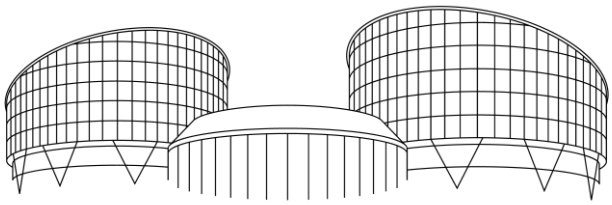

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF VALENTINO ACATRINEI v. ROMANIA

(Application no. 18540/04)

JUDGMENT

STRASBOURG

25 June 2013

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Valentino Acatrinei v. Romania,

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria,
Kristina Pardalos,
Johannes Silvis, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 4 June 2013,

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

PROCEDURE

1. The case originated in an application (no. 18540/04) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Valentino Acatrinei ("the applicant"), on 23 March 2004.

2. The applicant was represented by Mr Petre Buneci, a lawyer practising in Bucharest. The Romanian Government ("the Government") were represented by their Agent, Ms Irina Cambrea, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the criminal proceedings against him had been unfair and that the telephone interceptions used as evidence had been illegal.

4. On 29 August 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. As Mr Corneliu Bîrsan, the Judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court), the President of the Chamber appointed Mrs Kristina Pardalos to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1947 and lives in Bucharest. At the relevant time, he was a judge inspector at the Bucharest Court of Appeal.

7. On 11 September 2000 the Romanian Intelligence Service ("the RIS") informed the Anti-Corruption Department of the Prosecutor's Office attached to the Supreme Court of Justice ("the prosecutor") that the lawyer L.P. (the applicant in case no. 25333/03) had given bribes to several judges, including the applicant, in order to obtain decisions favourable to her clients. It based the accusation on information obtained through intercepting L.P.'s telephone, measure taken because one of her clients was suspected of crimes against national security. The surveillance activity was carried out under the National Security Act (Law no. 51/1991). The RIS handed the audio tapes and their transcripts over to the prosecutor's office. The prosecutor then continued the surveillance of the applicant's activities, including through telephone tapping. Several conversations between L.P. and the applicant, concerning cases of L.P.'s clients, were recorded between 7 and 14 June 2000.

8. On 22 March 2001 the prosecutor obtained the Ministry of Justice's approval to start criminal investigations in respect of the judges involved that is the applicant and R.F. On 4 May 2001 he started criminal proceedings against the applicant (*începerea urmăririi penale*).

9. On 7 May 2001 the prosecutor invited the applicant to his office, informed him of the accusations against him and arrested him.

10. Under Law no. 92/1992 on the organisation of justice, the applicant was suspended from his post from 7 May 2001.

11. On 21 May 2001 the applicant was released pending trial.

12. Throughout the proceedings, the applicant denied having committed the crimes.

13. On 12 December 2001 the prosecutor indicted the applicant for trading in influence (*trafic de influenţă*), for aiding and abetting to give bribes (*complicitate la darea de mită*) and for favouring the commission of crimes, and committed him and several other persons to trial. In particular, the prosecutor accused him of accepting money from L.P. on several occasions in order to convince the judges who were deciding on the cases concerning L.P.'s clients to release them pending trial and of acting upon his promises by trying to persuade some of those judges to release L.P.'s clients.

14. The case was heard by the Criminal Division of the Supreme Court of Justice.

15. On 31 January the Supreme Court heard testimony from each defendant separately and the relevant parts of the audio tapes were played in their presence. None of them denied having had the recorded conversations.

16. The applicant again denied having committed any crime. He explained that his discussions with L.P., which had been recorded through secret surveillance, as well as those he had had with his fellow judges about the cases referred to by L.P., had concerned only questions of law. He maintained that he had not accepted any money or promise of money from L.P. He reiterated that in his capacity as judge inspector, he was entitled to discuss questions of law with his colleagues.

17. L.P. and R.F. also denied committing any crime.

18. At the same hearing on 31 January 2002, the co-defendants alleged that there were procedural defects. They argued that as the prosecutor had failed to request the necessary authorisation for intercepting magistrates' conversations, the audio recordings were illegal.

