2006 the same domestic court, the Bucharest Court of Appeal, upheld the first-instance judgment of 4 October 2005 acquitting the applicant. The Court considers that the two decisions of acquittal showed no bias on the part of the judges who examined the merits of the applicant's case.

77. Therefore, in the light of the foregoing considerations, the Court finds that the applicant's complaint does not disclose any appearance of a

violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

78. The applicant raised complaints under Articles 3 and 8 of the Convention concerning his alleged ill-treatment and the alleged unlawfulness of the search of his factory on 30 May 2003. The Court notes that despite the fact that the applicant lodged a criminal complaint in this regard with the domestic authorities, he failed to lodge an appeal on points of law against the first-instance judgment of 5 December 2005 dismissing his criminal complaint. It follows that these complaints must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

79. The applicant also complained under Article 3 of the Convention about the conditions of his detention in the lock-up of the Bucharest Police Inspectorate. The Court notes that the applicant was transferred from that lock-up to Rahova Prison at the latest on 16 January 2004, but only lodged the complaint with the Court on 13 October 2004. It follows that this complaint was introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

80. As regards the applicant's complaint concerning the length of the criminal proceedings, the Court notes that the proceedings against the applicant started on 30 May 2003, when he was questioned and placed under arrest, and were completed on 4 December 2008. The Court considers that, even without deducting the period during which the applicant's extraordinary appeal was being examined (approximately six months), a duration of five years, six months and four days for three levels of jurisdiction does not appear unreasonable in the light of the complexity of the case and the number of accused. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

81. The Court further notes that the applicant's complaint under Article 6 §§ 1 and 3 concerning the fact that he had been convicted in the appeal proceedings after being acquitted by two lower courts, and the change of legal classification without adversarial debate, was raised before the Court only on 11 December 2009, while the final decision was delivered on 4 December 2008. It follows that this complaint was introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. 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

83. The applicant claimed 19,211,910 euros (EUR), representing the loss of his clientele and company and the damage caused to his reputation.

84. The Government contested the existence of a causal link between the alleged violations and the losses claimed by the applicant, arguing, *inter alia*, that the applicant should have substantiated his claims.

85. The Court shares the Government's view that there is no causal link between the violations found and the pecuniary damage claimed (see *Khudoyorov v. Russia*, no. 6847/02, § 221, ECHR 2005-X (extracts)). Consequently, it finds no reason to award the applicant any sum in respect of pecuniary damage. However, it awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

86. The applicant also claimed EUR 41,770 for the costs and expenses incurred in connection with his extradition from Switzerland to Romania.

87. The Government maintained that the costs and expenses claimed by the applicant had no link with the object of the case and that, furthermore, the applicant had not substantiated his claims.

88. In accordance with the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court rejects the claim for costs and expenses on the ground that the applicant did not submit any documents proving that the costs and expenses have been actually incurred.

C. Default interest

89. 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. *Declares* the complaint under Article 5 § 3 concerning the applicant's pre-trial detention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the respondent State's national currency 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;

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

Done in English, and notified in writing on 1 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President