

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

FOURTH SECTION

DECISION

Application no. 26239/09
Dorin Mircea GIURGIU
against Romania

The European Court of Human Rights (Fourth Section), sitting on 3 October 2017 as a Chamber composed of:

Ganna Yudkivska, *President,*
Paulo Pinto de Albuquerque,
Faris Vehabović,
Egidijus Kūris,
Iulia Motoc,
Carlo Ranzoni,
Péter Paczolay, *judges,*

and Marialena Tsirli, *Section Registrar,*

Having regard to the above application lodged on 8 May 2009,

Having regard to the decision of 10 July 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 applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Dorin Mircea Giurgiu, was a Romanian national who was born in 1955 and lived in Urziceni. He was represented before the Court by Mr V. Gafiuc, a lawyer practising in Urziceni. The applicant died on 16 December 2009. His daughter, Ms Dora Samira Giurgiu, born in 1983, applied to pursue the application before the Court in his name and retained the same lawyer to represent her.

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 case

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

1. The pre-trial stage of the proceedings

4. On 18 December 2000 the Sibiu Police Department opened criminal proceedings against the applicant and two co-accused for fraud and aiding and abetting fraud.

5. On the same date the Sibiu Police Department took a statement from the applicant in respect of the circumstances of the case. He was assisted by a publicly appointed legal representative, namely Mr A., and provided the investigating authorities with his registered address. The applicant stated that he and his co-accused had met in order to deceive people, but they had never planned for their actions to have such a large impact (*ne-am adunat pentru a trage țepe, dar nu am gandit-o de o aşa mare amploare*).

6. On the same date, after informing the applicant of the accusation brought against him and of his right to be assisted by a publicly appointed legal representative or by a lawyer of his own choosing during the criminal proceedings against him, the Sibiu Police Department took a second statement from the applicant about the circumstances of the case in the presence of Mr A., his legal representative.

7. On the same date the applicant was taken into police custody for twenty-four hours. He was released the following day.

8. On 28 December 2000 the applicant complained to the Sibiu Prosecutor's Office about the Sibiu Police Department's action in seizing several items of movable property used by him on the day of his placement in police custody.

9. On 23 August 2001, following an inquiry conducted by the Sibiu Police Department, the Romanian Ministry of Justice informed the aforementioned police department that the applicant was not being held in any detention facility.

10. On 5 September 2001 the Sibiu Police Department asked the Sânnicolau Mare Police Department to summons the applicant for the purposes of taking a statement from an accused about the circumstances of the case. The Sibiu Police Department asked the Sânnicolau Mare Police Department to provide it with proof that the summons had been served on the applicant.

11. On 10 September 2001 the Sibiu Police Department verified the applicant's identity data and registered address with the Agency for Computerised Records of Individuals (*Direcţia Generală de Evidenţă Informatizată a Persoanei*). In a report produced on the same date the Sibiu Police Department noted that, according to the available information, the applicant's registered address was that of his domicile and that a search

warrant had been issued in the applicant's name on 30 May 2001 by the Ialomița Police Department because it (the Ialomița Police Department) had initiated an investigation against the applicant for fraud.

12. According to a police report produced on 21 November 2001, the Sibiu Police Department contacted the Sânnicolau Mare Police Department and asked them to find and summons the applicant to appear before the Sibiu Prosecutor's Office so that he could be served with the prosecution material. In reply, the Sânnicolau Mare Police Department informed the Sibiu Police Department that for the past year the applicant had not been living in his former domicile and that the Ialomița Police Department had issued a search warrant in his name. Several other police departments had also been searching for the applicant in connection with a number of financial offences.

13. On 7 December 2001 the Sibiu Prosecutor's Office indicted both the applicant − in his absence − and the two co-accused and sent their case for trial on the basis of documentary and testimonial evidence and their statements. In the act of indictment the Prosecutor's Office noted that the applicant and his co-accused had been questioned on 18 December 2000 but that it had subsequently been impossible to serve the applicant with the prosecution material because he had absconded.

2. The first round of court proceedings

14. The applicant did not attend any of the hearings held before the first-instance court.

15. During the hearings of 20 February and 20 March 2002 the Sibiu District Court allowed the Sibiu Prosecutor Office's request that the Department of Prisons be asked if the applicant was being detained in any prison facility in the country. Moreover, it adjourned the proceedings to 20 March and 10 April 2002, respectively, and ordered that a summons for the applicant to appear before the court be served both by delivery to his domicile and by publicly posting it in the Sibiu Local Council building. The applicant's registered address, as provided by the court, was incomplete.

16. According to summons reports produced by a bailiff on 7 and 28 March 2002, the court summonses of 20 February and 20 March 2002 were both publicly posted in the Sibiu Local Council building.

17. According to summons reports produced by a bailiff on 8 and 28 March 2002, summonses were served on 20 February and 20 March at the registered address provided by the court. The bailiff found the applicant's mother at the aforementioned address, but she refused to accept the summonses. Although the applicant had apparently changed his address, the bailiff had been unable to find out his new address from her.

18. On 15 March 2002 the Sibiu Mayor's Office informed the Sibiu District Court that they had removed the summons posted by the bailiff in

the Sibiu Local Council building on 7 March 2002 (see paragraph 16 above).