The court gave detailed answers to their complaints. Concerning the telephone tapping, it noted that one of L.P.'s clients had been indicted for weapons and ammunition smuggling, which, under the National Security Act, constituted a threat to national security and thus allowed the RIS, under procedure regulated by the Code of Criminal Procedure, to seek authorisation from the prosecutor to intercept the suspect's conversations. The fact that during the surveillance activity the authorities came across telephone discussions among the co-defendants which led them to believe that L.P. was trying to corrupt the defendant judges constituted preliminary investigation (*acte premergătoare*).

The Supreme Court reiterated that so long as the recordings had been obtained during the preliminary investigation phase, they did not constitute evidence. Only if the judicial authorities considered their content relevant for the criminal proceedings could those recordings be admitted to the file.

19. On 21 February 2002 the declarations given by the defendants were read out in court. They were allowed to supplement their testimony and put questions to their co-defendants.

20. R.F.'s counsel opposed hearing testimony from an informer arguing that "the prosecutor is using [him] although he is an offender" (*"infractor"*), to which the prosecutor, I.K., replied "an offender who is giving statements about other offenders". Both the applicant and R.F. asked for the prosecutor to withdraw from the case for having breached the presumption of their innocence.

21. At the same hearing of 21 February 2002 the Supreme Court heard testimony from the witnesses for the prosecution.

22. On 27 February and 25 March 2002 the Supreme Court dismissed the objections raised by the applicant and R.F. concerning the prosecutor's withdrawal. I.K. continued to represent the prosecutor's office throughout the first-instance and appeal proceedings.

23. On 14 March 2002, at the defendants' request, the Supreme Court ordered an expert examination of the audio tapes, in accordance with Article 91^5 of the Code of Criminal Procedure ("CCP").

24. At a hearing on 4 April 2002 the Supreme Court dismissed a request by the applicant and R.F. for the RIS to be asked to adduce the reports drafted by the officers in charge of the surveillance and the reports attesting to the transfer of the audio tapes between the RIS and the prosecutor's office. The Supreme Court considered that that evidence was irrelevant in so far as none of the parties involved had contested having had the recorded conversations.

25. On 4 April, 25 April, 9 May and 6 June 2002 the Supreme Court heard eight witnesses for the defence.

26. On 3 June 2002 the two experts rendered their report, as requested by the Supreme Court. They concluded that the audio tapes were neither authentic nor original and they advised against admitting them as evidence in the criminal trial.

27. On 6 November 2002 the Supreme Court of Justice, sitting as a three-judge bench, rendered its decision. By a majority of two, it changed the legal classification from continuous crimes of trading in influence and aiding and abetting L.P. to give bribes, to two individual crimes of trading in influence and two individual crimes of aiding and abetting. It convicted the applicant and sentenced him to five years' imprisonment. The dissenting judge disagreed with the legal classification given to the facts.

28. The Supreme Court considered that the statements made by the defendants and the witnesses both before the prosecutor and in open court confirmed that some of L.P.'s clients had been released from prison because she had bribed the judges, including the co-defendants. The court also noted that some of the witnesses for the prosecution who had retracted their initial statements had admitted, either before the prosecutor or in court that they had been pressured by the defendants into changing their declarations. The court also considered that the testimonies given by the witnesses corroborated the transcripts of the telephone conversations.

29. The Supreme Court also made a lengthy analysis of the transcripts thus responding to the defendants' allegations that they had been obtained unlawfully and that they could not be used as evidence as they had been collected during the preliminary investigation stage. The court reiterated that none of the participants had denied having had the conversations recorded on the tapes produced by the prosecutor and listened to in open court. It noted that the experts had not questioned that aspect either.

As for the authenticity and originality of the tapes, which the experts contested, the court pointed out that, in the sense of Article 224 of the Code of Criminal Procedure, the report concerning the transcripts, drafted by the prosecutor after the opening of the criminal proceedings, represented the evidence and not the tapes themselves (which were attached to the

prosecutor's report, as the law required); nor did the original hard-disk onto which the recording had been done. In his report, the prosecutor attested to the authenticity of the recordings and proved that the procedure in place for the telephone tapping had been respected. The court confirmed those aspects. The defendants had had ample opportunity to challenge it, as provided for by the CCP.

Moreover, the court observed that the original recording had been digital, done straight onto the hard-disk of the equipment used by the RIS for telephone tapping; the tapes attached to the prosecutor's report were consequently copies of the original recordings. Because of its nature and purpose, the hard-disk could not be attached to the prosecutor's report; furthermore, it did not need to be attached as it did not constitute evidence. The court concluded that the absence of the hard-disk did not automatically disqualify the transcripts from being used as evidence.

