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

# FOURTH SECTION

# DECISION

Application no. 23884/19
Marius COVACIU
against Romania

The European Court of Human Rights (Fourth Section), sitting on 23 September 2025 as a Committee composed of:

Ana Maria Guerra Martins*, President*,
Anne Louise Bormann,
Sebastian Răduleţu*, judges*,

and Crina Kaufman, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 23884/19) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 9 April 2019 by a Romanian national, Mr Marius Covaciu ("the applicant"), who was born in 1963, lives in Braşov and was represented by Mr M. Carapcea, a lawyer practising in Braşov;

the decision to give notice of the application to the Romanian Government ("the Government"), represented by their Agent, Ms O.F. Ezer, of the Ministry of Foreign Affairs;

the parties' observations;

Having deliberated, decides as follows:

## SUBJECT MATTER OF THE CASE

1. The case concerns alleged unfairness of criminal proceedings against the applicant in breach of his rights under Article 6 §§ 1 and 3 a) and b) of the Convention.

2. On 8 November 2016 the prosecutor's office attached to the Braşov County Court indicted the applicant for tax evasion and use of "forged documents" and sent his case to the Braşov County Court ("the county court") for trial. According to the indictment, between January and August 2006 the applicant registered expenses which did not correspond to real operations in

the accounting records of the company he was managing. Furthermore, on 8 August 2010, he presented forged project documentation to the tax inspectors. The indictment mentioned the date on which each disputed invoice was issued and paid, the last one having been issued on 14 August 2006 and paid on 15 November 2006.

3. The county court heard testimony from seven prosecution witnesses and considered the documentary evidence submitted by both parties. The applicant was represented by a lawyer.

4. On 29 November 2017 the county court acquitted the applicant of the tax evasion charges and dismissed the use of forged documents charges as time-barred. With respect to the charges of tax evasion, the county court found that they had not been proven beyond any reasonable doubt, as some invoices, company records and an expert report pointed to the possibility that the transactions had been real, whereas none of the witness statements indicated unequivocally that the charges were substantiated. On the charges of use of forged documents, the county court found that the statute of limitations had expired.

5. On 7 December 2017, the prosecutor's office appealed against this judgment before the Braşov Court of Appeal ("the court of appeal"). On the one hand, they challenged the outcome of proceedings. On the other hand, they argued that the facts of the case should have been recharacterized as a single charge of tax evasion, in light of the decision no. 21 of 6 November 2017 ("decision no. 21") of the High Court of Cassation and Justice ("the High Court") on an appeal in the interests of the law, published in the Official Journal on 27 Decembre 2017. In this decision, the High Court ruled that, when forged invoices and receipts had been used for the purposes of committing tax evasion, the use of such documents should not be treated as a separate offence but included in the *actus reus* of tax evasion.

6. The court of appeal heard testimony from three witnesses proposed by the prosecution among those who had also testified before the county court, in the presence of the applicant's chosen lawyer. The defence indicated that the rehearing of the witnesses was "redundant" and that they did not wish to put forward any witnesses.

7. On 26 September 2018 the applicant's chosen lawyer submitted new documentary evidence, namely tax returns and contracts concluded with other companies, with a view of demonstrating that the company managed by the applicant was actively trading. The same day, the court of appeal heard the parties' oral arguments on the substance of the appeal. The applicant's chosen lawyer mentioned that the offence of tax evasion was time-barred as the *actus reus* had occurred when the disputed invoices had been issued, namely between January and August 2006 (see paragraph 2 above). He explicitly opposed the legal recharacterization of facts requested by the prosecutor, claiming that decision no. 21 was not applicable, as it pertained to use of

forged invoices and receipts for carrying out tax evasion, whereas the applicant was accused of using forged project documentation.

8. The court of appeal adjourned the case for the parties to submit written arguments. On 1 October 2018 the applicant submitted his written arguments, in which he rebutted the legal recharacterization of facts.