19. During the hearing of 13 November 2002 before the Sibiu District Court, the applicant was represented by Mr F., a publicly appointed legal representative. His co-defendants were also assisted by a publicly appointed legal representative, namely Mr M. The applicant's lawyer did not ask the court to admit any evidence in his favour and agreed that the court could dispense with the questioning of a witness who could not be brought before the court because he was no longer living at his registered address. Moreover, he submitted to the court that the facts had been proved and that one of the applicant's co-defendants, namely V., had partly admitted to having committed the offence. Consequently, the applicant could be convicted for being an accessory to fraud but Mr F. urged the court to take into account the extenuating circumstances in his favour when imposing the applicant's sentence.

20. On the same date the Sibiu District Court convicted the applicant for aiding and abetting fraud and sentenced him to four years' imprisonment. In addition, it ordered the applicant and his co-defendants to pay jointly to a third party compensation amounting to 114,757,865 Romanian lei (ROL) (approximately 3,132 euros (EUR)) in respect of pecuniary damage.

21. The Sibiu Prosecutor's Office and the applicant's co-defendants lodged an appeal against the judgment with the Sibiu County Court.

22. The applicant did not attend any of the hearings before the second-instance court.

23. On 11 February 2004, during a hearing before the Sibiu County Court, the applicant and one of his co-defendants, namely V., were represented by the same publicly appointed legal representative, namely Mr C. The latter did not submit any arguments to the court on the applicant's behalf and left his conviction and sentence to the court's discretion.

24. On the same date the Sibiu County Court allowed the appeals lodged by the Sibiu Prosecutor's Office and by the applicant's co-defendants on the grounds that the first-instance court had miscalculated V.'s sentence. It quashed the first-instance judgment and ordered a re-trial.

3. The second round of court proceedings

25. During the re-trail at first-instance the applicant had been represented by the same publicly appointed legal representative as V. and did not attend any of the hearings held by the first-instance court.

26. According to the applicant, his legal representative had not asked the court to adduce any evidence on his behalf nor to clarify the factual circumstances of the case in so far as they concerned the applicant and had left the applicant's conviction and sentencing to the court's discretion.

27. Between 13 May and 31 August 2004 the Sibiu District Court issued three "warrants to appear" in the applicant's name. According to enforcement reports produced by bailiffs on 13 May, 15 June and 31 August 2004, the applicant's neighbours stated that he had not been living at the address registered as his domicile for four or five years. Moreover, the applicant's mother had sold the apartment a year earlier and no one had been able to provide information about her new address.

28. Between 23 September 2004 and 27 March 2005 the Sibiu District Court issued three search warrants in the applicant's name. According to enforcement reports produced by bailiffs on 23 September and 20 October 2004 and 27 March 2005, neither the applicant nor his mother was still living at the address registered as his domicile. They had sold the apartment and left town. Neither the neighbours nor the persons who had purchased the apartment from the applicant's mother had known where they could be contacted. Moreover, several warrants to appear had been issued in the applicant's name by different district courts in the country following numerous proceedings that had been instituted against him.

29. On 26 October and 5 November 2004 and 24 March 2005, following inquiries by the first-instance court, the National Agency for Persons' Records (*Inspectoratul Național pentru Evidența Persoanelor*) informed it that their records showed the applicant's known address to be his registered address. Moreover, the applicant had never notified the relevant authorities of any change of address.

30. During the hearing of 4 May 2005 the Sibiu District Court noted that, according to information submitted by the Bucharest Department of Prisons following an inquiry from the court, the applicant was detained in Timişoara Prison. Consequently, it adjourned the proceedings until 18 May 2005 and ordered that a summons be served on the applicant in that prison. It also ordered the applicant's transfer to Aiud Prison and asked the Romanian Ministry of Justice to assist with the transfer. Lastly, it ordered that a summons also be served on him in Aiud Prison.

31. During hearings on 18 May, and on 8 and 29 June 2005, the Sibiu District Court noted the applicant's absence from the hearings and the fact that he had not been transferred from Timişoara Prison. It adjourned the proceedings and ordered that a summons be served on him in Timişoara and Aiud Prisons as well as his transfer from the former prison to the latter. Furthermore, on 8 June at the request of all the parties, the court heard one of the witnesses in the case.

32. On 30 June and 11 July 2005, in reply to the first-instance court's order of 4 May 2005 (see paragraph 30 above) the Prisons Department informed the Sibiu District Court that they had been unable to transfer the applicant because he had been made available for an appearance before the Constanța County Court but had been released by it on 23 June 2005.

Furthermore, upon his release the applicant had provided them with the same home address he had given to the authorities previously.

33. At the hearing of 28 September 2005 the Sibiu District Court adjourned the proceedings. Moreover, it ordered that a summons be served on the applicant at the home address provided by him and that it also be posted at both the Sibiu and Sânnicolau Mare Local Councils. It also asked the Timiş Agency for Computerised Records of Individuals to provide the applicant's new home address.

34. According to a summons report produced by bailiffs on 5 October 2005, the court summons of 28 September 2005 was posted at both Sibiu and Sânnicolau Mare Local Councils as well as on the main door of the building in which the applicant had his last known home address.

35. On 16 December 2005 the Sibiu District Court re-examined the case, convicted the applicant for aiding and abetting fraud, and sentenced him to four years' imprisonment. In addition, it ordered the applicant and his co-defendants to pay jointly to a third party compensation in the amount of EUR 3,132 in respect of pecuniary damage.