Furthermore, the court noted that, for obvious reasons related to respect for the private life of those involved, it had not listened to all the conversations recorded by the RIS, but only to those relevant to the charges brought before it. However, the parts presented to it and to the defendants by the prosecutor represented full conversations. The dialogues were coherent; the sentences were not truncated and no words were missing or had been inserted into the dialogues. It observed that neither the experts nor the parties had claimed that the content of the conversations heard in court had been falsified.

30. The court was therefore satisfied that the prosecutor's report on the telephone tapping and its transcripts qualified as lawful evidence for admission to the case file.

31. All parties appealed against the judgment. In particular, the applicant complained that the Supreme Court had failed to allow the parties to discuss the new classification of the crimes; that the indictment did not comply with the legal requirements as it had not been confirmed by the Prosecutor General, which rendered it null and void; that the investigation had started before the necessary approvals had been sought; that the telephone tapping had been illegal and that the court had refused to send a constitutional complaint raised by the applicant about that evidence to the Constitutional Court; that the judgment had not been signed by the dissenting judge; and that the operative part of the decision did not correspond to the one delivered in public. He lastly complained about the court's interpretation of the evidence in the file, in particular that the audio tapes had been taken into account despite the expert opinion, and considered that the sentence was too harsh.

32. The case was heard by a nine-judge bench of the Supreme Court who rendered the final decision on 8 October 2003. The Supreme Court gave a detailed answer to all arguments raised by the defence concerning

both the procedural and the substantive aspects of the case before the prosecutor and the first-instance court.

33. Answering to an appeal argument raised by R.F., the Supreme Court ruled that the prosecutor had been right not to withdraw from the case after having called the defendants "offenders", as the incriminated remarks had been uttered in the course of debates, where prosecutor and defendants were in positions of equality and had been provoked by defence counsel's offensive statements concerning a witness.

34. The Supreme Court noted that the telephone tapping had not observed the stricter requirements relating to magistrates. It was nevertheless satisfied that such requirements were not relevant in the case because the magistrates had not been targeted by the initial measure of telephone tapping; on this point it reiterated that the information concerning the magistrates' alleged involvement had been obtained incidentally by the prosecutor. It observed that for the procedural acts concerning the magistrates the prosecutor had obtained all the necessary authorisations. The court also reiterated that as the tapes had disclosed information on the commission of crimes, they could not have been ignored by the authorities. Furthermore, the tapes had been made with the prosecutor's prior approval, as the law had required at the time, and had not contravened public order. The Supreme Court attached great importance to the fact that the defendants had not denied having had the recorded conversations. It also noted that the information obtained through the telephone tapping had been confirmed by the evidence in the file. It therefore concluded that the tapes could be used as evidence.

The Supreme Court also decided that the evidence had to be interpreted in its entirety and in context, and reiterated that the law did not give precedence to any type of evidence to the detriment of others.

35. It therefore concluded that the evidence in the file was sufficient and that the first-instance court had correctly interpreted the facts based on the elements at its disposal.

36. The Supreme Court noted that the first-instance court had changed the legal classification of the crimes committed by L.P. from a continuous crime of giving bribe to several individual crimes of giving bribes and of the crimes committed by the applicant from a continuous crime of trading in influence and aiding and abetting L.P. to give bribes to several individual crimes of trading in influence and aiding and abetting L.P. to give bribes. It accepted that the first-instance court had erred in not allowing the parties to discuss the new legal classification of the crimes. However, it noted that such a failure did not trigger the nullity of the judgment and that in fact there had not been any risk of the defendants being disadvantaged by the new classification as the consequences in law for both situations were identical.

It noted nevertheless that the conviction for one of the crimes committed by the applicant had been pardoned. However, the final sentence remained the same.

37. On 13 October 2003 the applicant started serving his sentence.

38. On 15 December 2004, while the applicant was still in prison, the President of Romania granted individual pardon to several people, including the applicant, by means of Presidential Decree no. 1164 issued under Article 94 (d) of the Constitution and published the next day in the Official Monitor.

39. On 16 December 2004 the applicant was released from prison.

40. The President's decision was widely criticised in the press, as one of the persons who benefitted from the pardon was M.C. who had been convicted of crimes against national security and was serving a sixteen-year and six-month sentence for his role in the miners' riots in Bucharest in 1991.

41. As a consequence of the protests, on 17 December 2004 the president revoked the pardon, by means of Decree no. 1173, and the applicant was incarcerated again on 18 December 2004.

