

Criminal proceedings against a former MEP following the publication of an article in *The Sunday Times* were not unfair

In today's **Chamber** judgment¹ in the case of [Severin v. Romania](#) (application no. 20440/18) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 6 §§ 1 and 3 (d) (right to a fair trial/right to examine witnesses) of the European Convention on Human Rights.

The case concerned the fairness of criminal proceedings against Mr Severin for allegedly taking bribes while he was a Member of the European Parliament (MEP). The proceedings, which saw him receive a four-year prison sentence, were initiated following the publication of an article by two British *Sunday Times* journalists, who had posed as lobbyists and had offered the applicant money in exchange for his support for certain legislative amendments submitted to the European Parliament.

Before the European Court, the applicant argued that the two journalists had acted as *agents provocateurs*. He also complained about the Romanian courts' use of the journalists' recordings and the fact that the journalists had been examined in circumstances he claimed had been unfavourable to his defence.

Regarding the allegation that the British journalists had acted as *agents provocateurs*, the Court noted that there was no evidence of State involvement in the present case and that the two journalists had acted at all times as private individuals.

As to the criminal proceedings as a whole, the Court considered that they had afforded the applicant adequate safeguards to exercise his defence rights. While taking into account the possible weight of the evidence obtained or provided by the journalists – particularly the recordings – and the difficulties that their use might have created for the defence, the Court noted that the applicant had been able to raise his arguments before the domestic courts, where they had been examined in a manner compatible with the provisions of Article 6 of the Convention. The Court further considered that the way in which the witnesses had been examined during the proceedings was also compatible with that provision, and had enabled the applicant to exercise his rights effectively.

Principal facts

The applicant, Adrian Severin, is a Romanian national who was born in 1954 and lives in Romania. He was an MEP at the relevant time.

In 2011 the British weekly newspaper *The Sunday Times* published an article suggesting acts of corruption at the European Parliament, targeting several MEPs, including the applicant. The article was the product of a journalistic investigation by two British *Sunday Times* journalists, involving a number of MEPs.

According to the article, the journalists had met the applicant under false names on five occasions in Strasbourg and Brussels between December 2010 and March 2011, posing as representatives of a

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

London-based consultancy. They had offered him a paid role as a member of that company's advisory board, which the applicant had accepted. He had then, according to the article, taken steps to modify a draft amendment to a European directive (Directive 94/19/EC on deposit-guarantee schemes) in line with the journalists' requests, before providing them with a bill for his services.

The journalists had recorded their face-to-face and telephone conversations with the applicant and had saved the electronic messages they had exchanged with him.

A few days after the article was published an investigation was opened in respect of the applicant for suspected abuse of his position as an MEP.

Later in the same year the European Parliament waived the applicant's parliamentary immunity at the request of the Romanian authorities.

In 2013 the applicant was then committed for trial before the High Court of Cassation and Justice (sitting as a three-judge bench) on charges of accepting bribes and trading in influence. He was convicted of those charges and sentenced to three years and three months' imprisonment in 2016. Both the applicant and the public prosecutor's office appealed against the decision.

In 2017 a five-judge bench of the High Court dismissed the applicant's appeal and, ruling on the appeal by the public prosecutor's office, increased the applicant's sentence to four years' imprisonment. One of the judges on the bench issued a separate opinion, expressing the view that the applicant should have been acquitted on the charge of accepting bribes and convicted only of trading in influence.

During the proceedings the applicant unsuccessfully challenged the lawfulness of the use, as evidence against him, of the journalists' statements and recordings of face-to-face discussions, requesting that they be excluded from the case file. He also alleged that the journalists had acted as *agents provocateurs*.

In 2018 the High Court dismissed an extraordinary appeal lodged by the applicant.

Complaints, procedure and composition of the Court

Relying on Article 6 §§ 1 and 3 (d) (right to a fair trial/right to examine witnesses) of the Convention, the applicant complained that the criminal proceedings against him had been unfair, in particular on account of the use of the journalists' recordings and the fact that the journalists had been heard in circumstances that, he claimed, had been unfavourable to the defence.

The application was lodged with the European Court of Human Rights on 25 April 2018.

Judgment was given by a Chamber of seven judges, composed as follows:

Gabriele **Kucsko-Stadlmayer** (Austria), *President*,
 Tim **Eicke** (the United Kingdom),
 Faris **Vehabović** (Bosnia and Herzegovina),
 Armen **Harutyunyan** (Armenia),
 Anja **Seibert-Fohr** (Germany),
 Ana Maria **Guerra Martins** (Portugal),
 Sebastian **Rădulețu** (Romania),

and also Simeon **Petrovski**, *Deputy Section Registrar*.