36. The applicant's co-defendants lodged an appeal against the judgment before the Sibiu County Court.

37. The applicant did not attend any of the hearings held before the second-instance court.

38. On 11 September 2006, during a hearing before the Sibiu County Court, the applicant was represented by Ms H., a publicly appointed legal representative, while his co-defendants were assisted by other publicly appointed legal representatives. The applicant's lawyer did not submit any arguments before the court and left the assessment of the circumstances of the applicant's case to the court's discretion. The court noted that all the parties had been lawfully summonsed to appear before the court.

39. On 18 September 2006 the Sibiu County Court dismissed the appeal lodged by the applicant's co-defendants and upheld the judgment of the first-instance court. The applicant's co-defendants appealed on points of law against the judgment.

40. The applicant, assisted by his chosen legal representative, lodged a belated appeal on points of fact and points of law against the judgment and asked for the time-limit for appeal on points of fact and points of law to be reinstated. In addition, he asked the last-instance court to order the re-opening of the appeal proceedings. He further argued that, although he had informed the authorities of his correspondence address at the criminal investigation stage of the proceedings, during the appeal stage of the proceedings the summons and the judgment had been served at an incorrect address. He had found out about the judgment by chance after having been detained in a separate set of proceedings. Lastly, he indicated that his new correspondence address, to which the courts should deliver any summons, was the address of his chosen legal representative's law practice.

41. During the hearing of 30 November 2006 the Alba-Iulia Court of Appeal found that the applicant's summonsing for that hearing had been flawed and that the applicant's chosen legal representative had reiterated that the applicant's new correspondence address for the purpose of receiving summonses from the courts was the address of his representative's legal practice. It also noted that the applicant's legal representative had asked for the proceedings to be adjourned in order for him to have time to prepare his defence. Consequently, it adjourned the proceedings and ordered that the summons be served on the applicant at both his former and his new correspondence addresses.

42. According to a summons report produced by a bailiff on 15 December 2006, the court's summons of 30 November 2006 inviting the applicant to attend the hearing of 4 January 2007 was delivered to the new correspondence address and was handed to the assistant charged with receiving correspondence for the legal representative's law practice.

43. On 4 January 2007, in the presence of the applicant's chosen legal representative, the Alba-Iulia Court of Appeal allowed the applicant's belated appeal on points of fact and points of law, quashed the judgment of 18 September 2006 (see paragraph 39 above) and ordered a re-trial of the appeal on the grounds that the applicant had not been lawfully summonsed and notified of the judgment. It noted that the applicant had notified the authorities of his correspondence address at the criminal investigation stage of the proceedings (see paragraph 5 above); but that during the proceedings before the first and the second-instance courts the summons and the judgments had been served at an address that was incorrect as it had been misspelled.

4. The third round of court proceedings

44. Between 5 March and 2 July 2007, after the appeal proceedings had been re-opened, the Sibiu County Court adjourned the proceedings five times at the request of the applicant's chosen legal representative or of the other parties. On 4 June 2007 the court also decided to ask the Bucharest Department of Prisons to inform it if the applicant or his co-defendants had been incarcerated in any of the prisons in the country. The court continued to serve summonses for the applicant at the address of his chosen legal representative's law practice.

45. On 3 September 2007 the applicant's lawyer informed the court that the applicant had been detained following his conviction by the first-instance court and asked for the applicant's release pending the outcome of the proceedings.

46. On the same date the Sibiu County Court allowed the applicant's lawyer's request and ordered the applicant's release. In addition it ordered that a summons be served on the applicant at the address of the applicant's lawyer's law practice.

47. On 3 October 2007 the applicant's legal representative informed the court that the applicant had been released and a summons had been served on him at his former home address. He left to the court's discretion the issue of whether the applicant should also have been summonsed at his new home address.

48. On the same date the Sibiu County Court held that, in the light of his request for an appeal, the applicant had indeed been lawfully summonsed for that hearing. Moreover, it ordered that the applicant be served with a summons both at the address of his lawyer's law practice and at the address of his new domicile.

49. Between 12 November 2007 and 7 January 2008 the Sibiu County Court adjourned the proceedings three times either on procedural grounds or at the request of the applicant's lawyer and continued to summons the applicant both at the address of his chosen legal representative's law practice and at his new home address. On 7 January 2008, when the court adjourned the proceedings to 4 February 2008, the applicant's daughter appeared before the court and notified it that the applicant and his lawyer had been snowed in in a different city and that they had therefore been unable to attend the hearing. She confirmed that the applicant was living at his new home address and requested that the court adjourn the proceedings.

50. On 4 February 2008 the applicant's chosen legal representative asked the Sibiu County Court to quash the judgment of the Sibiu District Court of 16 December 2005 (see paragraph 35 above) and to order a re-trial. He argued that the summons and the judgment had been served on the applicant at an incorrect address, even though he had notified the investigating authorities of his correspondence address (see paragraph 5 above). In addition, the applicant had not had effective legal representation because he had been assisted by a publicly appointed legal representative who was the same legal representative as the one appointed to assist the co-defendant V., even though they had conflicting interests in the case.

51. The Sibiu Prosecutor's Office argued that if the applicant's summonsing at a misspelled address by the first-instance court had been perceived as a flawed summonsing procedure in respect of his trial, the applicant's appeal would have had to have been allowed and the proceedings before the first-instance court would have had to have been re-opened. Also, in the light of the applicant's and V.'s *modus operandi*, it did not appear that they had had conflicting interests entailing that they should not have been represented by the same lawyer.