42. On 20 December 2004 the applicant objected to his renewed detention.

43. In a decision of 20 April 2005, after several remittals of the case, the Bucharest County Court found that the applicant's detention was illegal, on the grounds that the individual pardon had been unconditional and that once Decree no. 1164/2004 had been enforced, it was no longer revocable. The court took account of the requirements of Articles 5 and 13 of the Convention.

On 5 May 2005 the Bucharest Court of Appeal upheld the reasoning of the County Court and ordered, in addition, that the applicant be released promptly. The decision became final on 6 October 2005, before the High Court of Cassation and Justice.

44. On 6 May 2005 the applicant was released from prison.

45. He then lodged a civil claim against the State for illegal detention for the period from 18 December 2004 to 6 May 2005. He sought 1,400,000 euros (EUR) in damages.

46. On 2 June 2006 the Bucharest County Court noted that the applicant's detention had been declared illegal and granted him EUR 100,000 in respect of non-pecuniary damage. All parties appealed and in a final decision of 20 September 2007 the High Court of Cassation and Justice set the amount of compensation in respect of non-pecuniary damage at EUR 10,000 and awarded it to the applicant.

II. RELEVANT DOMESTIC LAW

47. The legislation in force at the relevant time concerning telephone tapping, including the National Security Act, is described in *Dumitru Popescu v. Romania (no. 2)* (no. 71525/01, §§ 39-46, 26 April 2007).

48. The relevant provisions of the Code of Criminal Procedure concerning the preliminary investigation read as follows:

Article 224 §§ 1 and 3
The preliminary investigation

"1. The criminal investigation authorities may conduct any preliminary investigation measures.

...

3. The report of execution of any preliminary investigation measure shall constitute evidence."

Article 228 § 1
Opening of the criminal proceedings (*urmărirea penală*)

"The criminal investigation authority to which an application is made in accordance with any of the arrangements set forth in Article 221 shall order, by decision (*rezoluţie*), the opening of criminal proceedings where the content of that application or the preliminary investigation does not disclose any grounds for not prosecuting, as provided for in Article 10, with the exception of the ground set out in subparagraph (b)1."

49. Concerning the telephone tapping at the preliminary investigation stage, the High Court of Cassation and Justice considered, in a decision rendered in an appeal on points of law (decision no. 10 of 7 January 2008) that the lawfulness of the interception was not dependent on whether criminal proceedings had been opened; it further noted that the law did not impose an obligation on the authorities to inform the person concerned of that measure, an omission which the High Court found reasonable, given the purpose of the telephone tapping and its secrecy. However, the person concerned had subsequently had an opportunity to listen to the recordings and contest their content. The High Court also reiterated that there was no prior value attached to the report drafted by the prosecutor, as the courts were free to assess the evidence in the context of the files under examination.

By its decision no. 962 of 25 June 2009, the Constitutional Court confirmed that Article 91^1 of the CCP did not allow for evidence to be gathered during the preliminary investigations; any such evidence would fall under the courts' scrutiny.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

50. Relying in substance on Article 8 of the Convention, the applicant complained that the telephone interceptions had been illegal. Article 8 of the Convention reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

51. The Government averred that the applicant could not pretend to be the victim of a violation of the Article 8 rights, in so far as the authorities had not intercepted his telephone, but that of L.P. Furthermore, they argued that as the main aim of Article 8 was to protect individuals against arbitrary interference, this Article is not applicable to the facts of the current case because the interference had not been arbitrary, in so far as the measure had been approved by the court.

52. The applicant contested that argument.

53. The Court reiterates that Article 8 applies irrespective of whether the surveillance was carried out on a device belonging to the applicant or to a third party (see, notably, *Lambert v. France*, 24 August 1998, §§ 20-21, *Reports of Judgments and Decisions* 1998-V; and *Uzun v. Germany*, no. 35623/05, § 49, ECHR 2010 (extracts)). Moreover, telephone conversations between L.P. and the applicant were intercepted during the operation and were used in the criminal proceedings (see paragraphs 7 *in fine* and 16 above). The point whether the interference was arbitrary or not is a matter to be determined on the merits of the complaint.

The Government's pleas are therefore unsubstantiated.

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

B. Merits

1. The parties' submissions

55. The applicant argued that the content of the telephone conversations had damaged his private life and reiterated that despite them not being authentic and original, the recordings had been used in the criminal trial against him thus further infringing his right to respect for his private life.