Decision of the Court

As regards the applicant's allegation that the British journalists had acted as *agents provocateurs*, the Court noted that there was no evidence of State involvement in the present case and that the

two *Sunday Times* journalists had acted as private individuals. As the Court had previously found, a complaint alleging incitement by a private individual – who was not acting on the instructions or under the control of the authorities – had to be approached from the angle of the general rules of evidence rather than from that of incitement. The Court accordingly decided to examine how the taking of evidence might have impacted the fairness of the proceedings against the applicant, in the context of the criminal proceedings as a whole.

With regard to the applicant's complaint about the use of the journalists' recordings, the Court noted that the case file before the Romanian courts had contained several items of evidence obtained following the exchanges between the applicant and the two journalists, and in particular audiovisual recordings made during their meetings. It observed that nothing in the case file suggested that the High Court had failed to exercise the caution required by the circumstances of the case in admitting such evidence. It further noted that the use of recordings such as the journalists' – made on their own initiative and using their own equipment – had at the relevant time been authorised under domestic law in criminal proceedings. Lastly, it noted that the High Court had duly considered the applicant's arguments that the use of such evidence was unlawful, and had rejected them. In these circumstances, the case did not raise any issue relating to the use of unlawfully obtained evidence. In addition, the High Court had examined the applicant's allegations that the recordings were not genuine and/or had been edited, and his requests for an expert opinion on the matter. The Romanian courts had rejected those requests and provided reasons for their decision, explaining that such an opinion was not relevant to the case. Furthermore, the applicant and his lawyers had had access to all the recordings, and the High Court had given him the opportunity to submit detailed objections as to their content. Lastly, the recordings had been played at a public hearing before the High Court, in the presence of the applicant and his representatives.

The Court concluded that the applicant had been given sufficient opportunity to challenge the authenticity of the recordings and to object to their use. The recordings had not, moreover, been the decisive factor in the applicant's conviction, since there had been other evidence in the case file and the journalists had also given statements to the Romanian authorities.

As to the applicant's complaint that the journalists had been examined in conditions unfavourable to the defence, the Court noted that they had been initially interviewed by the British authorities following a request for judicial assistance during the investigation of the public prosecutor's office. They had then been heard by the High Court judges themselves via video-conference.

Concerning the request for judicial assistance, one of the applicant's main arguments was that the journalists' statements had been influenced by the Romanian authorities. The Court observed that it was the British authorities – not the Romanian public prosecutor's office – who had interviewed the witnesses at that stage of the proceedings and that they had been the only ones to have direct contact with them.

As regards the journalists' examination via video-conference, the Court noted that the High Court judges had been able to hear the witnesses in real time at the hearing on 24 November 2015. It observed that it had not been the public prosecutor's office which had decided to hear the witnesses via video-conference, as the applicant maintained, but rather the High Court judges. The applicant's lawyers had also been able to question the witnesses. It was apparent from the High Court's decision that video-conferencing had been used because the witnesses, as foreign nationals, could not attend the hearing. The Court therefore considered that the use of video-conferencing to take evidence – which was not in itself contrary to the Convention – had pursued the legitimate aim of the proper administration of justice in the present case, and that the manner in which it had been carried out was compatible with the requirements governing respect for defence rights, as laid down in Article 6 of the Convention. Furthermore, the applicant had attended the hearing on 24 November 2015 and his lawyers had been able to question the two witnesses.

As to the fact that the video-conference had allegedly been affected by technical issues and been cut short, the Court noted that the applicant had not raised those matters before the domestic courts. In any event, he had neither proved his allegations nor explained how those difficulties could have undermined the overall fairness of the proceedings.

Lastly, the Court noted that the witnesses' statements had remained consistent throughout the proceedings and that the High Court had been able to assess their veracity and credibility. In this regard, the Court reiterated that it was not its role to question the domestic courts' assessment of the evidence submitted to them, unless their findings could be regarded as arbitrary or manifestly unreasonable – which was not the case here.

In conclusion, the Court considered that the criminal proceedings, taken as a whole, had afforded the applicant adequate safeguards to exercise his defence rights. While taking into account the possible weight of the evidence obtained or provided by the journalists – particularly the recordings – and the difficulties that their use might have created for the defence, the Court noted that the applicant had been able to raise his arguments before the domestic courts, where they had been examined in a manner compatible with the provisions of Article 6 of the Convention. The Court further considered that the way in which the witnesses had been examined during the proceedings was also compatible with that provision and had enabled the applicant to exercise his rights effectively. Accordingly, there had been no violation of Article 6 §§ 1 and 3 (d) of the Convention.

The judgment is available only in French.

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Press contacts

echrpess@echr.coe.int | tel: + 33 3 90 21 42 08

We are happy to receive journalists' enquiries via either email or telephone.

Inci Ertekin (tel: + 33 3 90 21 55 30)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Neil Connolly (tel: + 33 3 90 21 48 05)

Jane Swift (tel: + 33 3 88 41 29 04)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.