52. On 11 February 2008 the Sibiu County Court allowed in part the applicant's and his co-defendants' appeals, dismissed the third party's claims for civil damages, and upheld the remaining part of the first-instance court's judgment. It held, *inter alia*, that the applicant's appeal against the first-instance court's judgment had been lodged within the lawfully allowed time-limit. In this connection it noted that the judgment of the first-instance

court had been served at an incorrect address, even though the applicant had notified the investigating authorities of his correspondence address. Consequently, the applicant had never been lawfully notified of the judgment. The court further held that, even if the applicant and V. had had to share the same publicly appointed legal representative, it could not be argued that they had conflicting interests in the case and that the applicant had therefore been deprived of his right to defence.

53. All the parties, including the applicant, appealed on points of fact and points of law against the judgment.

54. On 29 April 2008 the applicant asked the Alba-Iulia Court of Appeal to adjourn the proceedings in order to allow him to appear before it together with his chosen legal representative and to defend himself.

55. On the same date the Alba-Iulia Court of Appeal allowed the applicant's request and adjourned the proceedings. It also ordered that the applicant be summonsed and indicated as his address that of his former domicile.

56. On 20 May, 10 June, 2 and 23 September and 14 October 2008 the Alba-Iulia Court of Appeal allowed the applicant's lawyer's requests for an adjournment of the proceedings. The court continued to summons the applicant and ordered that the summons specify that the applicant had to attend the hearing in order to be questioned. The court indicated as the address for the summons that of his former domicile.

57. At the hearing of 4 November 2008, in the applicant's absence, his chosen legal representative argued, *inter alia*, that the applicant's right of defence had been breached on account of the superficial defence mounted during the proceedings by the publicly appointed legal representatives. In addition, during the first round of proceedings, although his interests in the case that conflicted with those of V., they had been assisted before the last-instance court by the same publicly appointed legal representative and no additional submissions had been made before that court. Consequently, the applicant's defence had been ineffective and the proceedings before the first-instance court should be re-opened.

58. On the same date the court held that the summonsing procedure had been lawfully conducted.

59. By a final judgment of 12 November 2008 the Alba-Iulia Court of Appeal dismissed the applicant's appeal on points of fact and points of law. It held that there was no evidence that the applicant's right to defence had been breached. Moreover, he had been lawfully assisted by a publicly appointed legal representative and his interests had been protected appropriately. However, the court allowed the argument put forward by the Sibiu Prosecutor's Office that the third party's civil claims had been wrongly dismissed by the second-instance court, quashed the aforementioned judgment, and upheld the judgment of the first-instance court in respect of the civil limb of the proceedings.

60. On 24 November 2008 the applicant's chosen legal representative lodged an extraordinary appeal for annulment against the judgment on the applicant's behalf. He argued that the conditions for the examination of his appeal on points of fact and points of law on 4 November 2008 (see paragraphs 54-59 above) had been inappropriate both procedurally and in respect of the merits of the case in so far as they related to the provisions of Article 386 of the Code of Criminal Procedure (hereinafter "the CCP" – see paragraph 65 below). He also argued that at the time of writing his application for an extraordinary appeal for annulment he had not been fully aware of the grounds relied on by the last-instance court because its reasoning had not been made available to the parties. However, he submitted that he had lodged his application in order to comply with the ten-day time-limit provided for by Article 388 of the CCP (see paragraph 67 below) and that he had intended to state the specific reasons for his extraordinary appeal for annulment under Article 386 of the CCP after having had sight of the reasoning part of the judgment. He also stated that he had reserved his right to clarify his application no later than the second hearing held by the court.

61. On 16 December 2008 the Alba-Iulia Court of Appeal dismissed the applicant's extraordinary appeal for annulment as inadmissible. It held that the reasons relied on by the applicant did not correspond to the reasons for an extraordinary appeal for annulment expressly provided for by Article 386 of the CCP. On 4 November 2008, when the debates had been held before the Alba-Iulia Court of Appeal, the procedure concerning the applicant had been lawfully conducted and he had been assisted by his chosen legal representative. In addition, the court had answered all the points raised in his appeal on points of fact and points of law.

B. Relevant domestic law

62. Article 46 (1) of Law no. 51/1995 on the legal profession provides that a lawyer may not assist or represent parties who have conflicting interests in the same case.

63. Law 356/2006, published in the Official Gazette no. 677 of 7 August 2006, amended the former CCP. It entered into force on 6 September 2006 but, in accordance with its transitional provisions, it was not applicable to pending proceedings.

64. Articles 378 (1^1) and 385^{14} (1^1) of the former CCP, introduced by Law no. 356/2006 (see paragraph 63 above), provided that the court examining an appeal or an appeal on points of fact and points of law had to hear a defendant who was present if he or she had not been heard by the lower courts.

65. Article 386 of the former CCP provided that an extraordinary appeal for annulment could be lodged against a final judgment if the procedure to

summons a party to the hearing at which the appeal on points of fact and points of law was examined had not been executed in accordance with the law. Following its amendment by Law no. 356/2006 (see paragraph 63 above), the aforementioned Article of the CCP also provided that an extraordinary appeal for annulment could be lodged against a final judgment if, when examining or re-examining an appeal on points of fact and points of law, the last-instance court had not heard a defendant who had been present although such hearing by the court was mandatory according to Article 385^{14} (1^{1}) of the former CCP.

66. Pursuant to Article 387 of the former CCP, the accused had to mention in his application for an extraordinary appeal for annulment all the grounds on which he was basing the said appeal and all the supporting arguments.