56. The Government contested that the telephone tapping constituted interference with the applicant's rights. Even assuming that such interference occurred, they argued that it was done in accordance with the law, the National Security Act. Relying on *Klass and Others v. Germany* (6 September 1978, § 49, Series A no. 28), they stated that the Court had accepted that national security concerns could justify, in exceptional circumstances, measures of secret surveillance. Furthermore, the measure was authorised by the prosecutor and the applicant had the possibility to have the tapes thus obtained examined by an expert.

2. The Court's assessment

57. The Court observes at the outset that telephone conversations are covered by the notions of "private life" and "correspondence" within the meaning of Article 8 (see, among other authorities *Craxi v. Italy (no. 2)*, no. 25337/94, § 57, 17 July 2003 and *Drakšas v. Lithuania*, no. 36662/04, § 52, 31 July 2012). It also notes that in the present case the conversations between the applicant and L.P. were recorded in June 2000 under a mandate given to the RIS by the prosecutor under the National Security Act (see paragraph 7 *in fine* above).

58. The Court further reiterates that it has already examined whether the system in place in Romania for telephone tapping on grounds of national security complied with the requirements of Article 8 of the Convention (see *Dumitru Popescu*, cited above, as well as *Calmanovici v. Romania*, no. 42250/02, §§ 120-26, 1 July 2008). It has ruled that the system lacked proper safeguards and thus breached the requirements of Article 8, in so far as the prosecutor authorising the surveillance was not independent from the executive (see *Dumitru Popescu*, cited above, § 71); a prosecutor's decision to intercept communications was not subject to judicial review before being carried out (*idem*, § 72); a person affected by the surveillance could not challenge before a court the merits of the interception (*idem*, § 74); and that there was no mention in the law of the circumstances in which the transcripts could be destroyed (*idem*, § 79).

59. The Court notes that the facts of the present case are similar to the ones examined in *Dumitru Popescu* and the same laws are applicable to them. It also observes that in the case under examination the applicants obtained an expert's opinion on the authenticity and originality of the tapes

(see, *a contrario, Dumitru Popescu*, cited above, § 21). However, the remaining flaws identified by the Court in the system had an effect on the applicant's rights.

60. For these reasons, in the light of its previous case-law and having examined the observations submitted by the parties in the present case, the Court sees no reason to depart from the conclusion it reached in *Dumitru Popescu*, cited above, in particular given that the same laws are at issue in the case before it.

61. Accordingly, the Court considers that in the present case there has been a violation of Article 8 of the Convention on account of a lack of safeguards in the procedure for telephone interceptions on grounds of national security.

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

62. The applicant complained that the criminal proceedings against him had not been fair. He relied on Article 6 §§ 1 and 3 of the Convention which reads as follows, in so far as relevant:

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

A. Admissibility

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

B. Merits

1. The parties' arguments

64. The applicant argued, mainly, that the prosecutor had not followed the procedure for indicting him, claiming both the non-observance of the formal requirements for the indictment act and the absence of the necessary approvals from the Ministry of Justice; that the evidence obtained through telephone tapping had been illegal, in so far as it had been gathered before the commencement of the criminal proceedings and without the proper

procedures being observed; that the witnesses and L.P. had been coerced by the prosecutor into testifying against him; that the accusations against him were unfounded; and that the operative part of the first-instance judgment had been falsified. He also complained that the first-instance court had changed the legal classification of the alleged crimes without allowing the parties to discuss the new situation. Lastly he put forward that the courts had made an erroneous interpretation of the evidence in the file.

65. The Government contended that the proceedings against the applicant, seen as a whole, had been fair. They put forward that the applicant had had the possibility to present his arguments, to adduce evidence and to challenge the evidence brought by the prosecution. They argued that the telephone interceptions had been authorised by the prosecutor according to the law; that the defendants had not contested having had the conversations or their content; and that in any case the recordings had not constituted the only evidence against the defendants. They also pointed out that the applicant had suffered no consequence from the change of the legal classification of the crimes operated by the court. Furthermore, the domestic courts had given answers to all the claims brought by the applicant before the Court.

2. The Court's assessment

(a) General principles

66. At the outset, the Court points out that the guarantees enshrined in paragraph 3 of Article 6 represent specific applications of the general principle stated in paragraph 1 of that Article and for this reason it will examine them together (see, among many others, *Deweer v. Belgium*, 27 February 1980, § 56, Series A no. 35; *Doorson v. the Netherlands*, 26 March 1996, § 66, *Reports* 1996-II; *and Artico v. Italy*, 13 May 1980, § 32, Series A no. 37).

