

Romania, ECtHR, Application no. 60858/15, Case of Alexandru Marian Iancu v. Romania,

4 February 2020

Member State

 Romania

Topic

Impartiality

Deciding Court Original Language

Tribunalul Bucureşti

Curtea de Apel Bucureşti

Înalta Curte de Casaţie şi Justiţie

Deciding Court English translation

Bucharest County Court

Bucharest Court of Appeal

The High Court of Cassation and Justice

Registration N

60858/15

Date Decision

4 February 2020

ECLI (if available)

ECLI:CE:ECHR:2020:0204JUD006085815

ECtHR Jurisprudence

Altay v. Turkey, no. 22279/93, 22 May 2001

Craxi III v. Italy (dec.), no. 63226/00, 14 June 2001

De Cubber v. Belgium, no. 9186/80, 26 October 1984 (Merits)

Diennet v. France, no. 18160/91, 26 September 1995

Dragojević v. Croatia, no. 68955/11, 15 January 2015

Ferrantelli and Santangelo v. Italy, no. 19874/92, 7 August 1996

Harabin v. Slovakia, no. 58688/11, 20 November 2012

Hauschildt v. Denmark, no. 10486/83, 24 May 1989

Marguš v. Croatia [GC], no. 4455/10, 27 May 2014

Mureşan v. Romania, no. 2962/13, 8 November 2016

Otegi Mondragon and Others v. Spain, nos. 4184/15, 4317/15, 4323/15, 5028/15 and 5053/15, 6 November 2018

Ringeisen v. Austria, no. 2614/65, 16 July 1971

Romero Martin v. Spain (dec.), no. 32045/03, 12 June 2006

Rudnichenko v. Ukraine, no. 2775/07, 11 July 2013

Thomann v. Switzerland, no. 17602/91, 10 June 1996

Tîrean v. Romania, no. 47603/10, 28 October 2014

Vaillant v. France, no. 30609/04, 18 December 2008

Subject Matter

The applicant did not rebut the presumption of judge's impartiality, as to the subjective aspect of the test of impartiality, in relation to the participation of the judge in previous proceedings concerning the applicant.

Legal issue(s)

Impartiality

The prosecutor decided to examine the acts committed by the applicant in two different files including two sets of criminal proceedings because the facts of the cases were not connected. The applicant complained of the lack of impartiality of the trial panel regarding judge M.A.M. who was part of the trial panel in both sets of criminal proceedings against the applicant. For this reason, the applicant invoked the violation of the Article 6 paragraph 1 of ECHR.

Request for expedited/PPU procedures

NO

National Law Sources

The Romanian Code of Criminal Procedure (Article 64, Article 66, Article 67, Article 68)

Facts of the case

Against the applicant, there were two sets of criminal proceedings. As for the first set, on 14 October 2014, the panel of the Bucharest Court of Appeal, composed of judges C.B. and M.A.M., convicted the applicant of continuous tax evasion, conspiracy to commit crimes and continuous money laundering, and sentenced him to twelve years' imprisonment. On 2 June 2015, judge M.A.M. submitted a withdrawal request, for being a member of the appeal panel which delivered the final Decision during the first set of criminal proceedings. The request was dismissed. Regarding the second set of criminal proceedings, on 8 June 2015, the Bucharest Court of Appeal, in a panel composed of judges M.A.M. and T.G., convicted the applicant with final effect of being an accessory to fraud, two counts of incitement to commit abuse of office with extremely serious consequences, instigation of an organised criminal group and two counts of money laundering, and sentenced him to fourteen years' imprisonment.

Reasoning (role of the Charter or other EU, ECHR related legal basis)

The Court reiterated the main principles applicable in cases raising impartiality issues: regarding the guarantees laid down in Article 6 paragraph 1 of the ECHR, a "tribunal" must be impartial. Impartiality denotes the absence of prejudice or bias. In accordance with the Court's case-law, there are two tests for assessing whether a tribunal is impartial within the meaning of Article 6 paragraph 1 of the ECHR. The first test (subjective) consists in seeking to determine the personal conviction of a particular judge in a given case. The personal impartiality of a judge must be presumed until there is proof to the contrary. As to the second test (objective), it means determining whether, quite apart from the personal conduct of a judge, there are ascertainable facts which may raise doubts as to his or her impartiality. The applicant submitted that the two sets of proceedings were connected as they had concerned similar facts. The ECtHR conducted a comparative study of the legislation of twenty-eight member States of the Council of Europe (Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Lithuania, North Macedonia, Norway, Poland, Portugal, the Russian Federation, Serbia, Slovenia, Spain, Sweden, Turkey, Ukraine and the United Kingdom). The comparative study suggested that in the criminal legal systems of all these member States there are four common grounds requiring the withdrawal of judges:

- (a) if the judge in question is a victim of the offence at issue;
- (b) if the judge had or has a relationship (as a spouse or relative up to the third degree) with the accused, the victim or any person participating in the proceedings;

(c) if the judge has previously been involved in the case in a different capacity (for example as a prosecutor, police officer, legal representative, witness, and so on);

(d) if the judge has previously participated in the examination of the case in his or her function as a judge, for example, if he or she has issued a ruling concerning arrest or detention as a preliminary investigation judge.

The ECtHR noted that complaints concerning judge M.A.M.'s alleged lack of impartiality were also examined and rejected by the High Court of Cassation and Justice and by the Superior Council of Magistracy. The ECtHR established that judge M.A.M.'s behaviour in both criminal proceedings was not such as to objectively justify the applicant's fears as to his impartiality. For this reason, the ECtHR considered that there has been no violation of Article 6 paragraph 1 of the ECHR.

Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

The High Court of Cassation and Justice asked the Bucharest Court of Appeal for clarification, regarding a request for a change in venue based on suspicions of a lack of impartiality of the judges of the Bucharest Court of Appeal.

(Link to) full text

[https://hudoc.echr.coe.int/eng#{%22languageisocode%22:\[%22ENG%22\],%22appno%22:\[%2260858/15%200729%22\]}](https://hudoc.echr.coe.int/eng#{%22languageisocode%22:[%22ENG%22],%22appno%22:[%2260858/15%200729%22]})

Author

Ioana ?oldea, National Association of the Romanian Bars

History of the case: (please note the chronological order of the summarised/referred national judgments.)

The first set of criminal proceedings:

1. 28 November 2011- The Judgment of the Bucharest County Court
2. 14 October 2014- The Decision of the Bucharest Court of Appeal

The second set of criminal proceedings:

1. 16 December 2014- The Judgment of the Bucharest County Court
 2. 8 June 2015- The Decision of the Bucharest Court of Appeal
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