67. Article 388 of the former CCP provided that an extraordinary appeal for annulment could be lodged by the person against whom the final judgment had been enforced within ten days of the enforcement of the judgment and by the other parties within thirty days of the delivery of a final ordinary judgment.

COMPLAINT

68. The applicant alleged that his right to a fair trial guaranteed by Article 6 of the Convention had been infringed because he had not been effectively represented by the publicly appointed legal representatives during the initial stage of the trial proceedings. Moreover, he had been assisted by the same publicly appointed legal representative as one of his co-accused, even though they had conflicting interests in the case. Furthermore, the domestic courts had failed to hear him and to summons him correctly during the trial proceedings.

THE LAW

69. The applicant complained that his right to a fair trial had been breached. He relied on Article 6 of the Convention, which, in so far as relevant, reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by a ... tribunal...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

..."

70. The applicant complained, in particular, about the alleged lack of effectiveness of his representation by public defendants, of having been assisted by the same publicly appointed representative as his co-accused V., and of not having been correctly summonsed and heard by the domestic courts.

A. The parties' submissions

1. The Government

71. The Government first submitted that the applicant had failed to exhaust the available domestic remedies. In particular, neither the applicant nor his chosen legal representative had raised before the domestic courts any complaint concerning either the procedural flaws which had occurred during the proceedings before the Alba-Iulia Court of Appeal or the omission of the last two instance courts to hear him. Also, the applicant's chosen legal representative had never argued before the last-instance court that the applicant had been unlawfully summonsed. Moreover, in the application for the extraordinary appeal for annulment the applicant's representative had made only a general observation about improper procedural conditions during the examination of the appeal on points of fact and points of law and consequently had failed to comply with the admissibility conditions for an extraordinary appeal for annulment (see paragraphs 65-67 above)

72. The Government submitted that the Court had already examined the effectiveness of extraordinary annulment appeal proceedings in the cases of *Butuşină v. Romania* (no. 30818/04, 8 February 2011) and *Flueraş v. Romania* (no. 17520/04, 9 April 2013). Moreover, the applicant's procedural conduct had been similar to that of the applicant in *Boroancă v. Romania* (no. 38511/03, 22 June 2010), where the Court had found no violation of Article 6 of the Convention.

73. The Government submitted that, notwithstanding the Alba-Iulia Court of Appeal's judgment of 4 January 2007 (see paragraph 43 above), the applicant had been lawfully summonsed. The minor difference between the address indicated by the applicant and the address mentioned on the summons had not rendered the summons procedure unlawful or the proceedings unfair. At the address mentioned on the summonses, the bailiffs had on two occasions found a member of the applicant's family who had refused to accept the summons in question (see paragraph 17 above). Furthermore, the bailiff reports had not referred to any essential difference

between the address indicated by the applicant and the address mentioned on the summonses.

74. The Government contended that the applicant had been aware of the criminal proceedings instituted against him and that he had had a legal duty to inform the investigation authorities about any change of address. However, he had provided the authorities with the same correspondence address both in December 2000 and in 2005 after his release from prison, even though he had not lived at that address for years and the property had been sold in 2002.

75. The Government submitted that, starting from the second round of proceedings, the applicant had been assisted by his chosen legal representative. Moreover, for part of the proceedings during the second and third rounds of proceedings, summonses had been served at both the address of his lawyer's law practice and his new home address.

76. The Government acknowledged that during the third round of proceedings the last-instance court had used only his former home address to summons the applicant. However, during that stage of the proceedings the applicant had personally asked the court to adjourn the proceedings. He had therefore been aware of the evolution of the proceedings, but had chosen not to appear before the court. In addition, the applicant's chosen legal representative had been aware of the dates of the hearings before the last-instance court and had been present at those hearings. It was, therefore, difficult to imagine that the applicant's chosen legal representative would not have informed the applicant about the evolution of the proceedings before the last-instance court, given that he had a professional obligation to inform him of the summonses received by his law practice. The applicant's daughter had also appeared before the Sibiu County Court (see paragraph 49 above) and had informed the court about her father's intention to appear before it, although ultimately he had never done so.

77. The Government argued that the applicant had willingly waived his right to appear before the last two appellate courts even though he had been aware of the consequences. Moreover, the applicant's chosen legal representative had not asked the domestic courts to adduce any additional evidence to the file in respect of the merits of the case and had not provided any reasons explaining why the applicant had failed to attend the court hearings. Under the relevant criminal procedural rules, the last-instance courts had a duty to hear defendants who were present if they had not been heard by the lower courts (see paragraph 64 above). Therefore, if the applicant had chosen to attend the hearings before the courts, he could have presented his own version of the facts.

78. The Government contended that, according to the Court's case-law, proceedings must be assessed in the context of the overall fairness thereof. They argued that during the third round of proceedings the applicant's lawyer could have presented all the necessary arguments for the applicant's

defence before the last two appellate courts and could have remedied the shortcomings of the defence mounted by the publicly appointed legal representatives.

79. The Government argued that the authorities were called upon to step in only if the shortcomings of a legal representative were manifest. In the applicant's absence, the publicly appointed representative had had to prepare his defence on the basis of the available evidence and he could not be blamed for carrying out his own assessment of the evidence. The only indication of the applicant's position in respect of the case had been his statement of 18 December 2000 (see paragraph 5 above), in which he had partly admitted committing the offence. Also in the light of the applicant's aforementioned statement, the domestic courts had been entitled to consider that there was no conflict of interest between the applicant and V. requiring the two defendants to be represented by different lawyers. Moreover, the applicant himself had failed to identify any factors that would have proven the alleged conflict of interest.