67. According to the Court's case-law, for the purposes of Article 6, the "charge" could be defined as the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence or where "the situation of the [suspect] has been substantially affected" (see *Deweer*, cited above, § 46).

68. The Court further reiterates that it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention (see *Bykov v. Russia* [GC], no. 4378/02, § 88, 10 March 2009). Moreover, it is not its role to examine the legislation *in abstracto*, but to consider the manner in which it affected the applicant (see, *mutatis mutandis*, *Klass and Others*, cited above, § 33).

69. While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law (see *Brualla Gómez de la Torre v. Spain*, 19 December 1997, § 31, *Reports* 1997-VIII and *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). It is therefore not the role of the Court to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible or, indeed, whether the applicant was guilty or not. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. This involves an examination of the "unlawfulness" in question and, where a violation of another Convention right is concerned, the nature of the violation found.

70. The Court has already found in particular circumstances of a given case, that the fact that the domestic courts used as sole evidence transcripts of unlawfully obtained telephone conversations, did not conflict with the requirements of fairness enshrined in Article 6 of the Convention (see, among other authorities, *Khan v. the United Kingdom*, no. 35394/97, § 34, ECHR 2000-V; *P.G. and J.H. v. the United Kingdom*, no. 44787/98, § 76, ECHR 2001-IX; and *Dumitru Popescu*, cited above, § 106).

71. In determining whether the proceedings as a whole were fair, regard must also be had to whether the rights of the defence were respected. It must be examined in particular whether the applicant was given the opportunity of challenging the authenticity of the evidence and of opposing its use. In addition, the quality of the evidence must be taken into consideration, including whether the circumstances in which it was obtained cast doubt on its reliability or accuracy (see *Bykov*, cited above, § 90).

(b) Application of those principles to the case at hand

72. The Court notes that the complaint raised by the applicant is manifold. It will examine the main arguments in the following paragraphs.

(i). the transcripts of the telephone conversations

73. The Court observes that pursuant to the relevant provisions of the Code of Criminal Procedure, the domestic courts accepted as evidence in the case file the prosecutor's report concerning the telephone conversations between the defendants recorded during the preliminary investigation. The defendants argued that the tapes had been unlawfully obtained and that they had been proven not to be authentic and original.

74. The domestic courts responded extensively to the arguments concerning the impact of the contested evidence raised by the defendants (see paragraph 29 above).

75. The Court observes that the applicant freely engaged in the incriminatory conversations (see *Bykov*, cited above, § 102). Moreover, both

the applicant and the defence counsels availed themselves of numerous opportunities to question the validity of that evidence, and the courts gave thorough answers to their objections. It is to be noted that the applicant did not question the reality of the conversations recorded or the authenticity of their content. The domestic courts also insisted on that point when they examined the experts' opinion disputing the "authenticity and originality" of the tapes (see paragraph 29 above and *Dumitru Popescu*, cited above, § 109).

76. The Court further reiterates that the evidence does not have a pre-determined role in the respondent State's criminal procedure. The courts are free to interpret it in the context of the case and in the light of all the elements before them (see *Dumitru Popescu*, cited above, § 110). In the case at hand, the recording was not treated by the courts as a plain confession or an admission of knowledge capable of lying at the core of a finding of guilt (see *Bykov*, cited above, § 103); it played a limited role in a complex body of evidence assessed by the court.

77. Having examined the safeguards surrounding the analysis of the admissibility and reliability of the evidence concerned, the nature and degree of the alleged compulsion, and the use to which the material obtained through telephone tapping at the preliminary investigation stage was put by the courts in the current case, the Court considers that the use of transcripts in the trial did not breach the rights of the defence.

(ii). the legal classification of the alleged crimes

78. It is to be noted that L.P. lodged the same complaint with the Court which declared it inadmissible in a decision of 15 September 2009. The Court observed that the court of last resort had addressed the issue of reclassification and had concluded that it had concerned only the sentence and not the legal classification of the facts themselves and that the defendants had had the opportunity to contest the facts attributed to them (see *Peter v. Romania* (dec.), no. 25333/03, § 80, 15 September 2009 and paragraph 7 above). The Court further notes that the parties' arguments regarding the new classification were fully taken into account in the appeal proceedings.