9. In a final decision of 10 October 2018, served to the applicant on 23 November 2018, the court of appeal quashed the judgment of 29 November 2017. It decided that, in light of decision no. 21, which was binding for all courts from 27 December 2017, which was the date of its publication in the Official Journal (Article 474 § 4 of the Code of Criminal Procedure ("CCP")), the use of forged documents should not be treated as a separate offence, but as a means by which the applicant committed tax evasion. It also noted that the enumeration of acts such as tax invoice and receipts in decision no. 21 was merely illustrative. Therefore, relying on Article 386 of the CCP, which allowed the courts to change the legal characterization of the facts during the trial, the court of appeal legally recharacterized the facts as a single complex offence of continuous tax evasion, which included the use of forged documents.

10. On the issue of the statute of limitations, the court of appeal decided that the crime of tax evasion was committed when the fictitious operations were recorded in the company's accounting records, as this was the moment the intended result was achieved. Consequently, even though the invoices had been issued earlier, between January and August 2006, the tax evasion occurred only in November 2006, when the last of them was paid and was reflected into the accounting records. Therefore, the statute of limitations had not expired.

11. On the merits of the case, the court of appeal proceeded to its own assessment of the case. It found that the backdating of one of the contracts, the fact that the company P displayed every indication of a ghost company, the use of forged documents and the delays in presenting these documents to the tax authorities, as well as the joint interests of the managers of the companies involved, proved beyond any reasonable doubt that the applicant had committed tax evasion. The court of appeal's decision bore no mention of the witnesses' statements. It sentenced the applicant to a two-year suspended sentence.

12. The applicant filed a further unsuccessful appeal on points of law (*recurs în casaţie*) before the High Court, which concluded on 17 May 2019 that the court of appeal had correctly interpreted and applied decision no. 21.

13. Under Article 6 §§ 1 and 3 of the Convention, the applicant complains that the proceedings were unfair because the court of appeal reversed the first instance court's acquittal by merely reassessing the evidence presented before the county court and without administering new evidence. He further alleges that the court of appeal exceeded the scope of the indictment by finding that the tax evasion had occurred in November 2006. Additionally, he

complains that the same court had changed the legal characterization of the facts without informing him in detail about the new charges and without providing him with adequate time and facilities to make submissions in respect thereof. Moreover, he alleged that the new legal characterization of the facts was incorrect, because decision no. 21 stated that the use of forged documents was absorbed into tax evasion when forged invoices and receipts were used, whereas the applicant had been charged with the use of forged project documentation.

## THE COURT'S ASSESSMENT

14. As regards the applicant's complaint that he was convicted on appeal based on the same body of evidence that led to an acquittal before the county court, the general principles established in the Court's case-law were laid out in the case of *Júlíus Þór Sigurþórsson v. Iceland* (no. 38797/17, §§ 30-38, 16 July 2019).

15. The Court notes that, having quashed the county court's acquittal judgment, the court of appeal engaged in a new evaluation of the facts and made a full assessment of the applicant's guilt or innocence. In doing so, it explained in detail why it dismissed the conclusion of the county court and then proceeded to reach a conclusion of guilt apparently based solely on documentary evidence (see paragraph 11 above; compare *Marilena-Carmen Popa v. Romania*, no. 1814/11, §§ 43-47, 18 February 2020, and *Ignat v. Romania*, no. 17325/16, §§ 54-55, 9 November 2021). Although it heard the testimonies of three witnesses, it did not mention any of them in its decision (see paragraphs 6 and 11 above; contrast *Mischie v. Romania*, no. 50224/07, § 38, 16 September 2014, and *Găitănaru v. Romania*, no. 26082/05, § 32, 26 June 2012). The applicant, who did not wish to put forward any witnesses (paragraph 6 above), was allowed to submit new documents on appeal (see paragraph 7 above). Recalling that issues such as the weight attached by the national courts to given items of evidence or to findings or assessments before them for consideration are not for the Court to review (see *Bochan v. Ukraine* (no. 2) [GC], no. 22251/08, § 61, ECHR 2015), the Court concludes that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

16. As regards the applicant's complaints that the court of appeal had exceeded the indictment by changing the legal characterization of the charge against him without allowing him to express his point of view, the Court considers that they should be examined under Article 6 §§ 1 and 3 a) and b) of the Convention. The general principles were laid out in *Pélissier and Sassi v. France* ([GC], no. 25444/94, §§ 51-53, ECHR 1999-II) and *Leka v. Albania* (no. 60569/09, §§ 63-67, 5 March 2024).