80. In respect of the third round of proceedings (see paragraphs 44-61 above), the Government submitted that the first-instance court had adduced of its own motion all the evidence it had considered relevant for the case. In the applicant's absence, the applicant's publicly appointed legal representative had not identified any other evidence that could have been adduced by the court and had reiterated the arguments for the defence raised during the first round of proceedings, which had relied on the available evidence. Consequently, the applicant's legal representative had taken all reasonable measures to protect the applicant's interests.

2. The applicant's daughter

81. The applicant's daughter submitted that, while the Government had tried to suggest that the applicant had not acted in good faith during the criminal proceedings opened against him and had tried to obstruct justice by not attending the hearings before the domestic courts, they had extenuated the fact that the summonsing procedure in his case had not been properly observed. However, the applicant could not be held responsible for the failure of the authorities to properly summons him.

82. The applicant's daughter also argued that the Government had not had the right to make inappropriate remarks about the quality of the defence mounted by the legal representative chosen by the applicant.

B. The Court's assessment

83. At the outset, the Court notes that the Government have raised an objection of non-exhaustion of domestic remedies (see paragraphs 71-72 above). However, it finds that it is not necessary to examine that objection as the application is in any event inadmissible for the following reasons.

84. The Court reiterates that compliance with the requirements of a fair trial must be examined in each case in the context of the development of the proceedings as a whole and not on the basis of an isolated consideration of one particular aspect or one particular incident, although it cannot be ruled out that a specific factor may be so decisive as to enable the fairness of the trial to be assessed at an earlier stage in the proceedings (see *Simenovi v. Bulgaria* [GC], no. 21980/04, § 113, ECHR 2017). In the present case, the Court will first examine the different allegations made by the applicant and will then proceed to an overall consideration of the fairness of the proceedings in their entirety.

1. The applicant's allegations concerning the lack of a proper summons to appear

85. The applicant firstly alleged that he had not been correctly summonsed – and therefore not heard – during the trial proceedings.

(a) General principles

86. The Court reiterates that although proceedings that take place in the absence of the accused are not in themselves incompatible with Article 6 of the Convention, a denial of justice nevertheless undoubtedly occurs where a person convicted *in absentia* is unable subsequently to obtain from a court which has heard him a fresh determination of the merits of the charge, in respect of both law and fact, where it has not been established that he has waived his right to appear and to defend himself (see *Sejdovic v. Italy* [GC], no. 56581/00, § 82, ECHR 2006-II, and *Colozza v. Italy*, 12 February 1985, § 29, Series A no. 89) or that he intended to escape trial (see *Medenica v. Switzerland*, no. 20491/92, § 55, ECHR 2001-VI). The Convention leaves Contracting States wide discretion as regards the choice of the means calculated to ensure that their legal systems are in compliance with the requirements of Article 6. The Court's task is to determine whether the result called for by the Convention has been achieved. In particular, the procedural means offered by domestic law and practice must be shown to be effective where a person charged with a criminal offence has neither waived his right to appear and defend himself nor sought to escape trial (see *Somogyi v. Italy*, no. 67972/01, § 67, ECHR 2004-IV).

87. The Court reiterates in this respect that neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to the guarantees of a fair trial. However, if it is to be effective for Convention purposes, a waiver of the right to take part in the trial must be established in an unequivocal manner and be attended by minimum safeguards commensurate to its importance (see *Sejdovic*, cited above, § 86, with further references).

88. In previous cases concerning convictions *in absentia*, the Court has held that to inform someone of a prosecution brought against him is a legal

act of such importance that it must be carried out in accordance with procedural and substantive requirements capable of guaranteeing the effective exercise of the accused's rights; vague and informal knowledge cannot suffice (see *T. v. Italy*, 12 October 1992, § 28, Series A no. 245-C, and *Somogyi*, cited above, § 75). The Court cannot, however, rule out the possibility that certain established facts might provide an unequivocal indication that the accused is aware of the existence of the criminal proceedings against him and of the nature and the cause of the accusation and does not intend to take part in the trial or wishes to escape prosecution. This may be the case, for example, when materials are brought to the attention of the authorities which unequivocally show that the accused is aware of the proceedings pending against him and of the charges he faces (see *Sejdovic*, cited above, § 99).

(b) Application of those principles to the present case

89. Turning to the present case, the Court notes that the applicant was aware of the criminal proceedings that had been opened against him. In this connection, it notes that on 18 December 2000 the investigating authorities informed the applicant of the accusations brought against him and of his procedural rights, took statements from him in the presence of a lawyer, and placed him in police custody (see paragraphs 5-7 above). Moreover, on 28 December 2000 the applicant lodged a complaint with the Public Prosecutor's Office concerning the action of the Sibiu Police Department in seizing several items of movable property used by him on the day he was taken into police custody (see paragraph 8 above).

90. However, after 28 December 2000 the applicant could no longer be found at his home address, which was the only correspondence address he had given to the investigating authorities (see paragraph 5 above). Even though the investigating authorities attempted to establish his whereabouts, they were unable to do so. Consequently, the applicant was indicted and his case was sent to trial in his absence.