79. The Court reiterates that the circumstances of the present case differ essentially from those examined in *Constantinescu v. Romania* (no. 28871/95, ECHR 2000-VIII), where the Court concluded that there had been a violation of Article 6 in so far as the applicant was convicted for the first time by the court of last resort, without being heard by that court about the new classification given to the crimes.

80. For these reasons, the Court sees no reason to depart in the present case from its findings in the decision *Peter*, cited above. Therefore it concludes that on this point no breach occurred under Article 6 of the Convention.

(iii). the remaining arguments

81. The applicant further raised under Article 6 of the Convention most of the arguments he had advanced in the domestic appeals.

82. The Court observes that the Supreme Court answered those pleas in great detail in a well-reasoned decision (see paragraphs 32 and following, above). The domestic courts paid particular attention to the manner in which the stricter procedural requirements for the investigation of magistrates had been observed by the prosecutor and gave sufficient reasons why they considered the proceeding to have been adequate (see paragraph 34 above and, *mutatis mutandis*, *Kudeshkina v. Russia*, no. 29492/05, § 97, 26 February 2009, and *Oleksandr Volkov v. Ukraine*, no. 21722/11, § 136, 9 January 2013).

83. The Court sees no reason to contradict the domestic court's findings in the matter and does not detect any grave procedural omissions in the proceedings carried out against the magistrates, including thus the applicant.

(iv). conclusion

84. The Court is satisfied that the domestic courts based their decisions on an important body of evidence: they heard testimony from several witnesses for the prosecution and for the defence, and took the opportunity to study the conflicting positions and to explain them in the context of the case.

85. For these reasons, the Court finds that the proceedings in the applicant's case, considered as a whole, were not contrary to the requirements of a fair trial.

It follows that there has been no violation of Article 6 §§ 1 and 3 (d) of the Convention.

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

86. The applicant further complained of the fact that the prosecutor I.K. had infringed the presumption of his innocence when, during the hearing that took place on 27 February 2002, she had called the defendants "offenders". He pointed out that I.K. had continued to represent the prosecutor's office throughout the proceedings. He relied on Article 6 § 2 of the Convention.

87. The Government contested the arguments put forward by the applicant.

88. The Court notes that L.P. lodged the same complaint with the Court which declared it inadmissible in a decision of 15 September 2009 whereby the Court observed that the statements by the prosecutor had been made during the debates, while a witness was being interrogated, and not

independently from the court proceedings and therefore could not constitute a breach of the presumption of the applicant's innocence (see *Peter* (dec.), §72, cited above and paragraph 7 above).

89. In addition, the Court notes that the applicant complained about the prosecutor's statements and the court examined his arguments (see paragraph 22 above). The mere fact that his objection was dismissed by the domestic courts is not sufficient to render the applicant's claims admissible under Article 6 of the Convention.

90. For these reasons, the Court sees no reason to depart in the present case from its findings in the decision *Peter*, cited above. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

91. Lastly, the applicant formulated several complains under Articles 5 and 6 (length of proceedings) concerning the criminal proceedings against him, as well as under Articles 5 and 6 of the Convention and Article 4 of Protocol No. 7 to the Convention concerning the incarceration from 18 December 2004 to 6 May 2005.

92. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

93. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

94. The applicant claimed EUR 173,906 in respect of pecuniary damage, having as basis the salary of a judge that he could no longer perceive after his suspension from post in May 2001.

He also claimed, in respect of non-pecuniary damage, EUR 4,390,000 for the alleged violations of Articles 5, 6 and 8 of the Convention.

95. The Government reiterated that the salary represented remuneration for work performed and since the applicant did not work as a judge after

May 2001, he could not legitimately pretend a salary after that date. They also argued that there was no causal link between the violations alleged and the pecuniary claims and that the finding of a violation should constitute sufficient just satisfaction in the case.

96. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 4,500 in respect of non-pecuniary damage.

B. Costs and expenses

97. The applicant made no claim under this head.

C. Default interest

98. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints raised under Articles 6 §§ 1 and 3 (d) and 8 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds* that there has been no violation of Article 6 § 1 and 3 (d) of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, in respect of non-pecuniary damage, EUR 4,500 (four thousand five hundred euros) plus any tax that may be chargeable, to be converted into the respondent State's national currency at the rate applicable at the date of settlement:
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 25 June 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President