17. In the current case, all the facts forming the basis of the charges, including the date on which the invoices were paid, were thoroughly described in the indictment (see paragraph 2 above; see *Leka*, cited above, § 74, and contrast *Juha Nuutinen v. Finland*, no. 45830/99, § 32, 24 April 2007). The parties to the domestic proceedings disagreed on the timing of the criminal offence, and the applicant had the opportunity to present his interpretation of this matter before the court of appeal (see paragraph 7 above). The court of appeal took the view that the tax evasion did not occur when the invoices were issued, but rather when they were paid and the desired outcome, namely a decrease in the company's taxable income, was reached. This conclusion was based on factual elements known to the parties already at the stage of the indictment (see paragraph 2 above) and were not arbitrarily determined.

18. The Court further notes that in its decision no. 21 of 6 December 2017 the High Court held that the use of forged documents to commit tax evasion was not to be treated as a separate offence, but rather as an element intrinsic to the tax evasion itself (see paragraph 5 above). Thereby, the High Court clarified the material element of the offence of tax evasion, including facts that previously constituted the offence of use of forged documents. Consequently, following decision no. 21, the facts of which the applicant was accused constituted a single offence.

19. The applicant was informed by the public prosecutor's indictment of all the facts with which he was charged (see paragraph 2 above) and the issue of the legal recharacterization of the charge was raised in the prosecutor's office grounds for appeal (see paragraph 5 above) (compare and contrast *Varela Geis v. Spain*, no. 61005/09, § 50, 5 March 2013). Thus, in the light of Article 386 of the CPC, the applicant was fully aware of the possible change in the legal characterisation of the facts (see paragraph 9 above). Moreover, he was able to express his views (see paragraphs 7-8 above; compare *Giosakis v. Greece* (no. 3), no. 5689/08, §§ 30-31, 3 May 2011) and had the opportunity to debate on the elements of the tax evasion offence (see paragraph 7 above; contrast *Penev v. Bulgaria*, no. 20494/04, § 41, 7 January 2010). Furthermore, the court of appeal adjourned the case in order to give the parties the opportunity to submit written submissions to the file (see paragraph 8 above; see, for a different situation, *Adrian Constantin v. Romania*, no. 21175/03, §§ 10, 11 and 22, 12 April 2011).

20. Having regard to the foregoing, the Court considers that the applicant was informed about the facts he was charged with, that he was sufficiently warned of the possibility that these facts might be legally recharacterized by the court of appeal as a single offence of tax evasion, and that he had a sufficient opportunity to defend himself (*Leka*, cited above, § 65, and the cases cited therein). Thus, these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

21. As regards the applicant's complaint referring to the incorrect legal recharacterization of the charge against him (paragraph 2 above *in fine*), the Court observes that the applicant contests the interpretation by the court of appeal of decision no 21. Or, the High Court confirmed this interpretation (see paragraph 12 above). In any event, according to its well-established case-law, it is not the Court's task to deal with alleged errors of law or fact committed by the national courts, unless their findings can be regarded as arbitrary or manifestly unreasonable (see *Bochan*, cited above, § 61), which has not been proven in the present case.

22. Having regard to the foregoing, this complaint is also manifestly ill-founded and must be rejected pursuant to 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 16 October 2025.

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| Crina Kaufman<br>Acting Deputy Registrar | Ana Maria Guerra Martins<br>President |