91. As regards the question of whether the judicial authorities acted diligently and made sufficient and adequate efforts to trace the applicant and establish his whereabouts, the Court notes that the numerous summonses, warrants to appear and search warrant reports drafted between 2002 and 2005 – as well as the repeated inquiries addressed by the domestic courts to the prison authorities and the two agencies charged with storing individuals' addresses (see paragraphs 9-12, 15, 28-29 and 33 above) – demonstrate that they made repeated attempts to contact the applicant during the court proceedings. The aforementioned reports show that the bailiffs repeatedly went to the applicant's last known domicile. Even though the address on the summonses and on the warrants had been misspelled by the authorities, the bailiffs had found the correct address and interacted with his mother and neighbours. However, the applicant's mother refused to accept the

summonses and it appears that she did not provide any information about the whereabouts of her son (see paragraph 17 above). Also, in 2003 she had sold the apartment located at the applicant's known correspondence address and had relocated to an unknown address. The applicant's neighbours and the new owners of the apartment also confirmed repeatedly that the applicant and his mother had moved from that address to an unknown location (see paragraphs 27-28 above). Moreover, on at least one occasion in 2005 the bailiffs had posted one of the summonses on the main door of the building which had been stated by the applicant as being his home address (see paragraph 34 above).

92. The Court also notes that in May 2005 the judicial authorities were informed that the applicant had been detained in Timişoara Prison (see paragraph 30 above). However, their efforts to have the applicant appear before them remained unsuccessful because he had been made available to appear before another domestic court in a separate set of proceedings against him and that court had released him from prison. Upon his release the applicant had provided the authorities with the same correspondence address – namely his former domicile – even though he was no longer living there (see paragraph 32 above).

93. The Court observes that there is no evidence in the file to show that between the date of his indictment and 2005 the applicant had been personally served with a summons either at his last place of residence or in Timişoara Prison during his detention there in 2005. However, the authorities had at their disposal material indicating that he might have been aware of the progression of the proceedings pending against him. Indeed, given that the applicant knew that criminal proceedings had been instituted against him (see paragraph 89 above), the fact that his mother had sold the apartment after the bailiff's visit without leaving word of her new whereabouts and the fact that the applicant himself continued to provide the authorities with the same correspondence address even after he and his mother had stopped living there might even suggest that he was attempting to evade justice.

94. Be that as it may, the Court notes that after his conviction by the first-instance and the second-instance courts during the second round of proceedings, the applicant took an active part in the trial proceedings. He retained a legal representative of his choosing and lodged a belated appeal on points of fact and points of law against his conviction by the lower courts. Moreover, he informed the judicial authorities of his new correspondence address, namely the address of his chosen legal representative's law office (see paragraph 40 above).

95. The Court notes that the applicant's belated appeal on points of fact and points of law was allowed on 4 January 2007 and that the proceedings before the second-instance were re-opened (see paragraph 43 above).

96. In this connection, the Court reiterates that – given that the defendant was allowed to appeal against the conviction *in absentia* and was entitled to attend the hearing in the court of appeal, thus opening up the possibility of a fresh factual and legal determination of the criminal charge − the proceedings as a whole may be said to have been fair (see, *mutatis mutandis*, *Jones v. the United Kingdom* (dec.), no. 30900/02, 9 September 2003).

97. The Court notes that the second-instance court had jurisdiction to adduce the evidence requested by the applicant or his chosen legal representative and to carry out a fresh factual and legal determination of the criminal charge. However, following the re-opening of the proceedings, the applicant's chosen legal representative had failed to ask the domestic courts to examine evidence in his or the applicant's presence or to submit any other arguments in his defence. Furthermore, the applicant failed to appear before the court and made his submissions exclusively through his chosen legal representative, even though during the course of the proceedings before the second-instance court he was lawfully and repeatedly summonsed at the new correspondence address indicated by him and the aforementioned court allowed his daughter's request for the proceedings to be adjourned when he became snowed in and was unable to attend the hearing for practical reasons (see paragraph 49 above).

98. The Court is mindful of the fact that, during the third round of proceedings, the applicant failed to attend the hearings before the last-instance court (the Alba-Iulia Court of Appeal), which summonsed him at his former home address (see paragraphs 55-56 above), However, his chosen legal representative had attended the hearings before the last-instance court and the applicant seems also to have been aware of the dates of the hearings, given that on 29 April 2008 he asked the court to adjourn the proceedings in order to allow him to appear before it together with his chosen legal representative (see paragraph 54 above). Moreover, neither the applicant nor his chosen legal representative complained to the last-instance court about the fact that the summonses had been sent to an incorrect address, nor did they ask the court to correct that error, even though some of the aforementioned summonses expressly indicated that the applicant's presence was necessary in order for him to be heard (see paragraph 56 above).

99. In these circumstances, notwithstanding the applicant's arguments, the Court considers that the final-instance court took appropriate steps to ensure the applicant's attendance before it. Thus, the applicant was given a fair opportunity to seek a fresh determination of his conviction and to appear in person before the appellate court during the third round of court proceedings (see, *mutatis mutandis*, *Jones*, decision cited above). The domestic authorities cannot be blamed for the fact that he chose not to do

so, thus tacitly but unequivocally waiving his right to participate in the hearings (see the case-law quoted in paragraph 87 above).

2. The applicant's allegations concerning the lack of proper legal representation

100. The Court will now turn to the applicant's allegations that, during the first and second round of court proceedings, he had not been provided with proper, effective legal representation. The Court observes that the applicant's complaint in this respect is two-fold: firstly, he considered that the assistance provided by the public legal representatives during the initial stage of the proceedings and during the trial before the Sibiu District and County Courts in the course of the second round of court proceedings had been defective; and, secondly, he complained that before the Sibiu County Court (first round of proceedings) and the Sibiu District Court (second round of proceedings), he had been represented by the same representative as his co-accused V. (see paragraphs 23 and 25 above), even though they had conflicting interests in the case.

101. Even assuming that these alleged shortcomings were not remedied by the re-opening of the case and by the third round of court proceedings (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, §§ 66-84, 2 November 2010), the Court reiterates that, while it confers on everyone charged with a criminal offence the right to "defend himself in person or through legal assistance", Article 6 does not specify the manner of exercising this right. It thus leaves to the Contracting States the choice of the means of ensuring that it is secured in their judicial systems, the Court's task being only to ascertain whether the method they have chosen is consistent with the requirements of a fair trial (see *Sannino v. Italy*, no. 30961/03, § 48, ECHR 2006-VI). In this respect, it must be remembered that the Convention is designed to "guarantee not rights that are theoretical or illusory but rights that are practical and effective" and that assigning a counsel does not in itself ensure the effectiveness of the assistance he may afford an accused (see *Imbrioscia v. Switzerland*, 24 November 1993, § 38, Series A no. 275, and *Artico v. Italy*, 13 May 1980, § 33, Series A no. 37).

102. Nevertheless, a State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal-aid purposes or chosen by the accused (see *Sannino*, cited above, § 49). It is a consequence of the independence of the legal profession from the State that the conduct of the defence is essentially a matter between the defendant and his counsel, whether that counsel be appointed under a legal-aid scheme or privately financed (see *Cuscani v. the United Kingdom*, no. 32771/96, § 39, 24 September 2002). The competent national authorities are required under Article 6 to intervene only if a failure by legal-aid counsel to provide effective representation is manifest or sufficiently brought to their attention in some other way (see *Kamasinski v. Austria*, 19 December 1989, § 65,

Series A no. 168, and *Daud v. Portugal*, 21 April 1998, § 38, *Reports of Judgments and Decisions* 1998-II).

103. Turning to the present case, the Court notes that – judging from the available evidence – it does not appear that the applicant's publicly appointed legal representatives asked the domestic courts to adduce evidence to the file on his behalf (see paragraphs 19 and 26 above). Moreover, it seems that the said legal representatives repeatedly left the applicant's conviction to the domestic court's discretion (see paragraphs 23, 26 and 38 above).

104. The Court also notes, however, that during the criminal proceedings the applicant had contact with one of his publicly appointed legal representatives, Mr A., on only one occasion, namely on 18 December 2000 when the Sibiu Police Department took his statement with regard to the circumstances of the case and when he had admitted that he and his co-accused had met in order to deceive people (see paragraphs 5 and 6 above). Moreover, the applicant's publicly appointed legal representatives seem to have attended the hearings held by the domestic courts, to have been familiar with the applicant's case and to have submitted arguments before the courts on the applicant's behalf whenever they considered it relevant (see paragraph 19 above).

105. In these circumstances, and taking into account the fact that the applicant decided to take an active part in the proceedings only after 18 September 2006 (see paragraph 40 above), the Court is not persuaded by the applicant's claims that the assistance provided by the publicly appointed legal representatives was manifestly defective. Nor it has been shown that the applicant had brought to the attention of the competent national authorities the alleged failure by his legal-aid counsels to provide effective representation during the first and second round of court proceedings. Had they been alerted at that stage of the proceedings, the authorities could have proposed two courses of action: either to replace the legal-aid counsels or, if appropriate, to compel them to fulfil their obligations (see, *mutatis mutandis*, *Artico*, cited above, § 36). Indeed, it was only at the hearing of 4 November 2008 that the applicant's chosen representative mentioned for the first time the "superficial defence mounted by the publicly appointed legal representatives" (see paragraph 57 above). At that time, however, the first and second round of court proceedings had already been terminated, and the applicant had obtained a re-trial (see paragraph 43 above) and was represented within the ambit of the third round of court proceedings by a counsel of his own choosing. It follows that the national courts were no longer in a position to intervene in the sense indicated above.

106. In so far as the applicant was assisted on two occasions by the same publicly appointed legal representative as his co-defendant V., the Court notes that both the applicant and V. had in substance acknowledged having committed the unlawful acts of which they were accused. The applicant

failed to identify any conflicting interests the applicant and V. might possibly have had in the proceedings and which under Romanian law would have prevented the same legal counsel from representing both accused persons (see paragraph 62 above).

107. The Court further notes that its views are also supported by the finding of the last-instance court, which concluded that the applicant's assistance by publicly appointed legal representatives had been lawful and that his interests had been protected appropriately (see paragraph 59 above).

3. Conclusion

108. In the light of the above findings, the Court considers that the fairness of the criminal proceedings against the applicant was not irretrievably prejudiced by the shortcomings in the summonsing procedure or by the quality of the assistance provided by his publicly appointed legal representatives. Having given consideration, in particular, to the re-trial ordered by the Alba-Iulia Court of Appeal on 4 January 2007 (see paragraph 43 above) and to the subsequent third round of court proceedings (see paragraphs 44-61 above), the Court is of the opinion that, considered as a whole, the proceedings complained of do not disclose any appearance of violation of Article 6 of the Convention.

109. It follows 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 26 October 2017.

Marialena Tsirli
Registrar

Ganna Yudkivska
President